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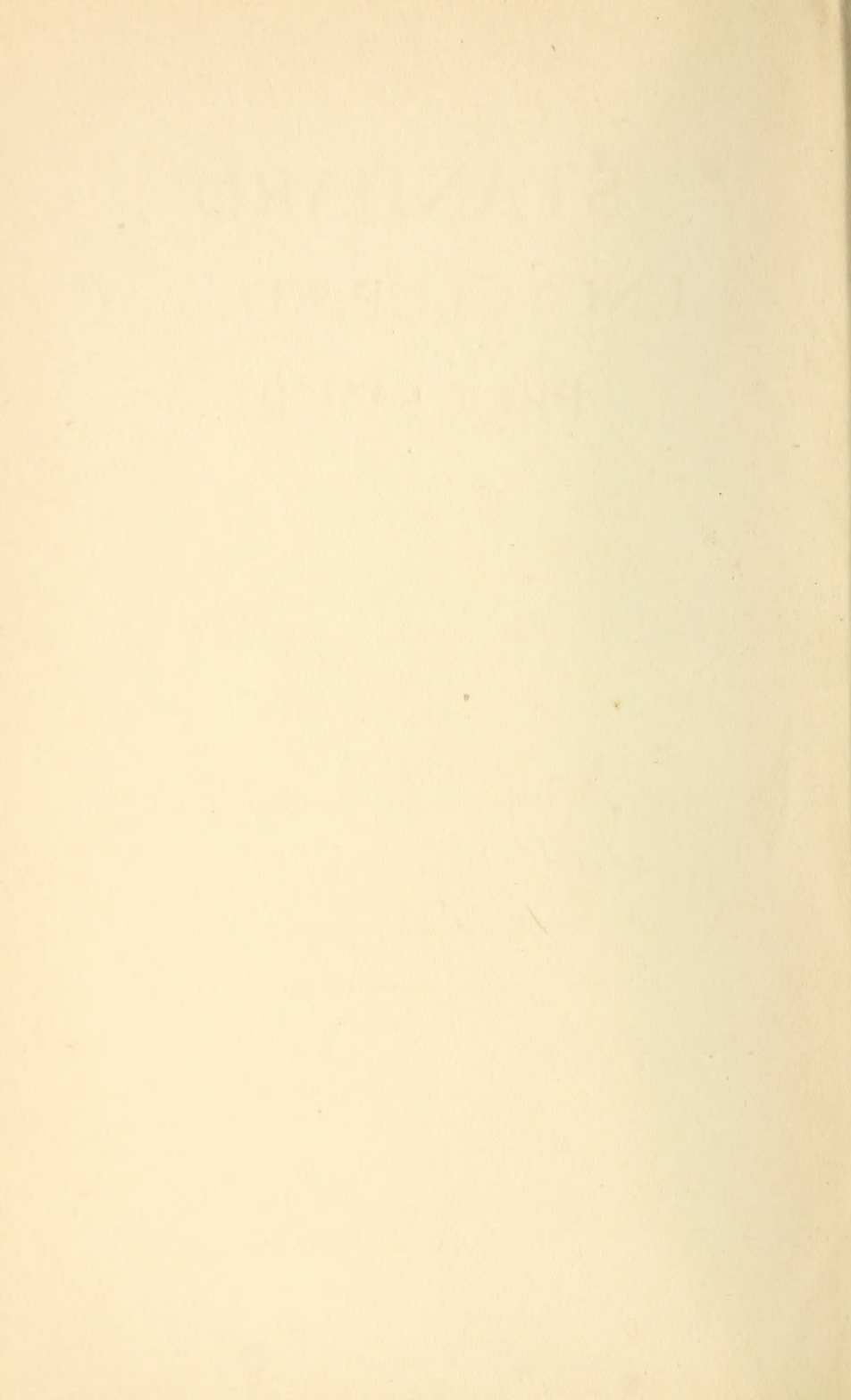


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STANDARD ENCYCLOPÆDIA *of* PROCEDURE

COMPILED BY
EDWARD E. BURNS

SUPERVISING EDITOR
EDGAR W. CAMP, *Editor "Encyclopædia of Evidence."*


VOL. IX

LOS ANGELES
L. D. POWELL COMPANY
CHICAGO

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INTRODUCTION

By EDWARD E. BURNS.

I. SCOPE, i

- A. *Forms for Use*, i
- B. *Illustration*, ii
- C. *Standard Procedure*, ii
- D. *Not Substantive Forms*, ii
- E. *Annotations*, ii

II. FOLLOWING PRECEDENTS, ii

III. WANT OF DUE FORM, iii

IV. FORMS OF EXPRESSION, iii

- A. *At Law*, iii
- B. *In Equity*, iv
- C. *Rules Apply to Code Pleading*, iv

V. PRECEDENTS AS AUTHORITY IN CRIMINAL PLEADING, iv

VI. SELECTION OF FORMS, v

VII. HOW TO USE THIS VOLUME, v

- A. *References*, v
- B. *Formal Parts*, v
- C. *Statements of Action*, vi
- D. *Statements of Things Enjoined*, vi
- E. *Adaptation of Common Law Forms and Code Forms*, vi

I. SCOPE.—A. FORMS FOR USE.—It is the purpose of this volume to set out forms of procedure of general application (as distinguished from merely local forms), ready for use, or readily adaptable, for practice under the common law and the codes, in civil and criminal procedure, at law and in equity, and in special proceedings, from the issuance of the first process to the execution of the final judgment. While it is impossible within the space of one volume, or of any number of volumes, to supply forms which will meet the requirements of every case without adaptation, owing to the fact that forms in their details tend toward infinite variety, it is the purpose of this volume to furnish

the elements from which every kind of a form that may be required in practice may be produced.

B. **ILLUSTRATION.** — Another purpose which has entered into the compilation of this volume is that of illustration and exemplification of subjects treated in the articles of **STANDARD PROCEDURE**. Courts frequently find it necessary to set out pleadings and proceedings in order that a clear understanding may be had of the point under discussion, and some of the best commentators use copious illustrations of forms in treating of procedure.

This volume will supplement the other volumes of **STANDARD PROCEDURE** in the purpose expressed in the opening paragraph of the **"Introduction"** to the series.

This volume will in another way render a great service to those who use **STANDARD PROCEDURE**. The intricate system of cross-references graphically presents the interrelation and interdependence of the several titles. This will materially assist the user of **STANDARD PROCEDURE** to become familiar with the general treatment of subjects before the succeeding volumes are issued.

C. **STANDARD PROCEDURE.** — The scope of **STANDARD PROCEDURE** is, of course, much greater than can be exemplified by the forms herein set out. One volume is inadequate to contain forms to correspond with the great multitude of details discussed throughout the work. Many principles are incapable of expression in forms.

D. **NOT SUBSTANTIVE FORMS.** — The forms herein are forms of procedure. Substantive forms, those not used in court proceedings, such as deeds, mortgages, bonds (not incidental to procedure), contracts, agreements, bills and notes, are not within the scope of this work and are therefore entirely omitted.

E. **ANNOTATIONS.** — The forms here presented are not annotated to any extent, it being assumed that in every instance the practitioner will refer to the title which the particular form is intended to supplement. In those titles the principles which enter into the structure of the forms will be fully explained and supported by abundant citation of authorities. There are, however, cautionary notes and remarks appended to certain forms where that has been deemed necessary.

II. FOLLOWING PRECEDENTS. — All progress in science and art is built upon the achievements of the past. Our progress in law is but the extending of principles laid down in past decisions. But older than decisions of the court as precedents, are the forms that have come down from the past, some of them unchanged from the earliest times. Many of the forms of expression now in use had their origin when pleading was cultivated as an art. The fruits of the toils of the pleader laboring under the strict requirements of former times may now be gathered by the modern practitioner from the forms that are preserved.

Respecting common law pleading, Stephen says: "This system, known by the name of Pleadings, of remote antiquity in its origin, has been gradually moulded into its present form, by the wisdom of successive ages. Its great and extensive importance in legal practice, has long recommended it to the early and assiduous attention of every pro-

INTRODUCTION

fessional student. Nor is this its only claim to notice; for when properly understood and appreciated, it appears to be an instrument so well adapted to the ends of distributive justice, so simple and striking in its fundamental principles, so ingenious and elaborate in its details, as fairly to be entitled to the character of a fine juridical invention." Steph. Pl. 2.

The same learned author lays down as one of the principal rules, that: "Pleadings should observe the known and ancient forms of expression as contained in approved precedents." Rule VII, Steph. Pl. 392.

The principle that what has been well settled judicially shall remain a guide for future action permeates every part of legal science, substantive or adjective, and is expressed in the maxim: "*Omnis innovatio plus novitate perturbat quam utilitate prodest.*" (Every innovation occasions more harm by its novelty than benefit by its utility.) Broom's Maxims, *147; Eighth Eng. Ed. 121.

Bishop says: "It is little short of an insult to a judge to compel him, without any necessity, to pass upon the sufficiency of a form got up for the occasion in disregard of established practice." Bish. Dir. and Forms, §2.

III. WANT OF DUE FORM. — Of the evils growing out of disregard of established precedents a very learned author says: "The want of due form constitutes a just objection to proceedings in every court of justice; for to reject all form would be destructive of the law as a science, and would introduce great uncertainty and perplexity in the administration of justice. Every irregularity of this sort is fraught with inconvenience, and generally tends to delays and doubts. And it has been well remarked, that infinite mischief has been produced by the facility of courts of justice in overlooking errors in form. It encourages carelessness, and places ignorance too much on a footing with knowledge amongst those who practice the drawing of pleadings. To which it may be added, that it often exposes the parties themselves to no small hardship, by embarrassing them at every step in the progress of the cause; and involving the merits of the cause in superfluous details and inartificial allegations, at once loose, obscure and misleading." Story's Eq. Pl. §454.

IV. FORMS OF EXPRESSION. — A. AT LAW. — That the labors of the court can be reduced and confusion avoided by following established precedents is not the only reason for their use. A clear concise statement of a cause of action can best be attained by the observance of established forms of expression.

"It was impossible that a set form of expression could be designed for every matter that might become the subject of a declaration or plea. But many modes and circumstances of properties recurred so often in judicial inquiries, as to obtain apt and stated forms of description and allegation, which were established by long usage; the experience of them having shown them preferable to all others. These therefore were adhered to by pleaders; and the nicety with which they were conceived,

is a strong mark of the refinement and curiosity with which this part of our law was cultivated." 3 Reeves 463, 464.

B. IN EQUITY. — "Although the rules of pleading in Courts of Equity, especially in the case of bills, are not so strict as those adopted in Courts of Law, yet, in framing pleadings in Equity, the draftsman will do well to adhere as closely as he can to the general rules of Common Law pleadings, whenever such rules are applicable, since the stated forms of description and allegation adopted in pleading at Law having all been duly debated under every possible consideration, settled upon solemn deliberation, and established by long usage, experience has shown them to be preferable to all others for conveying distinct and clear notions of the subject to be submitted to the court." 1 Dan. Ch. Pr. *363.

C. RULES APPLY TO CODE PLEADING. — The code forms set out in standard works are derived in all their essential elements from common law forms. The rejection in the codes of certain formal parts of pleadings at common law does not imply a disregard of the rules concerning the substantial parts. The rules which produce materiality and certainty and which prevent obscurity and confusion, prolixity and delay, are, theoretically, at least, as much in force under the codes as under the common law; and they should be so in fact. Effective pleading demands the observance of such rules. Common law precedents will suggest correct forms of expression for code pleadings. See "**Introduction**," 1 STANDARD PROC. 10.¹

V. PRECEDENTS AS AUTHORITY IN CRIMINAL PLEADING.
 "Precedents, or forms of indictments, which have been long used and stand uncontradicted, are the highest evidence of what the law is. Wherever an important principle of criminal law is referred to the discretion of the judges they ought to consult the precedents."²

1. The statements by the learned authors quoted, on the desirability of observing established precedents, are abundantly justified by the practice that obtains in many localities. Long, rambling statements of a cause of action in complaints, opposed by long, loose counter statements under the name of an answer, are of frequent recurrence. From the two it is extremely difficult to extract the issue.

2. *People v. Robertson*, 3 Wheel. Cr. Cas. (N. Y.) 180, 190.

"I agree also with the saying of a very enlightened man of our own country that forms are the handmaids of justice." *People v. Robertson*, 3 Wheeler's Cr. Cas. (N. Y.) 180, 192.

"Pleaders should be more careful, and pay some attention to the prescribed forms which have grown up and become familiar to the profession." *State v. Reakey*, 62 Mo. 40, 41.

"Although it has sometimes been claimed by members of the profession that by our Code of Criminal Procedure no particular skill or precision was required in framing an indictment, and that almost any form of words would be sufficient, yet we fail to see that any of the substantial elements of a good and sufficient indictment, as attested by the long and well established principles of criminal jurisprudence, are ignored by our statute." *State v. Dougherty*, 4 Ore. 200.

"It has become too much the prevailing belief to suppose that our liberal practice act in criminal cases will cure almost every defect, but this is a mistake. A clear, substantive charge, constituting the offense, is as necessary now as it ever was." *State v. Reakey*, 62 Mo. 40, 42.

"The indictment in the present case departs from established forms. If,

INTRODUCTION

VI. SELECTION OF FORMS.—In general, approved standard forms are given in this volume. They have been collected from selections of forms made by authors of recognized ability.

In some cases, however, forms from adjudicated cases, based on statutory provisions, have been set out for the purpose of exemplification of what the courts have held sufficient under a particular kind of statute. Great care will have to be exercised in adapting such forms to the statutes of other jurisdictions. They can serve only as suggestions outside of their particular state.

In a great many instances the forms set out in modern reported cases are specimens of crude originality, bad enough to invite attack, yet containing sufficient substance to save them from utter condemnation by the courts. Because they are doubtful they get into the reports and thus reverse nature's law of "survival of the fittest." Besides their general unfitness their introduction here would carry into the volume much unadjudicated matter.³

VII. HOW TO USE THIS VOLUME.—**A. REFERENCES.**—The ample direct cross-references made herein to forms pertaining to a title, which of necessity have been set out under other titles, will readily direct the practitioner to any form within the volume which he may desire. But until familiarity is acquired with the volume and with the titles therein contained, further suggestion may be necessary to aid in ready reference to the forms. In general, it may be said that the surest way to quickly find the form desired by one not familiar with the titles would be to refer to general heads under which the form may be classed. Thus, if it is an order that is desired, look under the title "**Orders of Court**" through the analysis and direct cross-references. If it does not readily occur to the practitioner under what general class the particular form he desires will be found, a reference to the title "**Pleading**," or to the title "**Practice**," as the case may be, will probably start a chain of references which will lead to the desired form.

In this connection it may be said that reference to a large number of the titles herein contained will be found under the titles "**Answers**;" "**Arraignment and Plea**;" "**Bills and Answers**;" "**Declaration and Complaint**;" "**Decrees**;" "**Demurrer**;" "**Equity Jurisdiction and Procedure**;" "**Judgments**;" "**Motions**;" "**Orders**;" "**Pleas**;" "**Process**" and also under other general titles.

Answers referred to above are code answers. Answers in equity will be found under the title "**Bills and Answers**."

B. FORMAL PARTS.—Throughout this volume the mere formal parts, such as commencements and conclusions, have been in many

therefore, we consign Mr. Robertson to the state prison, we must do so under a form of indictment hitherto unknown to our law. To this I am opposed. I do not believe that the courts, unless authorized by the legislature, have the power to change the forms of criminal proceedings." *People v.* Robertson, 3 Wheel. Cr. Cas. (N. Y.) 180, 191.

3. "While a little inartistic, and not grammatically free from criticism, yet it sufficiently charges the statutory offense." *Parsons v. State*, 33 Tex. Crim. 540, 28 S. W. 204.

"It would be difficult to conceive of

INTRODUCTION

cases necessarily omitted to conserve space. It has not been deemed necessary to repeat, parenthetically or otherwise, the suggestion that pleadings and other papers should be entitled in the case, should have the proper commencement and conclusion, and should be signed by the party or attorney.

The question of formal parts, however, has not been neglected. Great care has been exercised in supplying them at their proper place under general heads. Thus, in the case of bills in equity, the beginnings and endings of the several parts of the bill have been set out under the title "**Bills and Answers;**" of declarations and complaints, at the beginning of the title "**Declaration and Complaint;**" of indictments and informations, at the beginning of the title "**Indictment and Information.**"

C. STATEMENTS OF ACTIONS. — Under the title "**Attachment,**" II, A to L will be found numerous statements of actions adapted to the purpose of the practitioner, where a brief statement is required in emergencies previous to the preparation of the complaint. These may be adapted to affidavits for arrest and for any other occasion where such brief statement is required.

D. STATEMENT OF THINGS ENJOINED. — Under the title "**Injunctions,**" III, A to L will be found numerous statements of things enjoined which may be conveniently used in decrees and in judgments under the codes.

E. ADAPTATION OF COMMON LAW FORMS AND CODE FORMS. — A large number of common law forms and code forms are contained in this volume. It is desirable that they supplement each other.

Whenever the code pleader desires to supplement his code forms of complaint from common law sources, it is only necessary to pass over the formal commencement of the common law declaration down to the words "for that" or "for that whereas," striking out the word "for" and "whereas" and leaving "that" for the introductory word following "alleges." He can then continue to the end, substituting a code prayer for relief.

In case the code pleader desires to adapt the common law plea of new matter to his purpose, he can likewise pass down through a common law plea to the words "because he says" and omitting these words, use "that" as the introductory word of the substance of his answer, omitting the formal ending, "And this the defendant is ready to verify," etc. See notes below.⁴

A specific denial under a code may be constructed from a special

an indictment more illogically or inartistically drawn." *State v. Reakey*, 62 Mo. 40, 41.

4. In the King's Bench. The _____ day of _____ in the year of our Lord _____.

_____, to-wit, A. B. (the plaintiff in this suit), by E. F. his attorney (or, in his own proper person), complains of C. D. (the defendant in this suit), who has been summoned to answer the

said plaintiff (or, who has been arrested at the suit of the said plaintiff), in an action of trespass: For that the said defendant heretofore, to-wit, on the _____ day of _____ in the year of our Lord _____, with force and arms, made an assault upon the said plaintiff, and beat, wounded, and ill-treated him (so that his life was despaired of; and other wrongs to the said plaintiff did; against the peace of

INTRODUCTION

plea by way of traverse by rejecting the formal beginning and the formal ending and incorporating the body of the plea. It is a common practice, however, to change the form from negative to affirmative by omitting the word "not" and preceding the statement by the word "denies," thus: "denies that the plaintiff did lend the money mentioned in the complaint," instead of "that the plaintiff did not lend the money mentioned in the complaint."

For substance of code complaints in equity reference is suggested to the stating part of the bill.

It will be observed that decrees can be easily adapted as prayers of relief by a few verbal changes for either bills in equity or complaints under the codes.

In preparing judgments under the code equity procedure it will hardly be necessary to suggest reference to decrees herein for substance.

our said lord, the king, and) to the damage of the said plaintiff of — pounds; and therefore he brings his suit, etc. Steph. Pl. 38.

Matter italicized used in code pleading, except that matter in parenthesis is usually omitted.

Supreme Court, C. D. v. A. B.

And the said C. D., defendant in this suit, by S. G. R., his attorney, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, *that the said several supposed causes of action in the*

said declaration mentioned, did not, nor did any or either of them, accrue to the said plaintiff, at any time within six years next before the commencement of this suit (in manner and form as the said plaintiff hath above thereof complained against him, the said defendant.) And this he, the said defendant, is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc.

S. G. R., attorney for deft.
Burr. App. 344, §630; 3 Chit. Pl. 941.

Matter italicized used in code pleading, except that matter in parenthesis is usually omitted.

FORMS IN PROCEDURE

SUPPLEMENTAL TO ARTICLES

IN

STANDARD PROCEDURE

(See Introduction in This Volume)

ABATEMENT, PLEAS OF

I. Pleas, at Law, 2

- A. *Alien Enemy*, 2
- B. *Coverture*, 2
 - 1. *Of Plaintiff*, 2
 - 2. *Of Defendant*, 3
- C. *Death of Plaintiff*, 3
- D. *Misnomer of Defendant*, 3
- E. *Nul Tiel Person in Rerum Natura*, 3

II. Answers in Abatement (Code), 3

- A. *Alien Enemy*, 3
- B. *No Such Corporation*, 3
- C. *Coverture of Plaintiff*, 3
- D. *Death of Defendant*, 4
- E. *Misnomer*, 4

For other forms, see 1 STANDARD PROC. 32, 42, 51, 65.

CROSS-REFERENCES:

ANOTHER ACTION PENDING:

- Plea of Autre Action Pendant;
- Answer in Abatement, Another Action Pending;
- Answer in Abatement, Another Action Pending in Case of Counterclaim;
- Answer in Abatement, Pendency of Partnership Cause, in Partition Suit.

ARRAIGNMENT AND PLEA:

- Plea in Abatement, No Preliminary Examination;
- Plea in Abatement to Indictment, Misnomer;
- Replication to Plea of Abatement.

ASSIGNMENTS:

- Answer in Abatement, Assignment of Cause of Action by Plaintiff to Third Person.

CORPORATIONS:

- Plea of Nul Tiel Corporation;
- Replication by Way of Traverse to Plea of Nul Tiel Corporation;
- Plea of Misnomer of Corporation.

DEMURRER:

Special Demurrer to Plea of Abatement.

GRAND JURY:

- Plea in Abatement, Grand Juror Disqualified;
- Plea in Abatement, Full Jury Not Present;
- Special Plea, Jurors Not Properly Selected;
- Replication to Plea That Jurors Were Not Properly Selected.

INFANTS:

- Plea in Abatement of Infancy of Plaintiff;
- Plea in Abatement of Infancy of Defendant;
- Replication to Plea in Abatement of Infancy;
- Answer in Abatement, Infancy of Plaintiff.

JUDGMENT RECORDS:

- Judgment Record on Cassetur Billa;
- Judgment Record of Respondeat Ouster, Demurrer to Plea;
- Judgment Record on Verdict for Plaintiff in Abatement;
- Judgment Record Where Verdict Has Been Given for Defendant on Plea of Misnomer;
- Judgment Record on Demurrer to Replication to Plea in Abatement, Sustained.

JUDGMENTS:

- Order for Judgment of Respondeat Ouster;
- Judgment for Defendant on Plea of Misnomer;
- Judgment on Plea of Abatement Sustained;
- Notice of Judgment of Respondeat Ouster.

PARTIES:

- Answer in Abatement, Non-Joinder in Case of Endorsement;

- Answer in Abatement, Non-Joinder of One Party to Contract;
- Answer in Abatement, Non-Joinder of Co-Administrator;
- Answer in Abatement, Non-joinder of Co-Executor;
- Answer in Abatement, Non-Joinder of Partner of Defendants;
- Answer in Abatement, Non-Joinder of Necessary Defendant;
- Answer in Abatement, Joint Interest in Plaintiff and Third Person;
- Plea of Non-Joinder of Plaintiff;
- Answer in Abatement, Non-Joinder of Tenant in Common, as to Part of the Goods;
- Answer in Abatement, Non-Joinder of Other Owners in Action Relative to Land;
- Plea of Non-joinder of Defendant.
- PLEA IN EQUITY:
 - Plea, Defendant No Interest;
 - Plea in Abatement, Coverture of the Plaintiff;
 - Plea of Infancy of Plaintiff, No Prochein Ami;
 - Plea of Lunacy of Plaintiff;
 - Plea, Plaintiff Not Administrator;
 - Plea, Defendant Never Administrator;
 - Plea to Bill by Administrator, Supposed Intestate Living;
 - Plea Plaintiff an Alien Enemy.

PLEAS:

- Plea in Abatement as to Part, and in Bar to the Rest.

REPLICATION AND REPLY:

- Replication to Plea of Abatement in Coverture;
- Replication by Way of Estoppel to Plea in Abatement.

I. Pleas at Law.

A. *Plea of Alien Enemy.*

And the said C. D., defendant in this suit, by G. H., his attorney (or, "in his own proper person") comes and defends the wrong and injury, when, etc., and says that the said plaintiff ought not to be answered to his bill (or "writ"), and declaration (see next form), aforesaid, because he says that the said plaintiff is an alien, born in foreign parts, out of the allegiance of the United States of America, and within the allegiance of a foreign state, to-wit, of the (United Kingdom of Great Britain and Ireland), and is not a citizen of the United States by naturalization or otherwise, to-wit, at etc.; and that the persons exercising the powers of government in the said for-

eign state (the United Kingdom of Great Britain and Ireland), aforesaid, are at war with and enemies of the United States of America, to-wit, at, etc., and that the said plaintiff being such alien as aforesaid and not a citizen of the United States, entered and came into the United States, and still remains therein, without any letter of safe conduct from the president of the United States, or any license to be, reside, or remain in the United States; but the said president (or, "by an act of the congress of the United States, the said plaintiff was") ordered and directed (him, the said plaintiff), to quit and leave the said United States of America (or set out some other matter showing affirmatively that he had no license to remain, etc.). And this he is ready to verify, etc. Wherefore he prays judgment, if the said plaintiff ought to be answered to his bill (or "writ"), and declaration aforesaid, etc. (Add affidavit as in next form.) Burr. App., 331, §596; 1 Wentworth's Pl. 42; Lill. Ent. 1.

B. *Coverture.*1. *Plea of Coverture of Plaintiff.*

And the said C. D., defendant in this suit, by G. H., his attorney (or, "in his proper person"), comes and defends the wrong (or, in trespass, "the force") and injury when, etc., and prays judgment of the said bill (or "writ") and declaration (or, if the suit be commenced by declaration, "prays judgment of the said declaration"), of the said plaintiff, because he says that the said plaintiff, before and at the time of the commencement of this suit, was and still is married to one S. T., then and yet her husband who is still living, to-wit, at, etc. (the venue), aforesaid; and this he, the said defendant, is ready to verify; wherefore, because the said S. T. is not named in the said bill (or, "writ"), and declaration (or "in the said declaration") of the said plaintiff, the said defendant prays judgment of the bill (or, "writ") and declaration (or, "of the declaration") aforesaid, and that the same may be quashed, etc. (City and) county—ss.: C. D., the above named defendant being sworn says, that the above plea is true in substance and matter of fact.

C. D.

Sworn, etc., Burr. App. 332, §597; 3 Chit. Pl. 899 (c).

2. *Plea in Abatement of Cover-
ture of Defendant.*

And the said defendant in this suit, to-wit, C. F., sued by the name of C. D., in her own proper person (the defendant must plead this in person), comes and prays judgment of the said bill (or, "writ"), and declaration (or "prays judgment of the said declaration"), (see last form), of the said plaintiff; because she says that, at the time of the exhibiting of the said bill of the said plaintiff (or "of the issuing of the said writ," or, "of the filing of the said declaration"), she was and still is married to one S. F., who is still living, to-wit, at, etc. (the venue) aforesaid; and this she is ready to verify; wherefore because the said S. F. is not named in the said bill (or "writ" or "declaration") aforesaid, she prays judgment of the said bill (or "writ") and declaration, and that the same may be quashed, etc. (Add affidavit as in last form.) Burr. App. 332, §598; 3 Chit. Pl., 899.

C. *Plea in Abatement of Death of
Plaintiff.*

(Commencement in usual form)—because he says that the said A. B., at whose suit the same bill is above supposed to be exhibited against him, the said defendant, at the time of the exhibition of that bill and long before was dead; and that there is not, nor at the time when, etc., was there any such person in being as the said A. B., as in and by the aforesaid bill is above supposed. And this he is ready to verify. Wherefore he prays judgment of the said bill (or "writ"), and that the same may be quashed, etc. Burr. App. 334, §601; 1 Wentw. Pl. 50.

D. *Plea of Misnomer of Defendant.*

And C. D., against whom the said A. B. hath exhibited his said bill (or "issued his said writ"), (or "filed his said declaration"), by the name of E. D., in his own person, comes and says that he is named and called by the name of C. D., and by that name and surname hath always, since the time of his nativity, hitherto been named and called; without this that he, the said C. D., now is, or at the time of exhibiting the said bill (or "issuing the said writ"), (or "filing the said declaration") was, or ever before had been named or called by the name of E. D., as by the said bill (or "writ") and declaration, is sup-

posed, and this he, the said C. D., is ready to verify. Wherefore he prays judgment of the said bill (or "writ") and declaration (or, "of the said declaration"), and that the same may be quashed, etc. (Add affidavit.) Burr. App. 334, §604; 3 Chit. Pl. 901.

E. *Plea of Nul Tiel Person in Rerum
Natura.*

And the said C. D., defendant, etc., comes and defends the wrong and injury, when, etc., and says that there is not, nor on the day of the service of the said writ (or "declaration"), (or "of the exhibition of the said bill"), nor ever since, was there in nature any such person called A. B., as by the said writ (or "bill") is above supposed, and this he is ready to verify. Wherefore he prays judgment, etc. (Add affidavit.) Burr. App. 334, §602; Yates' Forms, 111.

II. *Answers in Abatement (Code).*

A. *Answer in Abatement, Alien
Enemy.*

I. That the plaintiff was not at the commencement of this action, and is not now, a citizen of the United States, by naturalization or otherwise; but was and is an alien, born in _____ out of the allegiance of the United States, and within the allegiance of the kingdom of _____.

II. That at the commencement of this action the government of said _____ were, and still are at war with, and enemies of, the United States.

III. That the plaintiff then was, and still is, an alien enemy abiding without the United States, and at _____, within said _____, and adhering to the said enemies of the United States. 2 Abb. Forms 25; Bell v. Chapman, 10 Johns. (N. Y.) 183; Le Bret v. Papillon, 4 East 502, 102 Eng. Reprint 923.

B. *Answer in Abatement, No Such
Corporation.*

That at the commencement of this action there was not, nor is there now, any such corporation as the _____ company, named as plaintiffs therein. 2 Abb. Forms 25.

C. *Answer in Abatement, Coverture
of Plaintiff.*

That at the commencement of this action the plaintiff was, and still is, the wife of one M. N., who is still living at _____ (and that this action

does not concern her separate property). 2 Abb. Forms 24.

D. Answer in Abatement, Death of a Defendant Before Suit.

That Y. Z., one of the defendants in this action, died at ———, before this action, and on or about the ——— day of ———. 2 Abb. Forms 28.

E. Answer in Abatement, Misnomer.

That the true name of the plaintiff (or this defendant) is, and always has been, ———, and not ———, in which name he sues (or, is sued). 2 Abb. Forms 28; L. & N. R. Co. v. Hall, 12 Bush (Ky.) 131.

ABDUCTION.

I. Indictment, 4

A. Abduction of Woman on Account of Her Fortune, 4

B. Abduction of Girl Under Sixteen, 4

C. Stealing Child Under Age of Ten Years, 4

For other forms, see 1 STANDARD PROC. 86, 88, 89.

I. Indictment.

A. Abduction of Woman on Account of Her Fortune.

Middlesex, to-wit:—The jurors for our lady the queen upon their oath present, that J. S., late of the parish of B., in the county of M., laborer, on the third day of August, in the ninth year of the reign of our sovereign lady Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, feloniously, and from motives of lucre, did take away and detain one A. N. against her will, she the said A. N., then and there having a certain present and absolute interest (any interest, whether legal or equitable, present or future, absolute, conditional, or contingent), in certain real estate, (real or personal estate), with intent her the said A. N. to marry (to marry or defile, or cause her to be married or defiled by any other person), against the form of the statute in such case made and provided, and against the peace of our lady the queen, her crown and dignity. Arch. Cr. Pl. 475.

B. Indictment, Abduction of Girl Under Sixteen.

(Commencement as in I, A)—in the county aforesaid, unlawfully did take

and cause to be taken one A. N. out of the possession and against the will of R. N., her father (out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her), she the said A. N., then and there being an unmarried girl, under the age of sixteen years, to-wit, of the age of fifteen years; against the form of the statute in such case made and provided, and against the peace of our lady the queen, her crown and dignity. Arch. Cr. Pl. 477.

Note.—The allegation, “being an unmarried girl,” is sufficient. Arch. Cr. Pl. 477; R. v. Moor, 2 Lev. 179; R. v. Boyall, 2 Bur. 832.

C. Indictment, Stealing Child Under Age of Ten Years.

(Commencement as in I, A)—in the county aforesaid, feloniously and maliciously did by force (force or fraud), lead and take away (lead or take away, or decoy or entice away, or detain) one A. N., a child, then under the age of ten years, to-wit, of the age of seven years, with intent then and there and thereby to deprive one J. N., the father (parent or parents, or any other person having the lawful care or charge of such child) of such child, of the possession of the said child; against the form of the statute in such case made and provided, and against the peace of our said lady the queen, her crown and dignity. 2nd Count. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. afterwards, to-wit, on the day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, feloniously and maliciously did, by force, lead and take away the said J. N., a child then under the age of ten years, to-wit, of the age of seven years, with intent then and there and thereby, divers articles (any article upon or about the said child, to whomsoever such article may belong), that is to say, one necklace of the value of twenty shillings (etc., stating the articles), then and there upon and about the person of the said child, feloniously to steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace of our lady the queen, her crown and dignity. Add counts stating that the defendant did “by fraud entice away,” or, “did

by fraud detain," or, "did by force detain," etc., if necessary. Arch. Cr. Pl. 478.

ABORTION.

I. Indictment, 5

A. *Administering Poison*, 5

B. *Use of Instrument*, 5

C. *Use of Instrument and Drugs*, 5

For other forms, see 1 STANDARD PROC. 96, 105, 106, 109.

I. Indictment.

A. *Administering Poison To Procure Miscarriage*.

Middlesex, to-wit:—The jurors for our lady the queen upon their oath present, that J. S., late of the parish of B., in the county of M., laborer, on the third day of August, in the ninth year of the reign of our sovereign lady Victoria, at the parish aforesaid, in the county aforesaid, feloniously and unlawfully did administer to, and cause to be taken by one A. N. (administer to her, or cause to be taken by her), a large quantity of a certain noxious thing called savin, to-wit, two ounces of the said noxious thing called savin (poison or other noxious thing), with intent then and there and thereby to procure the miscarriage of the said A. N., against the form of the statute in such case made and provided, and against the peace of our lady the queen, her crown and dignity. If there be any doubt as to the drug administered, it may be prudent, perhaps, to state it in different ways, in several counts, and add a count stating it to be "a certain noxious thing to the jurors aforesaid unknown." Arch. Cr. Pl. 519.

B. *Indictment for Using Instruments To Procure Miscarriage*.

(Commencement as in the last precedent)—in the county aforesaid, feloniously and unlawfully did use a certain instrument (any instrument or other means whatever), called a ———, by then and there (state the mode of using the instrument), with intent, etc. (as in the last precedent). Arch. Cr. Pl. 521.

C. *Information for Using Instrument and Administering Drugs*.

"The said defendants, Thomas Hatchard and Nancy Josephine Hatchard, did wilfully and feloniously make an assault in and upon a woman, Minnie Beardsley, she, the said Minnie Beards-

ley, being then and there pregnant with a child; and that the said Thomas Hatchard and Josephine Hatchard did then and there wilfully and feloniously employ upon the body and womb of the said Minnie Beardsley a certain sharp instrument or instruments to this informant unknown, and did then and there wilfully administer to the said Minnie Beardsley certain medicines and drugs to this informant unknown, with intent thereby then and there wilfully and feloniously to destroy such child, the same not being necessary to preserve the life of such mother, the said Minnie Beardsley, and not having been advised by two physicians to be necessary for the purpose of preserving the life of such mother, the said Minnie Beardsley; by means whereof the death of the said Minnie Beardsley was produced, and whereby the said Thomas Hatchard and Nancy Josephine Hatchard, on the 12th day of December, in the year one thousand eight hundred and eighty-seven, at the said county of Milwaukee, feloniously did kill and slay the said Minnie Beardsley." Hatchard v. State, 13 Cr. L. Mag. 566, 567, 79 Wis. 359, 48 N. W. 380.

Note.—The statement as to advice of physicians is to meet a statutory exception.

ACCESSORIES AND ACCOMPLICES.

I. Indictment of Principal in Second Degree, 5

II. Indictment of Accessory Before Fact, 6

A. *With Principal*, 6

B. *Principal Convicted*, 6

C. *As Substantive Felony*, 6

III. Indictment of Accessory After Fact, 6

A. *With Principal*, 6

B. *Principal Convicted*, 7

For other forms, see 1 STANDARD PROC. 142, 143, 148.

CROSS-REFERENCE:

POST-OFFICE:

Indictment for Assisting in Robbing Mail.

I. Indictment of Principal in Second Degree.

After stating the offense of the principal in the first degree, and immediately before the conclusion of the indictment, charge the principal in the second degree thus: And the jurors

aforesaid, upon their oath aforesaid, do further present, that J. W., late of the parish aforesaid, in the county aforesaid, laborer, on the day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, feloniously was present, aiding, abetting, and assisting the said J. S. the (felony and larceny) aforesaid to do and commit; against the peace, etc. (In an indictment for murder, this is inserted immediately before the concluding clause, and so the jurors, etc.; and this clause then charges both the principals in the first and second degree with the murder thus): And so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. S. and J. W., the said J. N. in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder; against the peace, etc. Arch. Cr. Pl. 805.

Note.—If a person be present, and aiding and abetting, he cannot be indicted as an accessory. 1 Chit. Cr. L. 262.

II. Indictment of Accessory Before Fact.

A. With Principal.

After charging the principal with the offense, and immediately before the conclusion of the indictment charge the accessory thus: And the jurors aforesaid, upon their oath aforesaid, do further present that J. W., late of the parish aforesaid, in the county aforesaid, laborer, before the said (felony and larceny) was committed in form aforesaid, to-wit, on the first day of August, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did feloniously and maliciously incite, move, procure, aid, counsel, hire, and command, the said J. S. the said (felony and larceny) in manner and form aforesaid to do and commit; against the peace, etc., etc. Arch. Cr. Pl. 811.

B. Indictment of Accessory Before Fact, Principal Convicted.

Middlesex, to-wit: The jurors for our lady the queen upon their oath present, that heretofore, to-wit, at the general sessions of the delivery of the gaol of, etc. (so continuing the caption of the indictment against the principal), it was presented upon the oaths of, etc., that one J. S., late of, etc. (continuing the indictment to the end, reciting it however in the past, and

not in the present tense); upon which said indictment the said J. S., at the session of the gaol delivery aforesaid, was duly convicted of the (felony and larceny) aforesaid; as by the record thereof more fully and at large appears. And the jurors aforesaid, upon their oath aforesaid, do further present, that J. W., late of the parish aforesaid, in the county aforesaid, laborer, before the said (felony and larceny) was committed in form aforesaid, to-wit, on the first day of May, in the year aforesaid, at the parish aforesaid, in the county aforesaid, did feloniously, and maliciously incite, move, procure, aid, counsel, hire, and command the said J. S. the said (felony and larceny) in manner and form aforesaid to do and commit; against the peace, etc. (as in ordinary cases). Arch. Cr. Pl. 815.

C. Indictment of Accessory Before Fact as Substantive Felony.

Middlesex, to-wit: The jurors for our lady the queen upon their oath present, that one J. S., late of the parish of B., in the county of M., laborer (or, that some person or persons to the jurors aforesaid unknown), on the third day of August, in the fourth year (etc., etc., stating the felony exclusive of the conclusion, "against the peace," etc.). And the jurors aforesaid, upon their oath aforesaid, do further present, that J. W., late of the parish aforesaid, in the county aforesaid, laborer, before the said (felony and larceny) was committed in form aforesaid, to-wit, on the first day of August, in the year last aforesaid, at the parish aforesaid, in the county aforesaid, did feloniously and maliciously incite, move, procure, aid, counsel, hire, and command the said J. S. (or the said person or persons to the jurors aforesaid unknown as aforesaid), the said (felony and larceny) in manner and form aforesaid to do and commit; against the form of the statute in such case made and provided, and against the peace of our lady the queen, her crown and dignity. Arch. Cr. Pl. 816.

III. Indictment of Accessory After Fact.

A. With Principal.

After stating the offense of the principal, and immediately before the conclusion of the indictment, charge the accessory after the fact thus: And the jurors aforesaid, upon their oath

aforesaid, do further present, that J. W., late of the parish aforesaid, in the county aforesaid, laborer, well knowing the said J. S. to have done and committed the said (felony and larceny) in form aforesaid, afterwards, to-wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, him the said J. S. did feloniously receive, harbor, and maintain, against the peace, etc., as in ordinary cases. Arch. Cr. Pl. 817.

B. Indictment of Accessory After Fact, Principal Convicted.

(See III, A, to *). And the jurors aforesaid, upon their oath aforesaid, do further present, that J. W., late of the parish aforesaid, in the county aforesaid, laborer, well knowing the said J. S. to have done and committed the (felony and larceny) aforesaid, after the same was so committed as aforesaid, to-wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, him the said J. S. did feloniously receive, harbor, and maintain, against the peace, etc., as in as in ordinary cases. Arch. Cr. Pl. 693.

ACCORD AND SATISFACTION.

I. Pleas, 7

A. *In Covenant*, 7

B. *In Case*, 7

II. Replications, 7

A. *General*, 7

B. *That Bill Was Given*, 8

III. Answer, 8

For other forms, see 1 STANDARD PROC. 175, 178, 180, 181, 186, 187.

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Special Plea in Assumpsit, Account Stated and Negotiable Security Given.

INJURIES TO PERSONS:

Answer, Claim Satisfied and Discharged;

Answer, Accord and Satisfaction for Personal Injuries by Co-defendant.

I. Pleas.

A. *Plea in Covenant*.

And the said C. D., defendant in this suit, by J. W. G., his attorney, comes and defends the wrong and injury, when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, "because he says, that he, the said defendant, before the commencement of this suit, to-wit, on,

etc., at, etc. (the venue) aforesaid, paid to the said plaintiff the sum of _____ dollars, in full satisfaction and discharge of the said sum of _____ dollars, in the said breach of covenant mentioned, and of all the damages by the said plaintiff sustained, by reason of the non-payment thereof; which said sum of _____ dollars, the said plaintiff then and there accepted and received of, and from the said defendant, in full satisfaction and discharge of the said sum of _____ dollars, in the said breach of covenant mentioned, and of the damages of the said plaintiff by him sustained, by reason of the said breach of covenant. And this he, the said defendant, is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 360; 3 Chit. Pl. 1002.

B. Plea of Accord and Satisfaction in Case.

(As in preceding form to *) because he says, that after the committing of the said grievances as aforesaid, and before the commencement of this suit, to-wit, on, etc., at, etc. (venue) he, the said defendant, paid to the said plaintiff the sum of (two hundred) dollars, for and in full satisfaction and discharge of the said grievances in the said declaration mentioned, and which said sum of (two hundred) dollars he, the said plaintiff, then and there accepted and received of and from the said defendant, in full satisfaction and discharge of the said grievances. And this, etc. (conclude with a verification). Burr. App. 370; 3 Chit. Pl. 1031.

II. Replications.

A. *Replication to Plea of Accord and Satisfaction, General.*

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says, that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, "because he says that the said defendant did not deliver (or, if a bond was pleaded, "make and seal, and as his act and deed deliver") to him, the said plaintiff, the said (pipe of wine) (or, "the said supposed writing obligatory") in the

said plea mentioned, in full satisfaction and discharge of the said several promises and undertakings in the said declaration mentioned, in manner and form as the said defendant hath above in his said plea in that behalf alleged. And this he, the said plaintiff, prays may be inquired of by the country, etc. Burr. App. 376; 3 Chit. Pl. 1156.

B. Replication to Plea That Bill Was Given in Settlement.

(As in preceding form to the *, and then as follows): because he says, that the said bill of exchange in the said plea mentioned, bore date on a certain day and year therein in that behalf mentioned, that is to say, the (nineteenth day of February), in the year of our Lord one thousand eight hundred and (thirty-eight) and that the same became, and was due and payable long before the commencement of this suit; and the said plaintiff further saith, that after the said bill became due and payable, according to the tenor and effect thereof, and before the commencement of this suit, to-wit, on the (twenty-second day of July), in the year aforesaid, to-wit, at, etc. (venue) aforesaid, the said bill of exchange was shown and presented to the said defendant for payment thereof, but that he, the said defendant, did not nor would, when he was so requested as aforesaid, or at any other time before the commencement of this suit, pay the said sum of money in the said bill specified, or any part thereof, but wholly neglected and refused so to do, and the said sum of money, in the said bill mentioned, at the time of the commencement of this suit, was and still is wholly due and unpaid; and the said plaintiff, at the time of the commencement of this suit, was and still is the holder of the said bill, to-wit, at, etc., aforesaid. And this the said plaintiff is ready to verify. Wherefore, etc. (conclude with a verification). Burr. App. 381; Yates' Forms 368.

III. Answer of Accord and Satisfaction.

That after making the contract (or other instrument) and the alleged breach thereof (or after committing the said supposed grievances), in the complaint mentioned (or, in the _____ cause of action in the complaint mentioned), and before this action, to-wit,

on the _____ day of _____, 18____, this defendant delivered to the plaintiff and the plaintiff (or to A. B., one of the plaintiffs, and said A. B.) accepted and received from the defendant _____ dollars (or, briefly describing the thing delivered, if not money) in full satisfaction and discharge of the damages (or moneys, or liability, or debt, as may be appropriate), in the complaint mentioned, and of all the damages by the plaintiff sustained by reason of the non-performance (or non-payment, or neglect, or acts), therein alleged. 2 Abb. Forms 32; 2 Greenl. Ev., §28, note 1.

ACCOUNT AND ACCOUNTING.

I. Account Render, 9

A. Declarations, 9

1. *Against Defendant as Bailiff, 9*
2. *Against Defendant as Receiver, 10*

B. Pleas, 10

1. *Has Fully Accounted, 10*
2. *Never Was Bailiff, 10*
3. *Was Not Bailiff, 10*
4. *Did Not Receive More Than His Share, 10*

II. Assumpsit, 11

- A. Declaration for Not Rendering, 11**
- B. Plea, Account Stated, Negotiable Security Given, 11**

III. Complaints, 11

- A. On Account Stated, 11**
- B. To Correct Account Stated, 11**

IV. Answers, 12

- A. Denial of Error, 12**
- B. Accounting and Payment, 12**

V. Bills, 12

- A. Against Broker, 12**
- B. Against Trustee, 13**
- C. Of Freight and Earnings, 14**

VI. Decrees, 14

- A. For General Account, 14**
- B. Injunction Continued, 14**
- C. Of Freight and Earnings, 14**
- D. Setting Aside Stated Account, 14**
- E. Order of Reference, 14**
- F. Settled Accounts To Stand, 14**
- G. Balance To Be Paid, 15**
- H. Costs Reserved, 15**
- I. Leave To Surcharge and Falsify, 15**
- J. Conclusive, With Leave To Show Errors, 15**
- K. Release To Stand, 15**

- L. *Equities Reserved*, 15
- M. *Liberty To Apply*, 15
- N. *Order To Report Facts*, 15
- O. *Rests To Be Made*, 15
- P. *Special Circumstances Reported*, 15
- Q. *Production of Evidence Before Master*, 15

For other forms, see 1 STANDARD PROC. 215, 244.

CROSS-REFERENCES:

ANSWERS:

Answer, Accounting and Payment.

BILLS AND ANSWERS:

Prayer for an Account of Rents and Profits of Testator's Real Estate;
Prayer for an Account of Money Had and Received;
Prayer for an Account of Personal Estate;
Statements in Answer, Account Set Forth.

BILLS OF PARTICULARS:

Affidavit To Obtain Stay of Proceedings and Extension of Time, on Demanding Copy of Account;
Copy of Account;
Demand of Copy.

COPYRIGHT PROCEEDINGS:

Bill To Restrain Infringement of Copyright, and for Accounting.

DECEDENTS' ESTATES:

Petition To Reopen Account;
Order for a New Account and Setting Aside Former Approval.

DECLARATION AND COMPLAINT:

Complaint for Money Due on Account.

JUDGMENT RECORDS:

Judgment Record on Report of Referee.

MORTGAGES:

Complaint by Mortgagee in Possession Against Parties Entitled To Redeem, Seeking Accounting and Payment, or Strict Foreclosure.

NE EXEAT:

Affidavit To Obtain Ne Exeat in Action for Accounting;

PARTNERSHIP:

Prayer in Bill for Accounting, Receiver and Injunctions in Partnership;
Prayer in Bill After Dissolution for Accounting, Lien on Stock.

PATENTS:

Decree, Declaration of Validity of Patent, Infringement, Account, Perpetual Injunction.

PLEA IN EQUITY:

Plea of Stated Account.

PRINCIPAL AND AGENT:

Complaint Against Auctioneer or Agent for Not Accounting.

REFERENCES:

Affidavit To Move for Reference of an Action Involving Long Account;
Referee's Report on Accounting in Partnership Cause;
Order of Reference for Accounting in Partnership Cause;
Order That Books and Papers Be Deposited With Referee Before Accounting;
Plaintiff's Schedule of Account, To Be Presented on Reference;
Affidavit To Oppose Motion by Denying Account;
Affidavit To Oppose Motion, Where Fraud Is Set Up.

TRADE-MARKS AND TRADE NAMES:

Complaint To Restrain Infringement of Trade-Mark, and for Damages.

TRUSTS AND TRUSTEES:

Decree for Account and Inquiry as to Trust Funds Under Two Settlements;
Bill for Payment of Legacy and Accounting.

I. Account Render.

A. *Declarations.*

1. *Declaration in Account Render Against Defendant as Bailiff.*

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc. (or otherwise, according to the mode of commencing the action), of a plea * that he render to him a reasonable account of the time the said defendant was bailiff to the said plaintiff at (New York), to-wit, at (the city and) in the county of (New York), aforesaid. For that whereas the said defendant had been bailiff to the said plaintiff, at the place aforesaid, from the (first day of May, in the year one thousand eight hundred and forty-two), until the (commencement of this suit), and during all that time had the care and management of one thousand bushels of wheat (or otherwise, specifying the property of the plaintiff), to merchandise, and make profit thereof for, and to render a reasonable account thereof to, the said plaintiff, whenever the said defendant should be thereunto requested. Nevertheless the said defendant, although often request-

ed, hath not yet rendered an account thereof to the said plaintiff, but hath hitherto altogether refused, and still refuses so to do: Wherefore the said plaintiff saith that he is thereby injured, and hath sustained damage to the value of (one thousand) dollars, and therefore he brings suit, etc. Burr. App. 269, §537; Yates' Forms 121.

2. *Declaration in Account Rendered Against Defendant as Receiver.*

(As in preceding form to the *, and then as follows): that he render a reasonable account to the said plaintiff, for the time he was receiver of the plaintiff's moneys: For that whereas the said defendant had been receiver of the moneys of him the said plaintiff from the _____ day of _____ to the _____ day of _____ (stating the time), during which time he the said defendant had received of the moneys of the said plaintiff, at (the place where) five hundred dollars by the hands of one S. A., and two hundred dollars by the hands of W. P. (inserting all the names and the sums received from each), amounting in the whole to (one thousand) dollars (the total of all the receipts), to render a reasonable account thereof to the said plaintiff, when he the said defendant should be thereunto requested: Nevertheless the said defendant, although often requested, etc. (as in last form to the end). Burr. App. 270, §538; Yates' Forms 122.

B. *Pleas.*

1. *Plea That Defendant Has Fully Accounted.*

Because he says, that after the time during which the said defendant is therein supposed to have been the bailiff of the said J. and E. as in the said last count is mentioned, and as such bailiff to have taken and received the rents and profits therein mentioned, to-wit, on the _____ day of _____, in the year of our Lord _____, to-wit, at, etc., aforesaid, he the said defendant fully accounted with the said J. and E. concerning the said time, and the said rent, issues and profits received, as in the said last count is mentioned, and this he is ready to verify. 3 Chit. Pl. 1300.

Because he says, that after the time during which the said J. is in the first count of the said declaration alleged to have had the care and management

of the said premises with the appurtenances in the said first count mentioned, to receive and take the rents, issues and profits thereof, and as bailiff of the said J. and E. to render such account as therein mentioned, to-wit, on, etc., at, etc., aforesaid, he the said defendant fully accounted with the said J. and E. concerning the said time, and the said rents, issues and profits in the said first count of the said declaration mentioned, and their said share thereof, and this, etc., therefore, etc. 3 Chit. Pl. 1299.

2. *Plea That Defendant Never Was Bailiff.*

Because he says, that the said defendant never was bailiff to the said J. and E. of the said part or share of the said premises with the appurtenances, in the said last count of the said declaration mentioned, or any part thereof, nor ever took or received the rents and profits of the said premises with the appurtenances, in the said last count of the said declaration above alleged, and of this also the said defendant puts himself upon the country, etc. 3 Chit. Pl. 1299.

3. *Plea That Defendant Was Not Bailiff.*

Because he says that the said defendant never had the care and management of the said premises with the appurtenances, in the said (first) count of the said declaration mentioned, or any part thereof, to receive and take the rents, issues and profits thereof, or as bailiff of the said J. and E., his wife, in right of the said E. of what he received more than his just share and proportion thereof, to render a reasonable account to the said J. and E., and their said share thereof, when he the said defendant should be thereunto afterwards requested, in manner and form as the said J. and E., his wife, have in the said first count of the said declaration above alleged, and of this the said defendant puts himself upon the country, etc. 3 Chit. Pl. 1298.

4. *Plea That Defendant Did Not Receive More Than His Share.*

Because he says, that he the said defendant did not receive more than his just share and proportion of the rents, issues and profits of the said premises with the appurtenances, in the said first count of the said declaration mentioned, and the said J. and E.'s

share thereof, in manner and form as the said J. and E. have in the said first count of the said declaration above alleged, and of this also the said defendant puts himself upon the country, etc. 3 Chit. Pl. 1299.

II. Assumpsit.

A. Declaration in Assumpsit for Not Rendering Just Account of Sale of Goods.

For that whereas heretofore, to-wit, on, etc., at, etc., in consideration that the said plaintiff, at the special, etc., of the said defendant, had sent and consigned to the said defendant, divers goods, wares and merchandises, to-wit, etc., of great value, to-wit, etc., in order that the said defendant might sell and dispose of the same, for the said plaintiff, for commission and reward to the said defendant in that behalf, he the said defendant undertook, etc., the said plaintiff, to endeavor to sell and dispose of the said goods and chattels, for and on the account of the said plaintiff, and to render a just and reasonable account of the said sale thereof to the said plaintiff, in a reasonable time then next following, and to pay over the proceeds of such sale to the said plaintiff, when he the said defendant should be thereunto reasonably requested by the said plaintiff; and although the said defendant then and there had and received the said goods, etc., for the purpose aforesaid, and afterwards, to-wit, on, etc., sold the same, for and on account of the said plaintiff, for a large sum of money, to-wit, the sum of _____ dollars, at, etc., aforesaid; and although a reasonable time for the said defendant to render such account as aforesaid, and pay over the produce of the said sale to the said plaintiff, hath long since elapsed, yet the said defendant, not regarding, etc., hath not, although he was afterwards, to-wit, on, etc., at, etc., requested by the said plaintiff so to do, as yet rendered to the said plaintiff a just and reasonable account of the said sale, or paid over the proceeds thereof to the said plaintiff, but hath hitherto wholly neglected and refused so to do, to-wit, at, etc., aforesaid. Burr. App. 265, §529; 2 Chit. Pl. 344.

B. Special Plea in Assumpsit, Account Stated and Negotiable Security Given.

Because he says, that after the making of the said promises and under-

takings in the said declaration mentioned, and before the commencement of this suit, to-wit, on, etc., at, etc., aforesaid, an account was had and stated, by and between the said plaintiff and the said defendant, of and concerning the said several sums of money in the said declaration mentioned, and upon that occasion he the said defendant was then and there found in arrear and indebted to the said plaintiff in the sum of _____ dollars (and no more), for which said sum of _____ dollars he the said defendant then and there made and delivered to the said plaintiff, his certain promissory note in writing, bearing date the day and year last aforesaid, whereby he the said defendant promised to pay to the said plaintiff or his order, _____ months (or _____ days), after the date thereof, the said sum of _____ dollars, wherein he the said defendant was so found in arrear and indebted to the said plaintiff as aforesaid; and the said plaintiff then and there accepted and received the said note for and on account of the said sum of money in the said declaration mentioned, and by reason thereof, he the said defendant then and there became, and still is, liable to pay the said sum of _____ dollars, in the said promissory note mentioned, according to the tenor and effect of the said note. And this, etc. (conclude with a verification). Burr. App. 353, §643; 3 Chit. Pl. 925.

III. Complaints.

A. Complaint on Account Stated.

I. That on the _____ day of _____, 18—, at _____, an account was stated between the plaintiff and the defendant; and upon such statement a balance of _____ dollars was found to be due from said defendant to this plaintiff.

II. That (the defendant then and there promised to pay said sum, but) no part thereof has been paid. 1 Abb. Forms 262.

Note.—The usual practice is to allege also that, on the _____ day of _____, defendant was indebted to plaintiff in the sum of _____ dollars, and that an account was then stated, etc.

B. Complaint To Correct an Account Stated.

I. That the plaintiff and defendant, having had mutual dealings, after-

wards, on the ——— day of ———, 18—, came to a mutual accounting, upon which a statement of the said account was made in writing, of which a copy is annexed as a part of this complaint, whereby a balance of ——— dollars was found to be due from the plaintiff to the defendant (or from the defendant to the plaintiff) on final adjustment.

II. That since the said statement of account the plaintiff has discovered errors and false charges (or credits, or both) therein, of which he was wholly ignorant at the time of such settlement.

III. That in the statement of said account so settled he is charged (here state the items wrongfully charged, and show what is the error).

IV. That the following items, which ought to have been entered to his credit in said account, were wholly omitted therefrom by mistake and oversight, to-wit (here set forth the items, with date, amount, etc.).

V. That the following items are erroneous in amount, in this, that the credit for ——— should have been of ——— dollars, instead of only ——— dollars (stating briefly the grounds why it should have been more).

VI. That the said account ought to be corrected as above mentioned; and the balance thereon ought to be ——— dollars in favor of the (plaintiff), instead of being ——— dollars in favor of the (defendant).

VII. That as soon as the plaintiff discovered the said mistakes and errors, he called on the defendant, on the ——— day of ———, 18—, and pointed the same out to him, and then requested the defendant to correct the same, and to restate the said account, with the mistakes and errors aforesaid corrected; but the defendant refused to do so, or to pay the plaintiff any part of said sum of ——— dollars, due to him at the time said account was stated (or and to accept the sum of ——— dollars from the plaintiff in full payment of said account).

Wherefore the plaintiff asks:

1. That he may be let in to prove the said errors and mistakes in the stating of the said account.

2. That judgment may be rendered against the defendant for the balance of ——— dollars, due him on said

corrected account, with interest thereon from the ——— day of ———, 18—.

Together with costs of this action 1 Abb. Forms 588.

IV. Answers.

A. *Answer, Denial of Errors in Account.*

That the account stated, which is mentioned in the complaint, is true and just (except as to, here specifying any admitted error), and that there are no errors or mistakes in the stating of the said account, as alleged (except as aforesaid). 2 Abb. Forms 162.

B. *Answer Alleging Accounting and Payment.*

I. (They deny each and every allegation in said complaint, except what is hereinafter admitted.)

II. The defendants, admitting that said plaintiff did, at the request of defendants, enter into the service of the defendants (to board their servants and hands in their employ), as stated in the complaint, allege that they did account with said plaintiff on the ——— day of ———, 18—; and that on said accounting there was found due said plaintiff only the sum of ——— dollars.

Second. For a further defense, the defendants allege that before the commencement of this action they paid to said plaintiff said sum of ——— dollars, so found due upon the accounting hereinbefore alleged, in full of the plaintiff's claims. 2 Abb. Forms 66.

V. Bills.

A. *Bill for Accounting Against Broker.*

1. The plaintiff, in the month of ———, in the year ———, entered into an arrangement with ——— and ———, the above named defendants, that the said defendants should, from time to time, as the brokers of the plaintiff, purchase on his behalf certain foreign stock or securities, then commonly called or known by the names, etc., the price or purchase money of which the defendants were to advance; but the plaintiff engaged on each transaction to deposit with the said defendants certain securities, that is to say, etc.

(The bill then proceeds to state that purchases had been made, moneys paid

and advanced on both sides, and securities given by the plaintiff to the defendants, and that the defendants had sold certain Spanish debentures and scrip of the plaintiff at a lower price than they ought to have done, without the plaintiff's consent.

3. The accounts in respect of the before mentioned transactions and dealings are still open and unsettled; nevertheless the defendants have commenced and are prosecuting an action at law against the plaintiff for the recovery of the sum of \$——, which they allege is the balance or sum of money coming to them in respect of said transactions.

4. The plaintiff, however, charges that if the accounts between the plaintiff and defendants were properly taken, a considerable balance would be coming from the defendants to the plaintiff.

5. The said accounts cannot be properly taken except in a court of equity. The plaintiff prays as follows:

1. That the defendants may make a full and true discovery and disclosure of and concerning all and singular the transactions and matters aforesaid, and that an account may be taken by and under the direction and decree of this honorable court, of all dealings and transactions between the plaintiff and the defendants.

2. That in taking such account the defendants may be charged with the amount of dividends or coupons which were due on the said Spanish debentures at the time of the aforesaid alleged sale thereof by the said defendants, and also with such sums of money as would have been produced by the sale of such debentures, if the same had been sold at the price or rate of 60% per each 100% of the said stock.

3. That in taking such account the defendants may not be allowed to charge the plaintiff with any sums of money which shall appear to have been paid or applied by them in the purchase of stocks or securities which were never actually transferred or delivered to the said defendants.

4. That the defendants may be charged with all benefit and advantage obtained by them in the said transactions of buying and selling, for and on account of the plaintiff, beyond the amount of the usual and regular commission or brokerage.

5. That the balance which shall be

found due upon taking such account may be paid by the defendants to the plaintiff, the plaintiff being ready and hereby submitting to pay to them any balance which shall be found due from him to the said defendants on the aforesaid accounts.

6. That in the meantime the said defendants may be restrained by the order and injunction of this honorable court from further proceeding in the said action at law commenced by them against the plaintiff as aforesaid, and from commencing or prosecuting any other action or proceedings at law against the plaintiff in respect of or concerning the matters aforesaid or any of them. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 1942.

B. Bill by Administrator Against Trustee.

Aaron Phillips v. Sarah G. Allen.

The bill sets forth that the plaintiff is administrator of the estate of G. A. A., deceased, who was the minor child and sole heir of A. A., deceased; that R. A., deceased, by his will, devised to his wife, the defendant, the rents, profits, income and improvement of all his real estate during the time she should remain his widow, with remainder in fee, of a portion of the land, to his son, G. F. A., in trust, for the benefit of A. A. during his life, and after his death to convey the same in fee to the lawful issue that he might have born to him after the date of the will; and providing further, in said will, that, as G. F. A. was then a minor, the defendant should execute the trust as long as she lived. The bill further alleges that S. D. A. was the mother and sole heir of G. A. A., and that she also had died, leaving the plaintiff her father and sole heir; that after the death of A. A. and G. A. A., the defendant duly accepted the trust, gave bond, and entered upon the discharge of the same; that S. D. A., in her lifetime, exhibited a bill of complaint against the defendant to compel the conveyance of the estate, subject to the defendant's life estate; and after the death of said S. D. A., the plaintiff exhibited a bill of revivor against the defendant, setting forth the facts, on which a decree in his favor was made; that before entering upon the trust, or giving bond for the due performance thereof, the defendant entered upon the land and com-

mitted strip and waste thereof, and cut off and sold wood and timber therefrom, to the injury of the inheritance.

The prayer was for an account, and for a decree for the payment of such sum as should be found due, and for further relief. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1944.

C. Prayer for an Account of Rents, Profits and Sums Received by Mortgagee.

And that an account may be taken of the rents and profits of the said mortgaged premises, which have been received by the said defendant, since his possession thereof as aforesaid, or which, but for his wilful default or neglect, might have been so received; and also an account of all other the sums, which have been received by the said defendant in or towards satisfaction of the said mortgage money. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1906.

VI. Decrees.

A. Decree for General Account, Injunction Continued.

This court doth order and decree, that it be referred to A. B., master (or one of the masters), etc., to take an account of all dealings and transactions between the plaintiff and the defendant; for the better clearing of which account the parties are to produce, etc., as the master shall direct, who, in taking of the said account, is to make unto the parties all just allowances, and what, upon the balance of the said account, shall appear to be due, from either of the parties to the other of them is to be paid by the party from whom to the party to whom the same shall be reported to be due, within _____ months after the said master shall have made his report, and the same shall have been confirmed (or as the said master shall direct). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2205.

B. Decree, Injunction Continued, Judgment as Security.

And it is further ordered, that the injunction formerly granted in this cause, for stay of the defendant's proceedings at law, be in the meantime continued, and the defendant's judgment is to stand as security for payment of what, if anything, shall appear to be coming to him on the balance of the said account. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2205.

C. Decree for Account of Freight and Earnings of Ship.

This court doth order that it be referred to A. B., esq., one of, etc., to take the following accounts, that is to say: 1. An account of all sums of money which have arisen from the freight of the ship _____, and the profits made by the said ship, or otherwise, on account of the said ship during her voyage to J., and thence back to L., and of the several sums of money received by the defendant D., or any other person on account of such freight and profits; 2. An account of the several sums of money expended on the outfit of the said ship, and of the expenses incurred during the voyage; 3. An account of the clear profits which have arisen from the said ship since the plaintiffs became part owners thereof. Adjourn, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2252; 1 Seton Dec. 560, 561.

D. Decree Setting Aside Stated Accounts, and for General Account. (Inter alia.)

This court doth declare that the three stated accounts, dated, etc., ought to be opened and set aside, and doth order and decree the same accordingly; and it is hereby referred to A. B., master, etc., to take a general account of all dealings and transactions between the plaintiffs, or either of them, and the defendant; and also of the value of any timber, etc.; in the taking of which account, the master is to make unto all parties all just allowances; and for the better taking of said account, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2206.

E. Decree, Order of Reference To Master.

On reading the pleadings in the above cause, and hearing the counsel of the respective parties, and on consideration thereof, it is ordered that it be referred to E. W., esq., as a master of this court, to take an account of the dealings and transactions of and between the said parties under the several agreements set forth in the plaintiff's bill, and to state what, upon the balance of said accounts, shall appear to be due from either party to the other. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2208.

F. Decree, Settled Accounts to Stand

And if in taking the said accounts the said master shall find that any

account has been settled between the said parties, the same is to stand (or not to be disturbed). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2206.

G. Decree, Balance Found Due to Be Paid, Costs of Setting Aside Stated Account.

And it is ordered and decreed that what shall be found due upon the balance of the said account from any of the parties to the other, or others of them be (within, etc.) paid by the party or parties from whom, to the party or parties to whom the same shall be found to be due; and it is ordered and decreed that the said defendant do pay to the plaintiffs their costs of so much of the cause as relates to the setting aside the said stated accounts to be taxed, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2206.

H. Directions, Rest of Costs Reserved.

And the court doth reserve the consideration of the rest of the costs of this suit until after the said master shall have made his report, and the said parties are to be at liberty to apply, as, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2206.

I. Decree, Direction for Leave to Surchage and Falsify.

But any of the parties are to be at liberty to surcharge and falsify any of the items and charges therein, as they shall be advised. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2207.

J. Decree, Accounts to Be Conclusive, With Leave to Show Errors.

Let the accounts, etc., as between, etc., be (considered as) prima facie conclusive, but with liberty to either party to show any error therein. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2207; *English v. Baring*, penned by Vice-Ch. Kindersley; 1 Seton Dec. (Eng. ed., 1862) 108, 109.

K. Decree, Release To Stand as To Sums Received, and Account Stated.

Declare that the indenture of release of the _____ day of _____ shall stand only as a discharge for the several sums of money thereby stated to be retained by or paid to the several parties thereto as therein mentioned; and declare that the account in the said indenture mentioned to be stated shall stand, with liberty to the plain-

tiffs and defendants to surcharge and falsify the same. Directions for account. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2207; 1 Seton Dec. (Eng. ed., 1862) 108.

L. Directions, Equities Reserved.

And all equities and further directions are reserved until the coming in of the report. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2208.

M. Directions, Liberty to Apply.

And the parties are at liberty to apply to the court as occasion may require.

By the court.

H. W. F., clerk.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2208.

N. Decree, Order To Report Facts.

(Inter alia.) He will, on request of either party to this proceeding, report to the court all the facts upon which he shall base his finding, on either of the points or particulars aforesaid. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2209.

O. Decree Rests To Be Made by Master.

And the said master is to make rests in said accounts, and state whether any and what balances were due from either, and which of said parties to the other on the first day of April, A. D. 1850, as well as at the period at which the plaintiff in his said bill alleges said mutual account to have terminated. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2208.

P. Decree, Special Circumstances To Be Reported.

And said master is authorized to state and report to the court any special circumstances needful for explaining said account and his report thereof, and the evidence as to the time when said mutual account did terminate. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2208.

Q. Decree, Direction for Production of Evidence Before Master.

And for the better taking of said accounts, etc., the parties are required to produce, etc., and to be examined before said master upon oath, either upon interrogatories or viva voce, or by each of said modes, as the said master may direct. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2208.

ADJOINING LANDOWNERS.

I. Complaints, 16

A. *Flowing Water From Roof*, 16B. *Excavating Adjacent To*, 161. *Building*, 162. *Land*, 16C. *Land Overflowed*, 16D. *Kindling Fire*, 17

For other forms, see 1 STANDARD
Proc. 322, 323, 328.

CROSS-REFERENCES:

INJUNCTIONS:

Injunctions Against Undermining
Plaintiff's Land;

Injunction Against Obstructing
Lights.

NUISANCE:

Declaration for Nuisance Near
Dwelling;

Complaint Against Erector of
Slaughter House, a Nuisance, Seek-
ing Damages;

Complaint Against Continuer of Nuis-
ance.

TRESPASS:

Complaint for Trespass to Land,
Where New Fence Was Not on
Line.

VENDOR AND PURCHASER:

Complaint on Covenant To Maintain
Fence.

WATERS AND WATERCOURSES:

Declaration for Damage Caused by
Continuing Dam, Flowing Meadow.

I. Complaints.

A. *Complaint For Flowing Water
From Roof on Plaintiff's Prem-
ises.*

I. That on the _____ day of
_____, 18—, the plaintiff was law-
fully possessed of a dwelling house and
premises, situate in the county afore-
said, and in which the plaintiff and his
family then resided.

II. That the defendant wrongfully
erected a building near to the said
dwelling house of the plaintiff, in so
careless and improper manner that by
reason thereof, on said day, and on
other times afterwards and before this
action, large quantities of rainwater
ran from said building upon and into
the said dwelling house and premises
of the plaintiff, and the walls, ceil-
ings, papering, and other parts thereof
were thereby wet and damaged, and
became less fit for habitation, to the
plaintiff's damage _____ dollars. 1
Abb. Forms 448.

Note.—When action is by owner of

fee, the allegation in paragraph 1
should so state.

Time of erecting building might
properly be stated in II.

B. *Excavating Adjacent to.*

1. *Complaint for Negligently Ex-
cavating Adjacent to Plain-
tiff's Buildings.*

I. That at the times hereinafter
mentioned, plaintiff was possessed of
certain land, with buildings thereon,
being his house and lot in the village
of _____ (or other brief designation
of the premises), which were supported
by the adjacent land and the soil there-
of, and that the plaintiff was entitled
to have them so supported.

II. That in the month of _____,
the defendant wrongfully and negli-
gently excavated the land adjacent to
plaintiff's said land and buildings, and
took away the soil therefrom, without
leaving proper or sufficient support for
the plaintiff's said land and buildings,
whereby the same sank and gave way,
and the house fell in and was destroyed,
and the goods of the plaintiff were
damaged and broken; and the plaintiff
incurred expense in procuring another
house, and in removing and repairing
his goods, and in removing the ruins
of the house and rebuilding the same,
to his damage _____ dollars. 1 Abb.
Forms 449.

See note above, I, A.

Note.—“Which were supported,”
etc., seems unnecessary in I.

2. *Complaint for Negligently Ex-
cavating Adjacent to Plain-
tiff's Land.*

I. That at the times hereinafter
mentioned, the plaintiff was possessed
of certain pasture-land, being a part
of his farm in the town of, etc. (or
other brief designation).

II. That in the month of _____,
18—, the defendant wrongfully and
negligently excavated the land adjacent
to the plaintiff's said land, and took
way, to the damage of the plaintiff
proper and sufficient support for the
soil of the plaintiff's land in its nat-
ural state, whereby it sank and gave
away, to the damage of the plaintiff
_____ dollars. 1 Abb. Forms 449.

See note above, I, A.

C. *Complaint for Negligence Where-
by Land Was Overflowed.*

I. That on the _____ day of
_____, the plaintiffs were (and still
are) the owners of a valuable mining

claim (or lands and ——— mines thereon), situated at ———, upon which they had bestowed great labor in putting the same in working order, and had incurred large expense in the purchase of tools for the purpose of extracting gold therefrom.

II. That at the same time the defendants were engaged in furnishing water to miners and others, by means of a ditch or canal; and they were the owners of (or were possessed of, and using) a reservoir situated on ———, wherein they collected a large body of water, which water would otherwise have flowed down the said stream.

III. That afterwards, and on the ——— day of ———, 18——, the plaintiffs being engaged in the prosecution of their work as aforesaid, the defendant's said reservoir, by reason of some defect in its construction, insufficiency for the purpose for which it was constructed, or carelessness and mismanagement on the part of the defendants, broke away, discharging an immense and unusual body of water, which they had collected in said reservoir; which said water so discharged flowed in and upon plaintiff's mining claim (or lands and mines), filling the same with great quantities of earth, stone, and rubbish, and carrying off and destroying the lumber and tools used by the plaintiffs in working and mining the same, to plaintiff's damage ——— dollars. 1 Abb. Forms 450; Hoffman v. Tuolumne County Water Co., 10 Cal. 413.

D. Complaint for Carelessly Kindling Fire on Defendant's Land, Whereby Plaintiff's Property Was Burned.

I. That on the ——— day of ———, at ———, the plaintiff was (and still is) possessed of about ——— of land, in ———, on which there was an orchard and fences, and also a barn containing sixty tons of hay, all which the defendant well knew.

II. That the defendant on that day intentionally kindled a fire on his land next adjoining to the plaintiff's, and at the distance of ——— from the plaintiff's said land, and so negligently watched and tended the said fire that it came into the plaintiff's said land, consumed said barn and hay, of the value of ——— dollars, and also forty-five rods of post and rail fence,

of the value of ——— dollars, and killed forty fruit-bearing apple trees in said orchard, and consumed and destroyed the plaintiff's grass growing on said land, to his damage ——— dollars. 1 Abb. Forms 448.

Note.—This allegation has been held sufficient. See Lucas v. Wattles, 49 Mich. 380, 13 N. W. 782; Keating v. Brown, 30 Minn. 9, 13 N. W. 909. If the action is by owner in fee, it should be so alleged.

ADMIRALTY

I. Libels, 18

- A. *Salvage*, 18
- B. *Jurat to Libel*, 19
 - 1. *By Proctor*, 19
 - 2. *By Attorney in Fact*, 19
- C. *Seamen's Wages*, 19
 - 1. *Vessel Left Port*, 19
 - 2. *After Preliminary Summons*, 20
 - a. *Libel*, 20
 - b. *Affidavit*, 21
 - c. *Summons*, 22
 - d. *Affidavit of Service*, 22
 - e. *Certificate of Magistrate*, 22
- D. *Pilotage*, 22
- E. *In Personam for Salvage*, 23
- F. *Supplies Ordered by Master*, 23
- G. *Assault and Battery*, 24
- H. *Collision*, 25
- I. *For Possession*, 27
- J. *Minority Owner for Security*, 27
- K. *Part Owner for Sale*, 28
- L. *As Prize*, 28
- M. *Restitution of Captured Ship*, 29
- N. *Of Information*, 30
- O. *Supplementary and Amendatory*, 30

II. Process, 31

- A. *Monition In Personam*, 31
- B. *Warrant of Arrest In Personam*, 31
- C. *Warrant, Attachment and Garnishment*, 32
- D. *Attachment and Monition*, 32
- E. *Attachment and Monition; Wages*, 33

III. Publication, 33

IV. Returns, 34

- A. *Attachment of Vessel, and Notice*, 34
- B. *Defendant Not Found. Attachment*, 34
- C. *Garnishee Summoned*, 34

V. Notice of Appearance, 34

- VI. Order Enlarging Time, 34
- VII. Order Staying Proceedings, 34
- VIII. Claims, 34
 - A. *By Owner*, 34
 - B. *By Foreign Consul, Unknown Owners*, 34
- IX. Exceptions to Libel, 35
 - A. *Form and Sufficiency*, 35
 - B. *New Matter*, 35
- X. Answer, 35
- XI. Interrogatories, 36
- XII. Pro Confesso, 36
- XIII. Stipulations, 36
 - A. *Costs and Damages*, 36
 - B. *Costs*, 37
 - C. *To Appear*, 37
 - D. *For Agreed or Appraised Value*, 37
 - E. *Costs by Libellant for Salvage*, 37
- XIV. Sale of Ship, Interlocutory, 38
 - A. *Affidavit*, 38
 - B. *Notice of Motion*, 38
 - C. *Order*, 39
- XV. Decrees, 39
 - A. *Caption of (and of Orders)*, 39
 - B. *On Peremptory Exception*, 39
 - C. *For Sum Certain Costs*, 39
 - D. *On Charter Party*, 39
 - E. *In Possessory Suit*, 40
 - F. *Settling Priority in Distribution*, 40
 - G. *For Wages With Forfeiture*, 40
 - H. *Forfeiture on Information*, 40
 - I. *On Process Improvidently Issued*, 40
 - J. *Overruling Exceptions to Answer*, 41
 - K. *For Libellant With Reference*, 41
 - L. *On Default With Reference*, 41
 - M. *On Default With Reference as to Damage*, 41
 - N. *On Merits With Reference*, 41
- XVI. Commissioner's Report, 41
 - A. *Report*, 41
 - B. *Exceptions*, 42
 - C. *Confirmation*, 42
- XVII. Venditioni Exponas, 42
 - A. *On Interlocutory Order*, 42
 - B. *On Final Decree*, 43
 - C. *Return*, 43
- XVIII. Fieri Facias (Execution), 43
- XIX. Appeal From District Court, 44
 - A. *Notice of Appeal*, 44
 - B. *Bond*, 44

- C. *Citation*, 45
 - D. *Affidavit of Service*, 45
 - E. *Return to Supreme Court*, 46
 - F. *Bond for Costs*, 46
 - G. *Appearance in Supreme Court*, 46
 - H. *Decree After Remittitur*, 46
- For other forms, see 1 STANDARD PROC. 447, 450.

CROSS-REFERENCE:

NEUTRALITY LAWS:

Libel To Condemn Vessel for Violation of Neutrality Laws.

I. Libels.

- A. *Libel by Owner and Master of Saving Vessel, for Themselves and Others, Against Saved Vessel and Cargo, for Salvage.*

District Court of the United States of America, Southern District of New York: In Admiralty.

To the honorable Samuel R. Betts, judge of the district court of the United States in and for the southern district of New York:

The libel of Peter Harmony, owner of the American brig Merced of New York, and of Eliphalet Kingsbury, master of the said brig, for themselves and all others entitled, against the ship Waterloo, her tackle, apparel and furniture, and cargo, and against all persons intervening for their interest therein, in a cause of salvage, civil and maritime, alleges as follows:

First. That on the twenty-seventh day of August last past, the said Eliphalet Kingsbury being on a voyage, in the said brig Merced, from Havana, in the island of Cuba, to Cadiz, in Spain, discovered a ship dismantled and apparently deserted, whereupon he hauled up for and boarded her; that he found the said ship which proved to be the British ship Waterloo, of London, with twelve feet of water in her hold, totally dismantled and entirely abandoned by her captain and crew; that he found no papers on board the said ship, but she had a full cargo of rum, sugar, and other West India produce on board.

Second. That the said Eliphalet Kingsbury thereupon took the said ship Waterloo in tow and made for the port of New York, where he arrived with the said ship on the twelfth day of September instant, the crew of the brig being almost worn out with fatigue in pumping out the said ship, and other work done on board of her, and they are entitled to a reasonable share of

said ship and cargo for the salvage thereof.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libelants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said ship Waterloo, her tackle, apparel, and furniture, and cargo, and that all persons claiming any interest therein may be cited to appear and answer upon oath, all and singular the matters aforesaid, and that this honorable court will be pleased to decree to the libelants a reasonable and proper salvage, in proportion to the value of said vessel and cargo, and that the said ship, her tackle, apparel, and furniture, and cargo, may be condemned and sold to pay said salvage, with costs, charges, and expenses, and that the libelants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

Peter Harmony.

Eliphalet Kingsbury.

Sworn, Sept. 16, 1829, before me, Fred J. Betts, clerk.

Isaac A. Johnson, proctor.

E. C. Benedict, advocate.

Benedict's Adm. 427.

Note.—In some districts this introductory statement of ownership is not sufficient, and ownership of the saving vessel is required to be alleged in a distinct paragraph so that it may be traversed, or at least proof required. The Cherokee, 30 Fed. 640.

B. *Jurat to Libel.*

1. *Jurat, Libel Signed by Libelant's Proctor.*

(Charles B. Moore, Proctor for Libelant; D. E. Wheeler, Advocate).

Southern district of New York, ss:

Charles B. Moore, of the city of New York, proctor for the libelant in the foregoing libel, being duly sworn, says: That the said libelant, as deponent is informed and believes, resides in the district of Columbia, and is now absent from the state of New York, having been in the state of Louisiana when last heard from. That the matters set forth in the foregoing libel are derived principally from original documents: that deponent has read the said libel, and knows the contents thereof,

and that the matters therein stated are true, to the best of the knowledge, information and belief of this deponent.

Chas. B. Moore.

Sworn to this 20th day of May, 1841, before me, George W. Morton, U. S. commissioner.

Benedict's Adm. 515.

2. *Jurat, Libel Signed by Attorney in Fact.*

(Sylvester Baxter, by John A. Baxter, attorney in fact.)

Southern district of New York, ss.

John A. Baxter, being sworn, says that he is agent (or attorney in fact), of Sylvester Baxter, the libelant above named. That said libelant is absent from the district, being, as deponent believes, in the state of Massachusetts. That the above libel is true according to the best of his knowledge and belief.

John A. Baxter.

Sworn, May 10th, 1848, before me, John W. Nelson, U. S. commissioner.

Burr & Benedict, proctors.

E. C. Benedict, advocate.

Benedict's Adm. 520.

Note.—Under Adm. Rule 1 of the Southern and Eastern districts of New York, which is also followed in many other districts, the verification if made by the agent, attorney in fact or proctor must allege that he is acquainted with the facts and the means of his knowledge or information, and the reason why the verification is not made by the party is to be stated. It should also be stated that the party is not within one hundred miles of the district, or not within the country. See also 1 STANDARD PROC., p. 446.

C. *Seamen's Wages.*

1. *Libel In Rem for Seaman's Wages; Vessel Left Port, or About To Leave.*

To the honorable, etc. (as in I, A).

The libel of John Graham, of said district, late seaman on board the schooner State Rights, whereof Silvanus Cummings now is, or lately was, master, against the said schooner, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest in said schooner, in a cause of wages, civil and maritime, alleges as follows:

First. That, some time in the month of January last, said schooner, then lying in the port of Charleston, and bound on a voyage thence to Murfreesborough in North Carolina and back, the said master, by himself or his agent

hired the libelant to serve as seaman on board the said vessel, during the said voyage, at the wages of sixteen dollars per month, by verbal agreement, the libelant having signed no shipping articles. That in pursuance of said agreement the libelant entered on board and into the service of the said ship as such seaman, on or about the twenty-ninth day of the said month of January.

Second. That the said schooner having taken on board a cargo, proceeded therewith, and with the libelant on board, for Murfreesborough, where she safely arrived and discharged her cargo, and made freight. That having taken on board another cargo, she proceeded therewith, and with the libelant on board, for the port of Charleston, where she safely arrived and discharged her cargo, and made freight, and her voyage ended.

Third. That at the request of said master, the libelant continued on board the said schooner, at the wages aforesaid, and the said schooner having taken on board another cargo, proceeded therewith, and with the libelant on board, for the port of Jericho in the state of Georgia, where she safely arrived and discharged cargo, and made freight. That having taken on board a cargo of live oak, she proceeded therewith, and with the libelant on board, for the port of Norfolk, where she safely arrived and discharged a portion of her cargo, and made freight. That she proceeded from thence with the residue of her cargo, and the libelant on board, for the port of Philadelphia, where she safely arrived and discharged her cargo, and made freight. That having taken on board another cargo, she proceeded therewith, and with the libelant on board, for the port of New York, where she safely arrived, and the libelant was duly discharged on the seventh day of August last, and the said schooner has since made another voyage.

Fourth. That during the whole time he was on board of said vessel to the time of his discharge therefrom, he well and faithfully performed his duty as such seaman, and was obedient to all lawful commands of the said master, and the other officers of the said schooner, and was entitled to be paid his wages which were then due, and amounted to the sum of eighty-nine dol-

lars and upwards, over and above all just deductions.

Fifth. That the said schooner has left the port of delivery, where the said voyage ended, without paying to the libelant the balance of wages due to him as aforesaid.

(Or, fifth. That the said schooner is about to proceed to sea before the end of ten days next after the delivery of her cargo or ballast.)

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libelant prays, that process in due form of law, according to the course of courts of admiralty, and of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said schooner, her tackle, apparel and furniture, and that all persons claiming any right, title, or interest therein may be cited to appear and answer upon oath all the matters aforesaid, and that this honorable court will be pleased to decree the payment of the wages aforesaid, and with costs, and that the said vessel may be condemned and sold to pay the same, and that the libelant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

John Graham.

Sworn, etc.

Benedict's Adm. 493.

2. *After Preliminary Summons.*

a. *Libel for Seaman's Wages After Preliminary Summons.*

To the honorable, etc. (as in I, A).

The libel of Bernard Glancy, mariner, formerly second mate of the brig Lowell, whereof Wm. Lawrence then was and is master, against the said brig Lowell, her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of wages, civil and maritime, alleges as follows:

First. That some time in the month of July, one thousand eight hundred and forty-three, the said vessel being in the port of New York, and bound on a voyage thence to one or more ports in the Mediterranean sea, and back to the United States, the said master, by himself or his agent, did ship and hire the libelant to serve as second mate on board the said vessel for the said

voyage, at the wages of twenty dollars per month. That, for the due performance of the said voyage, the libellant signed shipping articles, which are now in the possession, or under the control of the said master, and which the libellant prays may be produced to this honorable court, for further certainty in the premises, and for the benefit of the libellant; and that, in pursuance of the said agreement, the libellant entered into the service of the said brig, as such second mate, on or about the tenth day of the month of July, in the year aforesaid.

Second. That the said brig having taken on board a cargo, proceeded therewith, and with the libellant on board, for the port of Gibraltar, where she safely arrived and discharged her cargo, and made freight. That she proceeded thence to Sardinia with certain specie on board, where she safely arrived; and that she proceeded thence to Messina, where she safely arrived, and discharged the said specie, and having taken on board another cargo, she proceeded therewith, and with the libellant on board, for the port of Palermo, where she safely arrived, and where she completed her cargo.

Third. That while the said vessel was lying at Palermo aforesaid, on the tenth day of December, 1843, the said master unjustly, and without any cause, and without the consent of the libellant, and against his will, turned him on shore, and would not permit him to perform the remainder of the voyage, and the said brig completed said voyage, and arrived at the port of New York on the 29th day of January, 1844, where she now is.

Fourth. That during the whole time the libellant was on board the said brig, to-wit, from the time of his entering on board thereof, to the time of his discharge therefrom, he well and faithfully performed his duty as such second mate, and was obedient to all lawful commands of the said master, and the master of the said brig, whereby he became entitled to demand wages for the whole voyage of said vessel till her return to the United States; and at the time of his arrival in New York, there was due to him the sum of sixty dollars and upwards, over and above all just deductions.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the

United States and of this honorable court.

Wherefore the libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said brig Lowell, her tackle, apparel and furniture, and that all persons claiming any right or interest therein, may be cited to appear and answer all and singular, the matters aforesaid, and that this honorable court would be pleased to decree the payment of wages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same; and that the libellant may have such other and further relief in the premises, as in law and justice he may be entitled to receive.

Bernard Glancy.

Sworn, etc.

Benedict's Adm. 491.

b. *Affidavit To Obtain Summons; Seaman's Wages.*

Brig Lowell, Captain Wm. Lawrence and owners, to Bernard Glancy, Dr
To wages as second
mate, from July 10,
1843, to January 20,
1844, at \$20 a month. \$126.66
Credit.

By one month's advance.	\$20.00	
Cash in Gibraltar	15.00	
Cash in Messina	30.00	
Hospital money, 6		
months	1.20	\$ 66.20

Balance due \$ 60.46
Southern district of New York, ss.:

Bernard Glancy, late mariner on board the brig Lowell, being duly sworn says: That in July, 1843, he shipped on board brig Lowell, whereof William Lawrence was, and still is master, then lying in the port of New York, as second mate (or ordinary seaman, or mate, or cook, as the case may be), at the wages of twenty dollars a month, to perform a voyage to one or more ports in the Mediterranean, and back to the United States, and signed the usual shipping articles for said voyage, which are retained by the said master. That the deponent performed said voyage, and in all respects did his duty as such second mate, till the arrival of said vessel in the port of Palermo, where, without cause, he was turned ashore from said vessel by the said master, and prevented from performing the remainder of the voy-

age. That he returned to the United States as passenger in another vessel, and said brig Lowell arrived at the port of New York on the 20th day of January, inst., where she now is. That there is now due to him, for his wages on said voyage, a balance of sixty dollars and upwards, as shown by the above schedule, which is just and true, which balance the said master has refused to pay.

Bernard Glancy.

Sworn, etc.

Benedict's Adm. 489.

c. Preliminary Summons for Seaman's Wages.

To the master and owner of the brig Lowell:

I, George W. Morton, United States commissioner, do hereby summon you to be and appear before me, at my office, at the United States courts, in the city hall, in the city of New York, on the 31st day of January, instant, at 10 o'clock in the forenoon of that day, then and there to show cause, if any you have, why process of attachment should not issue from the district court of this district against the brig Lowell, her tackle, apparel and furniture, according to the course of admiralty courts, to answer the claims of Bernard Glancy, for mariner's wages.

Given under my hand, this 30th day of January, in the year of our Lord one thousand eight hundred and forty-five.

Geo. W. Morton, U. S. commissioner.
_____, Proctor.

Benedict's Adm. 490.

d. Affidavit of Service of Summons.

Southern district of N. Y., ss:

John C. Magrath, of the city of New York, clerk, being duly sworn, says—that on the thirteenth day of January, instant, he served the summons, of which the within is a copy, by delivering the same to the master of the brig Lowell, therein named. (Or by leaving the same on board the brig Lowell, within named, with the persons in charge thereof, the master being absent. Or, by fastening the same in a conspicuous place on the mast of said vessel, no person being on board in charge thereof.)

Sworn, etc.

J. C. Magrath.

Benedict's Adm. 491.

e. Certificate of Magistrate, Summons for Seaman's Wages.

I hereby certify to the clerk of the district court for the southern district of New York, that there is sufficient cause of complaint whereon to found admiralty process against the brig Lowell, her tackle, apparel and furniture, to answer for the wages of Bernard Glancy.

Dated, etc.

Geo. W. Morton, U. S. commissioner.
Benedict's Adm. 491.

D. Libel Against Owners for Pilotage.

To the honorable, etc. (as in I, A).

The libel of Martin Gray, of said district, pilot, against Russel H. Post, William Layton, Noah Stokeley, and Richard P. Williams, now or late owners of the ship Elizabeth Dennison, in a cause of pilotage, civil and maritime, alleges as follows:

First. That some time in the month of July, A. D. 1848, the said ship then being in the port of New York, under the command of one _____ Spencer, the said owners by themselves, or their agents, employed the libelant to take the said vessel to sea, from the port of New York, as pilot. That accordingly the libelant went on board said vessel, and took charge of the same, and did pilot her to sea on or about the twenty-fifth day of July aforesaid.

Second. That the libelant is a regular pilot, and did his duty faithfully and according to the best of his ability, as the pilot of said vessel, and is entitled to the regular and lawful fees for such service, which amount to the sum of thirty dollars and sixty-three cents, which sum the said master has admitted to be due, and promised to pay from time to time, but which is still due and unpaid.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libelant prays that a warrant of arrest, in due form of law, according to the practice and course of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said Russel H. Post, William Layton, Noah Stokeley, and Richard P. Williams, and that they be cited to appear and answer upon oath all and singular the premises afore-

said, and that this honorable court will be pleased to decree the payment of the amount due to him aforesaid, with interest and costs, and that he may have such other and further relief as in law and justice he may be entitled to receive.

Sworn, etc.

Benedict's Adm. 501.

E. Libel In Personam Against Owner of Ship for Salvage.

To the honorable, etc., (as in I, A.).

The libel of William Peters, master of the ship *Amiable*, for himself, and all others entitled, against John Jones, owner of the ship *Heracles*, in a cause of salvage, civil and maritime, alleges as follows:

First. That the libelant being at sea, and bound to the port of New York in the said ship *Amiable*, of which he was master, observed a brig with a signal of distress flying, and he immediately made for said vessel, when he discovered that she was aground on the beach, on the south side of Long Island, and being hailed by the master thereof, was informed that she was the brig *Rover*, of New York, and had been aground for several hours and had, by force of the wind and tide, worked so far into the sand, that he feared she would not float at high water without assistance, and asked the libelant to assist him.

Second. That the libelant thereupon consented to render such assistance as was in his power, and for that purpose let go his anchor and lay by her, and got out hawsers to her, and, by constant heaving of himself and his whole ship's company, prevented her working further up into the sand, and at high water, succeeded in heaving her off without injury—whereupon the said master informed the libelant that he had no means of paying him there—that he was bound to sea, and was very desirous of not being delayed, and that he would give the libelant a letter to his owner, the said John Jones, who would pay him his reasonable salvage. That said master thereupon gave the libelant a letter to said owner, informing him that the libelant had rendered him valuable assistance, whereby the said brig had been saved from probable loss, and was entitled to salvage.

Third. That the libelant therefore consented to allow the said brig to pursue her voyage, and on his arrival

in the port of New York, he presented said letter to said owner, and for himself and his ship's company, and his owners, whose ship had been periled in rendering said assistance, offered to accept the sum of five hundred dollars, if paid without delay or trouble to the libelant, although, as he had previously been informed, said brig and cargo were worth the sum of thirty thousand dollars, and the said sum of five hundred dollars was an inadequate salvage compensation, but said owner refused to pay the same, and to pay any more than fifty dollars.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libelant prays that the said John Jones may be cited to appear and answer the matters aforesaid, and may be decreed to pay to the libelant, and the others so entitled, a full reasonable salvage compensation for the said assistance so rendered, and that they may have such other and further relief as in law and justice they may be entitled to receive.

Sworn, etc.

Benedict's Adm. 537.

See note above, I, A.

F. Libel In Personam Against Owner for Supplies Ordered by Master in Foreign Port.

To the honorable, etc. (as in I, A.).

The libel of Simeon H. Lewis and John C. Clapp of Boston, in the state of Massachusetts, grocers, against Gilbert Hatfield and James T. Bertine now or late owners of the brig or vessel called the *Gulielma* of New York, in a cause of contract, civil and maritime, alleges as follows:

First. That at various times during the year eighteen hundred and forty-one the said brig *Gulielma*, then under the command of Richard Smith, and owned by the said Gilbert Hatfield and James F. Bertine, was lying at Boston aforesaid, and standing in need of stores, provisions, and other necessaries, to enable her to perform her intended voyage or voyages, and the libelants, at the request of the said master of the said brig, did furnish to and for the use of the said brig, provisions, stores and other necessaries, to enable said brig to perform her said intended voyage or voyages, to

the amount of four hundred and twenty-five dollars and five cents, which said bill is hereunto annexed, signed and approved by the said master; and the said provisions, stores, and other necessities were furnished on the credit of the said brig, and the master and owners thereof.

Second. That the libelants have repeatedly requested the said master and the said owners to pay them the said sum of money so due the libelants, for the provisions, stores, and other necessities so furnished as aforesaid, but that the said master and owners have hitherto neglected and refused to pay the same, and still neglect and refuse so to do. And that the sum of one hundred and sixty-nine dollars and five cents, with the interest, are still due to the libelant over and above all payments and deductions.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libelants pray, that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said Gilbert Hatfield and James F. Bertine, owners as aforesaid, and that they may be required to answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount due as aforesaid, with interest and costs, and that the libelants may have such other and further relief as in law and justice they are entitled to receive.

Sworn, etc.

Benedict's Adm. 487.

G. Libel in Personam; Seaman Against Master and Mate for Assault and Battery.

To the honorable, etc. (as in I, A).

The libel of Charles Grayman, late seaman on board the ship *Louvre*, whereof ——— Weeks was master, and ——— Whittlesey chief mate, against the master and mate in a cause of personal damage, civil and maritime, alleges as follows:

First. That some time in the month of March, in the year one thousand eight hundred and forty-eight, the libelant shipped on board the said ship *Louvre* for a voyage from New

York to Rotterdam, and back to New York.

That on or about the twenty-fifth day of March, while on the high seas, the libelant having been kept on deck longer than was usual, by reason of the illness of the cook, whose place he had volunteered to fill, in addition to his other duties, was lying in his berth in the forecabin while it was his watch below, and while there heard the mate call him to come upon deck, whereupon he immediately arose, but before he had fairly got out of the berth the mate sprang down into the forecabin, and seizing the libelant by the throat began to drag him along the floor, and the said master having come down with an iron belaying pin endeavored to strike the libelant with the same, but the libelant to avoid a blow with such a dangerous weapon escaped from the hands of the master, and ran upon deck, and the master and mate followed him, and coming up with him near the galley the said master endeavored again to strike the libelant with the iron belaying pin, and the libelant not being able to escape from his reach was obliged to ward off the blow with his arm and hand, and in so doing received a severe stroke with the said iron belaying pin upon the back of his hand, whereby the same was much injured, and to this day bears the marks of the blows so received: that upon another occasion, while engaged in hauling upon a rope the said mate without the least cause or provocation, and without the slightest warning to the libelant, fell upon the libelant and beat him severely with his fist about the head and face, and the said master coming from the other side of the deck took a wooden belaying pin from the rail, and holding the libelant by the neck, struck the libelant five or six times on the head with the belaying pin, and with the assistance of the mate, then beat him with the same about his legs and body, for some minutes; that by reason of such beating, the face and head of the libelant was very much bruised, and his body also injured; that he still feels the effects of such beating. And the libelant by reason of the premises claims to be entitled to demand of the said master and mate, damages to the amount of five hundred dollars and upwards.

Second. That on the arrival of the

said ship in this port the libelant took out a warrant from the marine court of the state of New York, against the said Weeks and Whittlesey, for the above mentioned assaults, but that they have fled from the jurisdiction of that court, or so concealed themselves that they cannot be taken, and this libelant is wholly without remedy unless by process from this court.

Third. That the said defendants have goods and chattels in this district and credits in the hands of E. D. Hurlburt & Co., of the city of New York, merchants.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Whereupon the libelant prays that a warrant of arrest, in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction may issue against the said Weeks and Whittlesey, and that they may be required to appear and answer on oath, this libel, and all and singular the matters aforesaid, and that if they cannot be found, that their goods and chattels, and if none be found, that their credits and effects in the hands of E. D. Hurlburt & Co., of the city of New York, merchants, garnishees, may be attached, to the amount sued for, and costs. And that this honorable court would be pleased to decree the payment of the damages sustained by the libelant, with costs, and that he may have such other and further relief as in law and justice he may be entitled to receive.

Sworn, etc.

Benedict's Adm. 532.

H. Libel In Rem for Collision.

To the honorable etc. (as in I, A).

The libel of Robert Schuyler and George L. Schuyler, both of the city of New York, against the brig Sea, her tackle, apparel, and other furniture, and all persons lawfully intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

First. That your libelants, before and at the time of the collision hereinafter in the third article mentioned, were the owners and proprietors of a certain steamboat called the Niagara, with her steam engine, boilers, machinery, tackle, apparel, and other furni-

ture; which said steamboat your libelants used and employed in transporting passengers and freight between the port of New York and the port of Bridgeport in the state of Connecticut and between which said ports she was regularly run, daily and every day, Sunday excepted, for the purposes aforesaid.

Second. That on Sunday, the ninth day of January, in the year 1848, the said steamboat Niagara, with her steam engine, boilers, fixtures, apparel and other furniture on board thereof was safely moored, and lying at her usual berth alongside of the pier or dock at the foot of Market street, East river, in said city of New York, where she had a perfect right to be; the said steamboat being then, and also at the time when she was run into as herein-after mentioned, tight, staunch, strong, and in every respect well manned, tackled, appareled and appointed, and having the usual and necessary complement of officers and men, and that the master and crew engaged on board were on the lookout for the protection and safety of said vessel.

Third. That, on the morning of the said day, and while the said steamboat was safely moored as aforesaid, the said brig Sea, whereof Norton was master, on her way from Havre, in the kingdom of France, to her destination at said city of New York, came up the East river, between the Battery and Governor's Island, passing at the distance of about four or five hundred feet from the docks of said city on said river, with a strong wind from west-south-west, and with a flood tide; and then and there with great force and violence ran into and upon the said steamboat, and did thereby cause great damage and injury to the said Niagara, her guards, hull, and stern, and remained foul of and upon the said Niagara for some time, and until she (the brig Sea) swayed round, when she cleared and passed on.

Fourth. That the said brig Sea, before and at the time of the said collision, on a voyage from Havre to New York, was coming up the East river without a pilot, and with the design of anchoring or mooring in said river; that she was moving along rapidly, with the aid of wind and tide, carrying her fore and main-top sails; that from the improper and unskilful man-

agement of the persons navigating said brig, the anchors were not let go in due time to check her headway, and bring her round into the tide, nor were her sails properly and in season furled and clewed up so as to lessen her speed, but, on the contrary, the said brig was so improperly and unskillfully managed, and navigated, in the particulars above mentioned, that she was driven upon and into the said steamboat as aforesaid.

Fifth. That the persons navigating the said brig Sea let one anchor go about abreast, or in the neighborhood of, the Fulton street slip or pier, which partially checked her headway, but, notwithstanding, she continued to drift up the stream with the tide, heading partly across it and in the direction of the Brooklyn shore; that the second anchor not being shackled, or otherwise in readiness, as it should have been, was not cast off into the stream until the said brig had drifted up to about opposite Catherine street pier, and at a distance of three hundred feet or thereabouts from the said Niagara, and before a sufficient scope of cable had run out, or the two anchors had checked her headway, she ran into and afoul of the said Niagara, the stern of said brig striking with great force and violence against the starboard side of said steamboat, twenty-five feet from the bows, and cutting in the deck beams, fender-piece, and plank shears, besides twisting round and damaging her stern; that at the time of the striking, the said brig was heading round into the stream and towards the Brooklyn shore, and that the collision aforesaid was occasioned by the negligence, inattention, and want of proper care and skill on the part of said brig, her master and crew, and not from any fault, omission, or neglect on the part of the said Niagara, her master and crew.

Sixth. That the said brig Sea had not before, or at the time of the collision, a proper lookout and watch to guard against the danger of a collision in a crowded port; that the crew of said brig were occupied on the forward part of the vessel—while she was drifting up as above mentioned, after having let go the first anchor—in shackling or otherwise preparing the second anchor to be cast into the stream; that the collision would not

have occurred if both of said anchors had been in readiness, or had been suffered to run in due season, which would have checked her headway, or if the position of her yards had been changed, by hauling on the larboard braces,—which would have forced her off from the docks towards the middle of the stream; and that the master and crew of the Niagara, fearful, from the course pursued by those navigating the brig that she would run into and upon their vessel, did everything in their power, by getting out additional fasts to the wharf, and heeling their vessel over, to diminish the extent of the injury and damage to be caused by the blow.

Seventh. That the said steamboat Niagara, was so injured and disabled by the force and violence with which she was struck by the said brig Sea, as to render it necessary to take her to the dry dock for repairs, at a time when her services on the line in which she was engaged, were particularly valuable to her owners; and that the libelants, in consequence of the Niagara having been run into and foul of as aforesaid, have sustained damages for the hire and expenses of a steamboat to supply her place; for repairs to the said Niagara, and to her fixtures for her loss of time, for expenses of her master and crew, and otherwise, to the amount of one thousand dollars—which said damages were occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said brig Sea, and not by or through any fault, negligence, or improper conduct on the part of the persons on board the Niagara, her master and crew.

Eighth. That since the said Niagara was so run foul of and into as aforesaid, these libelants have applied to the firm of John Ewell & Company, the consignees of said brig—the owners of said brig residing, as these libelants are informed and believe, in the town of Warren, and state of Rhode Island, where said brig belongs—and requested them to settle with these libelants for the damages sustained by them as above mentioned; but the said consignees deny that there is any liability on the part of said brig for the said damages, or any part thereof.

Ninth. That the said brig Sea is now lying in the port of New York,

and within the jurisdiction of this court.

Tenth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libelant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said brig Sea, her tackle, apparel, and other furniture, and that all persons having any interest therein, may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned and sold to pay the same, and that the libelants may have such other and further relief as in law and justice they may be entitled to receive.

Sworn, etc.

Benedict's Adm. 534.

I. Libel In Rem by Owners of Vessel to Obtain Possession of Her.

To the honorable, etc. (as in I, A).

The libel of A. B. and C. D., of Bath, merchants, owners of the schooner or vessel the Sea Gull, her tackle, apparel and furniture, and against all persons intervening for their interest therein, in a cause of possession, civil and maritime, alleges as follows:

First. That they are the true and only owners of the schooner Sea Gull, her tackle, apparel and furniture, and being such owners, on or about the tenth day of May, 1846, appointed one E. F., master of said vessel, to navigate and sail her for them, at the wages agreed upon between them, and the said E. F., continued to be such master till the fifth day of August, instant, when the libelants removed him as master, and appointed another master in his place.

Second. That when the new master, so appointed by the libelants, went on board said vessel, by their orders, to enter upon his duties as such master, the said E. F. refused to give up the possession or the papers of said vessel to the said master, or to the libelants, who have demanded the same—to the great damage of the libelant.

Third. That all and singular the premises are true, and within the ad-

miralty and maritime jurisdiction of the United States and of this honorable court.

Whereupon the libelants pray that process in due form of law, according to the course of this honorable court, in causes of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel and furniture, and that the said E. F. may be personally cited to appear and answer all the matters aforesaid, and that the said vessel, her tackle, apparel and furniture, may be delivered to the libelants, and that the said E. F. may be condemned to pay to the libelants their damages and costs in the premises, and that they may have such other and further relief in the premises as in law and justice they may be entitled to receive.

A. B.

C. D.

Sworn, etc.

J. B., proctor.

C. L., advocate.

Benedict's Adm. 475.

J. Libel In Rem by Minority Owner for Security for Return or Sale of Vessel.

To the honorable etc. (as in I, A).

The libel of A. B., of the city of New York, part owner of the brig Packet, against the said brig, her tackle, apparel and furniture, and against all persons intervening for their interest therein, and especially against C. D., part owner of said brig, in a cause of possession, civil and maritime, alleges as follows:

First. That the libelant is the true and lawful owner of one-quarter of the brig Packet, of the burthen of 200 tons, her tackle, apparel and furniture, and boats, and the said C. D. is the owner of the remaining three-quarters of said brig, and no other person is owner of said vessel or any portion thereof, and the said brig is now lying in the port of Hudson, in the southern district of New York.

Second. That the said C. D. has hitherto acted as ship's husband of said vessel, and has now the possession thereof, and declares his intention of despatching said vessel on a sealing voyage to the Pacific ocean. That the libelant has expressed to said C. D. his dissent from said voyage, and has remonstrated with him on the subject, and still dissents from the same, but the said C. D. persists in his

determination to send her on said voyage, and is now procuring her outfit and crew.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libelant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, furniture and boats, and that all persons claiming any right in said vessel, and especially the said C. D., three-quarters owner as aforesaid, may be cited to appear and answer the matters aforesaid, and to show cause why the said C. D. should not be restrained from sending the said vessel on the said voyage until good and sufficient security shall be given in this court to the full value of the libelant's interest in said vessel, her tackle, apparel, furniture and boats, for the safe return of said vessel to the said port of Hudson, where she belongs, and that this honorable court will be pleased to decree that such security be given or the possession of said vessel, her tackle, etc., be delivered to the libelant, with costs, and that the said vessel, her tackle, etc., may be sold under the direction of this honorable court, and the proceeds of such sale brought into this court, to be divided according to law; and that the libelant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

Sworn, etc.

Benedict's Adm. 481.

K. *Libel In Rem by Part Owner for Sale of Vessel.*

(Address and statement of parties as in the last precedent, then proceed): in a cause of licitation or partition, alleges as follows:

First. That he is two-fifths owner of the brigantine *Red Rover*, her tackle, apparel, furniture and boats; that C. D. is owner of two-fifths and E. F. is owner of one-fifth, and is also master of said vessel, and she is now in the port of New York.

Second. That in consequence of diversity of opinion and interest in relation to the employment of said vessel, which is irreconcilable, the said owners are unable to agree upon any

voyage or business for said vessel. That the libelant has named a reasonable price for said vessel, at which he is willing to sell his share, or buy the shares of his co-owners, but they refuse either to buy or sell, and, in consequence of their impracticability and obstinacy, he is unable to sell to any other person.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libelant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said brigantine, her tackle, apparel, furniture and boats, and that all persons claiming any right in said vessel, and especially the said C. D. and E. F., part owners and master as aforesaid, may be cited to appear and answer the matters aforesaid, and that the said vessel, her tackle, etc., may be sold under the direction of this honorable court, and the proceeds thereof brought into court to be divided and distributed according to law, and that the libelant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

Sworn, etc.

Benedict's Adm. 482.

L. *Libel Against a Vessel and Cargo as Prize.*

To the honorable, etc. (as in I, A.)

The libel of Silas Talbot, esquire, commander of the United States ship of war the *Constitution*, on behalf as well of the United States as of himself and the officers and crew of the said ship, against the ship *Amelia*, her tackle, apparel, furniture and cargo:

The said libelant for and on behalf as aforesaid, doth hereby propound, allege and declare to this honorable court, as followeth:

First. That pursuant to instructions for that purpose from the president of the United States, the libelant in and with the said United States ship of war the *Constitution* and her officers and crew, did subdue, seize and take upon the high seas, the said ship or vessel called the *Amelia* of the burthen of about 370 tons, with her apparel, guns and appurtenances, and

a valuable cargo on board of the same, consisting of cotton, sugar, and dry goods in bales, and hath brought the said ship or vessel and her cargo into the port of New York, where they now are.

Second. That the said ship or vessel called the *Amelia*, at the time of the said capture thereof, was armed with eight carriage guns, and was under the command of Citoyen Etienne Prevost, a French officer of Marine, and had on board besides the said commander thereof, eleven French mariners; that as this libellant hath been informed, the said ship or vessel with her said cargo, being the property of some person or persons to the said libellant unknown, sailed some time since from Calcutta, an English port in the East Indies, bound for some port in Europe: That upon her said voyage she was met with and captured as a prize by a French national corvette, called *La Diligente*, commanded by L. T. Dubois, who took out of her the captain and crew of the said ship *Amelia*, with all the papers relating to her and her cargo, and placed the said Etienne Prevost and the said French mariners on board of her, and ordered her to St. Domingo for adjudication, as a good and lawful prize; and that she remained in the full and peaceable possession of the French from the time of the capture thereof by them, for the space of ten days, whereby this libellant is advised that as well by the laws of nations, as by the particular law of France, the said ship became and was to be considered as a French ship.

Third. This proponent doth allege, propound and declare, that all and singular the premises are and were true, public and notorious, of which due proof being made, he humbly prays the usual process, and monition of this court in this behalf to be made, and that the said Etienne Prevost, and all other persons having or claiming any interest in the said ship *Amelia*, her apparel, guns, appurtenances and cargo, or any part thereof, may be cited in general and special, to answer the premises, and that right and justice may be duly administered in this behalf, and all due proceedings being had, that the same ship or vessel, her apparel, guns, appurtenances and cargo, for the causes aforesaid, and others appearing, may, by the

definitive sentence and decree of this honorable court be condemned as forfeited, to be distributed as by law is provided respecting the captures made by the public armed vessels of the United States; or if it shall appear that the same or any part or parcel thereof ought to be restored to any person or persons, as the former owner or owners thereof, then that the same may be so restored upon the payment of such salvage as by law ought to be paid for the same.

Sworn, etc.

Benedict's Adm. 541.

M. Libel for Restitution of Captured Ship and Cargo.

To the honorable, etc. (as in I, A).

The libel of Robert Findley, etc.

First. That your libellants are the true owners of the ship *William*, James Leggat master, now lying in the port of Philadelphia, and within the jurisdiction of this honorable court.

Second. That on the third day of May last, the said ship being on her voyage from Bremen to Potomac river, in the state of Maryland, and within nine miles of the sea coast of the United States, received an American pilot on board for the purpose of conducting her safely up the Chesapeake Bay to the place of her destination, and after receiving the said pilot she continued on the same course until she had arrived within about two miles of Cape Henry, the southern promontory of Chesapeake Bay, in five fathom water, and as near the shore as the pilot thought it proper to go, when she was forcibly seized and taken into possession by a number of armed men under the command of Peter Joanene, captain of an armed schooner then coming out of Chesapeake Bay, called the *Citizen Genet*, and bearing the national colors of the republic of France, as a prize to the said schooner, and hath since been detained and now is in the possession of the said Peter Joanene, who also then and there made prisoners of the captain, officers and crew of the said ship *William*, and them as prisoners doth detain.

Third. That not admitting that the said schooner the *Citizen Genet* was duly commissioned and authorized to make prizes of vessels belonging to British subjects, which they pray may be inquired of, humbly insist that according to the premises, the said ship

William was, at the time of her being so taken, upon neutral ground, within the territorial jurisdiction and under the protection of the United States, who are now at peace with the king and people of Great Britain, and that the said Peter Joanene and the persons under his command had no permission or authority from or under the United States to capture British vessels within that distance from the sea coast, to which by the laws of nations and the laws of the United States, the right and jurisdiction of the United States extended.

Inasmuch, then, as the said capture and detention of the said ship William and the captain, officers and crew thereof, are manifestly unjust and contrary to the laws of nations and the laws of the United States, your libelants humbly pray that the said ship William, her cargo, tackle, apparel and furniture, and all other things belonging to her may, by the sentence and decree of this honorable court, be restored to your libelants. That the said captain, officers and crew thereof may be relieved from imprisonment for the purpose of navigating her to her destined port, and that full satisfaction may be made by the said Peter Joanene and all others concerned, as well for the said unlawful capture, and detention of the said ship, as for the imprisonment of the said captain, officers and crew thereof, and all damages, charges and expenses incurred thereby.

For which end your libelants humbly pray process of attachment, arrest and monition as in like cases is customary.

Sworn, etc.

Benedict's Adm. 542.

N. Libel of Information.

To the honorable, etc. (as in I, A).

The libel of information of James A. Hamilton, attorney of the said United States, for the southern district of New York, who prosecutes on behalf of the said United States, and being present here in court in his proper person, in the name and on the behalf of the said United States, against the ship Waterloo, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

First. That Mordecai M. Noah, surveyor of the customs for the district

of the city of New York, heretofore, to-wit, on the twelfth day of October, in the year of our Lord one thousand eight hundred and twenty-nine, at the city of New York, and within the southern district of New York, on waters that are navigable from the sea by vessels of ten or more tons burthen, seized as forfeited to the use of the said United States, the ship, or vessel commonly called a ship, the Waterloo, her tackle, apparel, and furniture, being the property of some person or persons to the said attorney unknown.

Second. That the said ship Waterloo is a ship or vessel owned wholly or in part by a subject or subjects of His Britannic Majesty, and which said ship or vessel, after the thirtieth day of September, in the year one thousand eight hundred and eight, and also after the thirtieth day of September, in the year one thousand eight hundred and twenty, did come and arrive from a port or place in a colony or territory of his Britannic Majesty, to-wit, from Anatto Bay in the island of Jamaica, in the West Indies, which said port is, and was at the time the said ship sailed from thence, and also at the time of the arrival of the said ship at the port of New York, as is hereinafter mentioned, by the ordinary laws of navigation and trade, closed against vessels owned by citizens of the United States—and that the ports of the United States were, at the time of the arrival of the said ship at the port of New York, and still are, closed against the said ship or vessel called the Waterloo, which said ship or vessel being so excluded from the ports of the United States, did enter the same, to-wit, the port of New York, in the southern district of New York aforesaid, in violation of the acts of the congress of the United States, in such cases made and provided. And that by force and virtue of the said acts of congress, in such case made and provided, the said ship or vessel, her tackle, apparel and furniture, became and are forfeited to the use of the said United States,—and that the same are now in custody of the marshal of this court in the suit of certain persons claiming salvage.

And the said attorney saith that by reason of all and singular the premises aforesaid, and by force of the statute in such case made and provided, the

aforementioned and described ship or vessel, her tackle, apparel, and furniture, became and are forfeited to the use of the said United States.

Lastly. That all and singular, the premises aforesaid, are, and were, true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court, whereupon the said attorney prays the usual process and monition of this honorable court in this behalf to be made, and that all persons interested in the before mentioned and described ship or vessel, may be cited in general and special to answer the premises, and all due proceedings being had, that the said ship or vessel, her tackle, etc., may, for the causes aforesaid, and others appearing, be condemned by the definitive sentence and decree of this honorable court, as forfeited to the use of the said United States, according to the form of the statute of the said United States in such cases made and provided.

James A. Hamilton, Attorney U. S.
for the Southern District of New
York.

Benedict's Adm. 462.

O. Supplemental and Amendatory Libel.

The supplemental and amendatory libel of A. B. against the brig Lowel, her tackle, etc., and against all persons intervening, etc., and against E. F., master, alleges as follows:

First, etc. (allege the facts as amended, in articles, and add prayer as amended in same form as an original libel).

(Sign and verify like original answer).

Benedict's Adm. 573.

II. Process.

A. Monition In Personam.

"The president of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States of America, for the southern district of New York, on the tenth day of January, in the year of our Lord one thousand eight hundred and forty-six, by Ebenezer N. Hinckley, against David L. Robinson, in a certain action civil and maritime for wages therein alleged to be due the said libellant, amounting to four hundred and ninety-

eight dollars, and praying that a monition may issue against the said defendant pursuant to the rules and practice of this court.

"Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you cite and admonish the said defendant, if he shall be found in your district, that he be and appear before the said district court, on the first Tuesday of February instant, at eleven o'clock in the forenoon, at the city hall in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf, and have you then and there this writ, with your return thereon.

"Witness the honorable Samuel R. Betts, judge of the said court, this first day of February, in the year of our Lord one thousand eight hundred and forty-six, and of our independence the seventieth.

"Joseph Smith, proctor.

"C. D. Betts, clerk."

Benedict's Adm. 228.

B. Warrant of Arrest In Personam.

The president of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas, a libel has been filed in the district court of the United States of America, for the southern district of New York, on the _____ day of _____

in the year of our Lord one thousand eight hundred and _____ by A. B. against C. D., in a certain action, civil and maritime, for freight, therein alleged to be due to the said libellant, amounting to two hundred and fifty-two dollars, and praying that a warrant of arrest may issue against the said defendant. Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you take and arrest the said defendant, if he shall be found in your district, and him safely keep, so that you may have his body before the said district court, on the _____ day of _____ at the city hall, in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf: and have you then and there this writ, with your return thereon.

Witness the honorable Samuel R. Betts, judge of said court, this _____ day of _____ in the year of our Lord one thousand eight hundred and

_____ and of our independence the seventy _____.

E. F., clerk.

G. H., proctor.
Benedict's Adm. 552, 553.

C. *Warrant for Arrest and for Attachment Against Goods and Chattels, and Its Effects, and Summons to Garnishee.*

The president of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States of America, for the southern district of New York, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and forty-eight, by Thomas Gould, libellant, against John Gibbons master of the ship Mount Vernon, in a certain action, civil maritime, for certain assaults and batteries therein alleged to have been committed on the said libellant, to his damage of five hundred dollars, and praying that a warrant of arrest may issue against the said defendant, and that he may be held to bail, pursuant to the rules and practice of this court. Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you take and arrest the said defendant, if he shall be found in your district, and him safely keep, so that you may have his body before the said district court on the 23rd day of May, inst., at the city hall in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf; and if the said defendant cannot be found in your district, that you attach his goods and chattels in your district to the amount sued for, and if no goods and chattels can be found, that you attach his credits and effects to the amount sued for, in the hands of the garnishees John Elwell & Co., and St. George Givins; and that you summon the said garnishees to appear before the said district court on the 23rd day of May, instant, to do and abide what may be required of them in this behalf, and have you then and there this writ; with your return thereon.

Witness the honorable Samuel R. Betts, judge of said court, this 19th day of May, in the year of our Lord one thousand eight hundred and forty-

eight, and of our independence the seventy-second.

J. W. Metcalf, clerk.

A. Nash, proctor.
Benedict's Adm. 553.

D. *Attachment and Monition Against a Ship and Cargo In Rem.*

Southern District of New York, ss.
The president of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States, for the southern district of New York, on the 16th day of September, in the year of our Lord one thousand eight hundred and twenty-nine, by Peter Harmony and others, against the ship Waterloo, her tackle, apparel, and furniture, and cargo, in a cause of salvage civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, etc., and cargo, may be cited in general and special, to answer the premises, and all proceedings being had that the said ship or vessel, her tackle, etc., and cargo, may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded, to attach the said ship or vessel, her tackle etc., and cargo, and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the first Tuesday of October next at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern dis-

trict of New York, this 16th day of September, in the year of our Lord one thousand eight hundred and twenty-nine, and of our independence the fifty-sixth.

Fred J. Betts, clerk.

Isaac A. Johnson, proctor for libelant. Benedict's Adm. 429.

E. Attachment and Monition Against Ship, Freight and Master for Seaman's Wages.

Southern district of New York, ss:

The president of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel in rem and personam, has been filed in the district court of the United States for the southern district of New York, on the _____ day of _____ in the year of our Lord one thousand eight hundred and forty-seven, by John C. Duffie, Alfred Sandford, Alexander Wilson, Benjamin Hoffman, Robert Fruss, and Charles McCarty, against the barque Childe Harold, and against the freights due for the cargo now or lately laden therein, and against Crosby, master of said barque, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that the said master and all persons interested in the said barque or vessel, her tackle, etc., may be cited to answer the premises, and all proceedings being had, that the said barque or vessel, her tackle, etc., and freight may, for the causes in the said libel mentioned, be condemned to pay the demands of the libelant.

You are therefore hereby commanded to attach the said barque or vessel, her tackle, etc., and to detain the same in your custody, until the further order of the court respecting the same, and to attach said freight, and to give due notice to all persons claiming the said vessel and freight, or knowing or having anything to say why the same should not be condemned pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the _____ day of _____ at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then

and there to interpose a claim for the same, and to make their allegations in that behalf; and we do hereby further empower, and strictly charge and command you the said marshal, that you cite the said Crosby, master of said vessel if he shall be found in your district, to be and appear before the said district court, on the _____ day of _____ at the city hall in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the honorable Samuel R. Betts, judge of said court, this _____ day of _____ in the year of our Lord one thousand eight hundred and _____ and of our independence the _____.

A. B., clerk.

C. D., proctor.

Benedict's Adm. 559.

III. Notice for Publication Containing Substance of Libel.

United States of America, southern district of New York, ss:

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 16th day of September, 1829, by Peter Harmony, owner, and Eliphalet Kingsbury, master of the brig Merced, libelants, against the ship Waterloo, her tackle, apparel and furniture, and cargo, alleging, in substance, that on the twenty-seventh day of August last, said Eliphalet Kingsbury, being on a voyage from Havana to Cadiz, in the said brig Merced, discovered and boarded the British ship Waterloo of London, with twelve feet of water in her hold, totally dismasted and entirely abandoned by her captain and crew; that he found no papers on board of her, but that she had a full cargo of rum, sugar, and other West India produce on board: that he thereupon took the said ship in tow, and brought her into the port of New York, on the twelfth day of September instant, her crew being almost worn out with fatigue, and that they are entitled to a reasonable share of said ship and cargo for the salvage thereof. And praying process against said ship and cargo, and reasonable and proper salvage, and that the said ship, her tackle, apparel and furniture, and cargo, may be condemned

and sold to pay such salvage, with costs, charges, and expenses.

Now, therefore, in pursuance of the monition under the seal of the said court to me directed and delivered, I do hereby give public notice to all persons claiming the said ship, her tackle, apparel and furniture, and cargo, or in any manner interested therein, that they be and appear before the said district court to be held at the city of New York, in and for the southern district of New York, on the first Tuesday of October next, at eleven o'clock in the forenoon of that day (provided the same shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter), then and there to interpose their claims, and to make their allegations in that behalf.

Dated the 16th day of September, 1829.

Thomas Morris, U. S. marshal.

Isaac A. Johnson, proctor for libelants.

Benedict's Adm. 430.

IV. Returns.

A. *The Marshal's Return, Attachment and Notice.*

In obedience to the within monition, I attached the vessel and cargo therein described, on the 16th day of September last, and I have given due notice to all persons claiming the same, that this court will on the 5th day of October instant (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated October 5, 1829.

Thomas Morris, U. S. marshal.

Benedict's Adm. 431.

B. *Marshal's Return, Defendant not Found, Attachment.*

The defendant is not found in the district, and I have attached the following goods and chattels of said defendant.

C. *Marshal's Return, Garnishee Summoned.*

The credits and effects of the said defendant, in the hands of John Elwell & Co., and St. George Givins, garnishees, and have summoned the said garnishee as within commanded.

Henry F. Tallmadge, marshal.

Benedict's Adm. 554.

V. Notice of Appearance by Defendant or Claimant.

District court—in admiralty. W. P. v. J. J., and others.

Sir: You will please to enter my appearance as proctor for the defendants (or claimants) in this cause.

June 2d, 1849. A. B., proctor.

To J. W. M., Esq., clerk.

Benedict's Adm. 252.

VI. Order Enlarging Time.

Let the time to answer the libel ——— (to reply—to answer the interrogatories—to except to the libel, or answer, or interrogatories)—be extended ——— days. Benedict's Adm. 573.

Note.—The order should be dated.

VII. Order Staying Proceedings for Time to Make Motion.

On the foregoing affidavit and notice of motion, let all proceedings in this cause, on the part of the libellant, be stayed for a sufficient time to make said motion, and have the order of the court thereon. Benedict's Adm. 573.

VIII. Claims.

A. *By Owner.*

To the honorable etc. (as in I, A).

David Rome and William B. King, of Eastport, in the county of Washington, state of Maine, owners of the schooner Hornet, her tackle, apparel, and furniture, intervening for their interest in the said schooner Hornet, her tackle, apparel, and furniture, appear before this honorable court, and claim the said schooner, her tackle, apparel, and furniture, and state that they are true and bona fide owners thereof, and that no other person is the owner thereof.

And thereupon, the said claimants pray, that this honorable court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

David Rome,

William B. King.

Sworn July 10, 1847, before me,

George W. Morton,

U. S. commissioner.

W. R. Beebe, proctor.

Benedict's Adm. 257.

B. *Claim by Foreign Consul for Unknown Owners in Case of Salvage.*

To the honorable, etc. (as in I, A).

The claim and answer of James C. Buchanan, his Britannic majesty's vice-consul in and for the city and state of New York and eastern New Jersey, intervening for the interest of the owner or owners of the British ship *Waterloo* and her cargo, alleges as follows:

First. That the said ship *Waterloo* is, as alleged in the said libel, and as the said claimant believes to be true, British property; and he believes the cargo of merchandise alleged to have been found on board of the said ship, to be in like manner British property: And as such vice-consul, and in behalf of such British owners as may be entitled to the same, he claims the same as their property.

Second. That as to the facts alleged and set forth in the said libel the said claimant neither admits nor denies the same, but leaves the same to be duly proved to the satisfaction of this court.

And the said claimant prays, on behalf of the owner or owners of the said ship *Waterloo*, and her aforesaid cargo, or of any other persons or persons whom the same may concern, that the said ship, her tackle, apparel and furniture, and her cargo aforesaid, may be sold, and out of the proceeds of the sale thereof, after the payment of all costs and charges incurred, that the said libelants, having duly proved as aforesaid the facts in their said libel set forth, may be allowed and paid such rate and amount of salvage, for their labor and exertions in bringing the said ship and her aforesaid cargo into this port, as by this court shall be deemed just and reasonable under the circumstances of the case, and that the surplus of the said proceeds, after payment of such salvage as aforesaid, may be adjudged and decreed to be paid to the said claimant, on behalf of the owner or owners of the said ship and her aforesaid cargo, or whomsoever the same may concern; or that such other order or decree may be made in relation to the same as this court shall deem proper. Benedict's Adm. 435.

IX. Exceptions to Libel.

A. *Form and Sufficiency.*

To the honorable, etc. (as in I, A).

The exceptions of David Jones, defendant, to the libel of James Jackson, libelant, allege that the said libel is informal and insufficient, as follows:

First exception. That the same is not signed by the libelant, nor by any proctor of this court.

Second exception. That the same does not allege that the libelant has sustained any damages in the matter of the libel; nor that the defendant is indebted to the libelant in any sum.

Third exception. That the third article thereof is scandalous and impertinent.

E. F., proctor for defendant.
Benedict's Adm. 259.

B. *Exception to Libel, New Matter.*
To the honorable, etc. (as in I, A).

The exception of David Jones, defendant, to the libel of James Jackson, libelant, alleges that, on the tenth day of June last, the said libelant, in consideration of one dollar to him paid, released the said defendant from the cause of action set forth in the said libel; and, therefore, the said defendant is not bound further to answer the same; and he prays that the said libel may be dismissed with costs. Sworn, etc.

David Jones.

E. F., proctor for defendant.
Benedict's Adm. 260.

X. Answer.

To the honorable, etc. (as in I, A).

The answer of John Richards, of Portland, in the state of Maine, intervening for his interest in the brig *Spartan*, to the libel of Edmund Kimball, junior, and George R. Sheldon, of the city of New York, merchants co-partners, doing business under the name of Kimball and Sheldon, answers and alleges as follows:

First. That this respondent is ignorant of the matter contained in the first, fourth, and fifth articles of the said libel, and as to the matters contained in the second and third articles of the said libel, he has no personal knowledge, but has understood and believes that the same are, in a great part, falsely alleged, and that the truth is as is hereafter alleged.

Second. That the said brig *Spartan* being in good order, and well and sufficiently equipped and manned, arrived in the bay of New York early in the evening of the 28th day of November, it being moonlight, and the wind and tide being favorable, but the wind being light, the vessel did not enter the East river before the moon had set, and it had become overcast and dark,

so that it was difficult to see a vessel without a light, even at a short distance. That when about to anchor, the master and crew of the said brig *Spartan*, discovered a vessel which proved to be said brig *Buenos Ayres*, lying in the stream at single anchor, directly ahead of them, and but a short distance off, and by the force of the tide and wind, and without any neglect, carelessness, or default of the master and crew of the *Spartan*, and notwithstanding every possible precaution, she was driven towards, and in contact with the said brig *Buenos Ayres*, and sustained damage to a large amount, to-wit, to the amount of two hundred and fifty dollars and upwards.

Third. That at the time above mentioned, the brig *Buenos Ayres* was lying at anchor in the harbor of New York, in the channel of the East river, between the Fulton ferry and the South ferry, and had not a light set in her rigging, on deck, or elsewhere visible to those on board of the brig *Spartan*, and the said accident was occasioned by negligence and want of care in the master, officers and crew of the said brig *Buenos Ayres*, in anchoring the said brig without proper light in the channel of the East river, where inward bound vessels must pass.

Fourth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

Burr & Benedict,

Proctors for respondent.

Sworn, etc.

E. Burr, advocate.

Benedict's Adm. 262, 263.

Note.—The answer must be "full, explicit and distinct to each separate article and allegation of the libel."

... Alleging that a vessel lay in an improper place and in an improper manner, without setting forth in what manner the vessel lay, or in what respect the manner was improper, or that fails to describe the anchorage and why it was improper, is insufficient. The Commander-in-Chief, 1 Wall. (U. S.) 43, 17 L. ed. 609. See also 1 STANDARD PROC. 461.

XI. Interrogatories.

Interrogatories propounded to James

B. Tucker, libellant, by Abraham Farmer and Timothy Stevens, respondents, in a cause civil and maritime, for wages, in the district court of the United States for the southern district of New York.

First interrogatory. Did not Timothy Stevens above named, sometime in the month of June last past, or at some other time, and when in particular tender to you, or offer to pay to you some, and how much money, which he admitted to be due to you, for wages for services on board the ship *Orbit*?

Second interrogatory. Did not said Stevens so tender or offer to pay to you the sum of twelve dollars and fifty cents?

Third interrogatory. Did you not decline receiving the said sum or some sum of money, tendered or offered to you by said Stevens?

E. H., proctor.

Benedict's Adm. 264.

XII. Order That Libel Be Taken Pro Confesso.

The process in this cause being returned personally served, the defendant is duly called, and does not appear; and on motion of ———, proctor for the libellant, the said defendant is pronounced to be in contumacy and default, and the libel is adjudged to be taken pro confesso, against him, and it is referred to ———, a commissioner, to ascertain the amount due to the libellant, and to report the same to the court, with all convenient speed. Benedict's Adm. 248.

XIII. Stipulations.

A. *Costs and Damages.*

Whereas a libel was filed in this court, on the ——— day of ———, in the year our Lord one thousand eight hundred and ———, by A. B. against ——— for the reasons and causes in the said libel mentioned, and whereas C. D. has intervened for his interest, and the said C. D. and E. F., his surety, the parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the said intervenor or his sureties, execution may issue against their goods, chattels and lands, for the sum of \$250.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them

is, bound, in the sum of \$250, conditioned that the intervenor above named shall abide by the final decree rendered in the cause, and shall pay all such costs, expenses and damages as shall be awarded against him by the final decree of this court, or of the appellate court.

A. B.
C. D.
E. F.

Taken and acknowledged, etc.

Southern district of New York, ss.
_____ party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

E. F.

Sworn, etc. Benedict's Adm. 562.

B. Stipulation for Costs.

Whereas a libel was filed in this court, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, by A. B. against C. D. for the reasons and causes in the said libel mentioned; and whereas the said C. D. has appeared in said suit and the said C. D. and E. F., his surety, the parties hereto hereby consenting and agreeing, that, in case of default or contumacy on the part of the defendant or his sureties, execution may issue against their goods, chattels and lands, for the sum or _____ hundred _____ dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and are bound in the sum of _____ hundred _____ dollars, conditioned that the defendant above named shall pay all costs and expenses which shall be awarded against him in the suit upon the final adjudication thereof or by any interlocutory order in the process of this suit.

Taken and acknowledged, etc.

Southern district of New York, ss.
_____ party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of _____ dollars over and above all his just debts and liabilities.

Sworn, etc. Benedict's Adm. 561.

Note.—This stipulation is to be signed by both principal and sureties. It is common practice to insert the place of residence of the sureties.

C. Stipulation To Appear and Abide Decree.

District Court of the United States of America for the southern district of New York. Stipulation entered in to pursuant to the rules and practice of this court.

Whereas, a libel has been filed in the district court of the United States of America for the southern district of New York, on the first day of June, 1849, by James Johnson, libellant, against William Pratt, defendant, in a certain action civil and maritime, for pilotage, therein alleged to be due and owing to the said libellant, amounting to fifty-six dollars—and Charles Jones, of the city of New York, ship chandler, surety, and the said defendant, parties hereto consenting and agreeing, that in case of default or contumacy on the part of the defendant, execution may issue against them, their goods, chattels and lands, for one hundred and fifty-six dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the said defendant shall appear in the said suit before the said district court of the United States of America, for the southern district of New York, on the first Tuesday of June, instant, at 11 o'clock in the forenoon, at the city hall, in the city of New York, and abide by all orders of the court, interlocutory or final, in the said cause, and pay the money awarded by the final decree rendered therein in the said court, or any appellate court.

Charles Jones,
William Pratt.

Taken and acknowledged, etc.

(Add affidavit of justification.) Benedict's Adm. 229.

D. Stipulation for Agreed or Appraised Value.

District court of the United States for the southern district of New York. In admiralty. Stipulation entered in to pursuant to the rules and practice of this court.

Whereas, a libel was filed on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, by A. B. against _____ for the reasons and causes in the said libel mentioned; and whereas the same is now in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, and is of the value of _____ dollars,

as appears by a consent (or appraisal) now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or his sureties, execution may issue against their goods, chattels and lands.

Now, therefore, it is hereby stipulated, for the benefit of whom it may concern, that the stipulators undersigned, and each of them, is bound in the sum of _____ dollars, conditioned that they shall at any time, upon the interlocutory and final order or decree of the said district court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree, to said claimant, or _____, esquire, his proctor, pay into court the full value aforesaid, and abide by, and pay the money awarded by the final decree rendered by this court or the appellate court, if any appeal intervene.

Taken and acknowledged, etc.

Southern district of New York, ss.

_____ party to the above stipulation, being duly sworn deposes and says that he is worth the sum of _____ dollars, over and above all his just debts and liabilities.

Sworn, etc. Benedict's Adm. 564.

E. Stipulation for Costs To Be Given by the Libelants on Filing Libel for Salvage.

District court of the United States for the southern district of New York. Stipulation entered into pursuant to the rules and practice of this court.

Whereas, a libel was filed in this court, on the 16th day of September, 1829, by Peter Harmony and Eliphalet Kingsbury, against the ship Waterloo, her tackle, apparel, and furniture, and cargo, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libelants; and the said libelants and George Jones, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libelants or their surety, execution may issue against their goods, chattels and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are bound, in the sum of two hundred and

fifty dollars, conditioned that the libelants above named shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

Peter Harmony,
Eliphalet Kingsbury,
George Jones.

Taken and acknowledged, etc. Benedict's Adm. 428.

XIV. Sale of Ship, Interlocutory.

A. Affidavit of Circumstances To Move for Sale of Ship and Cargo.

District court of the United States for the southern district of New York. Peter Harmony and Eliphalet Kingsbury v. The Ship Waterloo, etc., and cargo. Southern district of New York, ss.

Peter Harmony, one of the libelants in this cause, being sworn, says—that the ship Waterloo is now at the wharf in the port of New York, subject to large and increasing expense for wharfage, keeper's fees, and other expenses. That she is in a damaged condition, and requires care and repairs. That a large portion of her cargo is perishable, being sugar, and in a wet and damaged condition. That the only claims that have been interposed are those of the United States, for a forfeiture and for duties—of the British consul, for the probable rights of unknown British owners, and of the agents of the underwriters, at Lloyd's, for the contingent rights of such underwriters. That, in his opinion, the interests of all parties concerned will be promoted by a speedy judicial sale of said ship, her tackle, apparel, and furniture and cargo, the proceeds of such sale to be brought into court for the benefit of whom it may concern, subject to the further order of the court.

Peter Harmony.

Sworn, etc. Benedict's Adm. 437.

B. Notice of Motion on Affidavit To Move for Sale of Ship and Cargo.

District court of the U. S.—Southern district of N. Y. Peter Harmony and Eliphalet Kingsbury v. The Ship Waterloo and Cargo.

Gentlemen:—You will please take notice that, on the libel and claims in this cause, and on an affidavit, of which the foregoing is a copy, a motion will be made before his honor Samuel R. Betts, judge of this court.

at his chambers, No. 5 Pine street, in the city of New York, on Thursday, the 8th day of October, inst., at 11 o'clock in the forenoon of that day, for an order, that the ship Waterloo and her cargo above-mentioned, be sold under the direction of the marshal, and the proceeds brought into court.

Yours, etc.,

Isaac A. Johnson, proctor for libelants.
New York, Oct. 7th, 1829.

To James A. Hamilton, Esq., Proctor for the U. S.; Robinson & Betts, Esqrs., Proctors for the Underwriters, etc.; H. & E. Wilkes, Esqrs., Proctors for the Owners.

Benedict's Adm. 438.

C. Interlocutory Order for Sale of Ship and Cargo.

Peter Harmony and Eliphalet Kingsbury v. The Ship Waterloo, her tackle, etc., and cargo.

On reading and filing the affidavit of Peter Harmony, and the admission of the proctors for the respective claimants, and on motion of Mr. Johnson, proctors for the libelants, it is ordered, that the ship Waterloo, her tackle, apparel, and furniture and cargo, be sold by the marshal, on six days' public notice, that a venditioni exponas issue accordingly; and it is further ordered, that the marshal bring the proceeds of such sale into this court, and pay the same to the clerk thereof. Benedict's Adm. 439.

XV. Decrees.

A. The Caption of Orders and Decrees.

At a stated (or special) term of the district court of the United States of America, for the southern district of New York, held at the city hall, in the city of New York, on Tuesday, the third day of January, in the year of our Lord one thousand eight hundred and forty-three.

Present—The honorable Samuel R. Betts, district judge.

A. B. v. C. D. Benedict's Adm. 574.

Note.—This caption is to be used in all the following forms of "Decrees."

B. Final Decree on Peremptory Exception to Libel.

This cause having been heard on exceptions filed by the libelant to the plea interposed by the respondent, and having been argued by the advocates for the respective parties, and on due deliberation, the court doth now order, adjudge and decree, that the ex-

ceptions filed by the libelant to the plea of the respondent of a former trial and decree, upon the subject-matter of this suit, be overruled with costs to be taxed, and that the libel of the libelant be decreed, barred, and be dismissed, with costs to be taxed, unless the libelant shall elect to reply to said plea, and in that case that he have leave to file a replication thereto, within ten days, on payment of the costs created by such exception to be taxed. Benedict's Adm. 576.

C. Final Decree for a Sum Certain, With Costs.

This cause having been heard on the pleadings and proofs, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed, by the court, that the defendant pay to the libelant the sum of two hundred dollars, with his costs to be taxed. Benedict's Adm. 575.

D. Decree for Libelant on Charter Party.

This cause having been heard upon the pleadings and proofs, and the premises being considered, and it appearing to the court that the cargo of the brig Virginia, was well and securely stowed, and was, on her arrival at this port, delivered to the respondent, pursuant to the tenor and effect of the charter party in the pleading mentioned, and in good condition, except 4500 segars, injured by the dangers of the sea; and it further appearing to the court that the libelant brought in the said vessel from Havana to New York, boxes of segars and bales of tobacco laden in the cabin of the said vessel, and not embraced within the provisions of the charter party, it is therefore considered by the court, that the libelant recover his freight, in this case due and stipulated by the said charter party, and also the accustomed freight for the said boxes of segars and bales of tobacco, laden in the cabin of said vessel; and that it be referred to the clerk to ascertain and compute the amount due according to the tenor of this decree; and it is further ordered, that in taking such account, the clerk allow the respondent all proper credits for payments made pursuant to the charter party, and also credit for the value at Havana of one quarter box of segars, laden in the cabin, unless

the respondent elects to take the one quarter box delivered from the vessel to the public store, it not having the proper mark of the respondent, corresponding with the bill of lading. It is further ordered, that the libelant recover his costs to be taxed. Benedict's Adm. 577.

E. Final Decree for Defendant in Possessory and Petitory Suit.

This cause having been heard on the pleadings and proofs, and argued by the advocates of the respective parties, and due deliberation being had in the premises, and it appearing to the court that the claimant has made out a sufficient and valid title to the vessel, it is now ordered, adjudged and decreed by the court, that the libel filed in the cause be dismissed, with costs, to be taxed against the libelant. And on motion of the proctors for the claimant, it is further ordered, that unless an appeal be taken to this decree, within the time limited and prescribed by the rules of this court, the claimant's stipulations be canceled. Benedict's Adm. 576.

F. Decree Settling Priority in Distribution of Proceeds in Court, in Several Causes.

Titles of all the causes affecting the proceeds in court.

No exception being taken to the clerk's reports in either of the above cases, and the question being agitated which, if any, of the parties is entitled to priority of payment, and also, whether costs are to have precedence in satisfaction, where the debts are only entitled to pro rata payment, and the court having been moved to decree a distribution of the proceeds of the brig *Triumph*, her tackle, etc., now in the registry, and advocates for the respective parties having been heard, and due deliberation had in the premises, it is ordered and decreed, that the demand of Elisha B. Baker, for services rendered as pilot, together with his taxed costs, be first paid out of the fund in court; that then the amounts reported due the several libelants in the suits on which the vessel was arrested, be paid them respectively, together with their taxed costs, according to the order in which their attachments were served on the vessel. And that the several petitioners be afterwards paid ratably out of the surplus, after satisfaction of the other suitors, together

with their costs to be taxed. Benedict's Adm. 577.

G. Decree for Wages and Short Allowance for a Part of Voyage, and Forfeiture of Residue.

This cause having been re-argued upon the merits, by consent of the counsel for both the parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed, that the libelant recover for the eight months' service on board the vessel, up to his payment, in Hamburg, the sum of eighty dollars, and for short allowance during that period, thirteen 33-100ths dollars — in the whole, ninety-three 33-100ths dollars, deducting therefrom his advance of twelve dollars, and nine dollars paid him as per receipt, amounting to the sum of twenty-one dollars, and that the defendant pay to the libelant the balance, amounting to seventy-two 33-100ths dollars, together with his costs to be taxed. And that the libelant's wages earned on the circuitous voyage from Hamburg to Buenos Ayres, be decreed forfeited for desertion at the latter place. Benedict's Adm. 578.

H. Final Decree of Forfeiture on a Libel of Information.

The monition issued in this cause, having been heretofore returned, and the usual proclamation having been made, and the default of all persons being duly entered, it is thereupon, on motion of Ogden Hoffman, Esq., attorney for the United States, ordered, sentenced, and decreed, by the court now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence and decree, that the four cases of broad cloths, mentioned in the libel in this cause, be, and the same accordingly are condemned as forfeited to the United States.

And upon like motion, it is further ordered, sentenced, and decreed, that the clerk of this court issue a decree of venditioni exponas to the marshal of the district, returnable upon the _____ day of _____ next. And that upon the return thereof, the clerk distribute the proceeds according to law. Benedict's Adm. 575.

I. Decree on Special Motion Dismissing Libel When Process Had Improvidently Issued.

Mr. Burr, proctor for the claimants, reads and files affidavit of notice of

motion and affidavit of service, and moves that the vessel be discharged from custody.

Mr. Zabriskie, proctor for the libelant, reads and files two affidavits and argues in opposition to the motion.

Ordered that the libel be dismissed and the vessel discharged from custody of the marshal forthwith. Benedict's Adm. 578.

J. Decree Overruling Exceptions to an Answer.

This cause coming on to be heard on exceptions filed by the libelant to the answer of the respondent, and having been argued by the advocates for the respective parties, and due deliberation having been had in the premises, it is now ordered and decreed by the court, that the exceptions of the libelant to the answer of the respondent be disallowed and overruled, with costs to be taxed. Benedict's Adm. 576.

K. Decree for Libelant on Hearing With Reference To Compute.

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged and decreed, that the libelant recover the amount of his wages (or freight, or materials, etc.) in this cause; and it is further ordered, that it be referred to a commissioner to ascertain and compute the amount due to the libelant in the premises, and that he report the same to this court, with all convenient speed. Benedict's Adm. 574.

L. Decree, Order of Condemnation by Default and Reference to Commissioner.

The marshal having returned, on the motion issued in the above entitled cause, that he had attached the said vessel, her tackle, apparel and furniture, and had given due notice to all persons claiming the same, that the court would, on this day, proceed to the trial and condemnation of the said vessel, her tackle, etc., should no claim be interposed for the same; whereupon, on motion of ———, esquire, proctor for the libelants, proclamation was made for all persons interested in the said vessel, her tackle, etc., to appear and interpose their claims; and no person appearing on like motion it was further ordered, that the defaults of all persons be and the same are accordingly hereby entered, and that the said

vessel, her tackle, etc., be condemned to pay the demands of the libelant.

And it is further ordered, that it be referred to a commissioner of this court to ascertain and compute the amount due the libelant, for freight (or other cause) and to report the same to this court, with all convenient speed. Benedict's Adm. 574.

Note.—The decree frequently appoints the commissioner by name.

M. Decree, Order on Default, With Reference on Amount of Damage.

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged and decreed, that the libelant recover his damages for the assault and battery (or collision, or other cause), mentioned in the libel, and that it be referred to a commissioner to take the testimony of the amount of such damages, and to report the same to this court with all convenient speed. Benedict's Adm. 574.

N. Decree on the Merits With Reference to Commissioner.

This cause having been heard on the pleadings in the cause, and having been argued by the advocates of the respective parties, and due deliberation being had, it is now ordered, adjudged and decreed, that the libelant recover against the defendant the amount due by the charter party (or bill of lading—or bottomry—or respondentia bond—or for the materials—or for the supplies mentioned in the pleadings), and that it be referred to a commissioner to ascertain the amount so due, after making all proper allowances, and that he report the same to the court, with all convenient speed. Benedict's Adm. 575.

Note.—It is usual to state also that the time for filing exceptions has expired, and that none were filed, or otherwise make a recital in conformity with the facts.

XVI. Commissioner's Report.

A. Report.

District Court of the United States for the southern district of New York. William Robinson v. The Barque Richard Alsop, her tackle, etc. Commissioner's report.

In pursuance of a decretal order made in this cause, on the first day of September, in the year of our Lord one thousand eight hundred and forty-nine,

by which, among other things, it was referred to one of the commissioners of this court, to ascertain and compute the amount due to the libelant, for materials and repairs, and to report thereon to this court with all convenient speed.

I, John W. Nelson, United States commissioner, do report that I have been attended by the proctor for the libelant and the proctor for the claimant, and have taken and examined the testimony offered by the proctors respectively, and do find that there is due to the libelant, for the materials and repairs mentioned in the libel, the sum of one hundred and eighty-eight dollars and ten cents.

Dated the 20th day of September, A. D. 1849.

All which respectfully submitted, John W. Nelson, U. S. commissioner. A. B., proctor for libelant. Benedict's Adm. 297.

B. Exceptions to Report of Commissioner.

Exceptions on the part of the libelant, to the report of John W. Nelson, esquire, a United States commissioner in this cause, dated September, 1849:

First Exception. That the said commissioner did not allow to the defendant fifty dollars and twenty-four cents, paid by him to the libelant.

Second Exception. That the said commissioner allowed to the libelant seventy-seven dollars, for said repairs, beyond the contract price for the same.

Third Exception. That the said commissioner has reported a balance of \$188.70, due to the libelant, instead of a balance of \$60, as shown by the proofs.

A. B., proctor for libelant. Benedict's Adm. 298.

C. Order of Confirmation of Report of Commissioner, and Final Decree, With Judgment Against the Bail.

On reading and filing the report of George W. Morton, United States commissioner, to whom the above matter was referred, by which there is reported due the libelant for the wages (or freights, or other causes), demanded in the libel, the sum of ——— dollars. On motion of ———, proctor for the libelant, it is ordered that the report be in all things confirmed,

and that the defendant pay to the libelant in this action the amount so reported due to him, together with his costs to be taxed.

And on like motion, it is further ordered, that a summary judgment be and the same is hereby entered against the said A. B., the principal, and C. D., the surety, for the sum of ——— dollars, the amount of the bond and stipulation given to the marshal, on the arrest of the defendant; and that the libelant have execution thereon to satisfy this decree. Benedict's Adm. 575.

XVII. Venditioni Exponas.

A. On Interlocutory Order.

Southern district of New York, ss: The president of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas, a libel was filed in the district court of the United States for the southern district of New York, on the sixteenth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, by Peter Harmony and Eliphalet Kingsbury, against the ship Waterloo, her tackle, apparel, furniture and cargo, and praying that the same may be condemned and sold to answer the prayer of the said libelants. And whereas the said ship and cargo have been attached by the process issued out of the said district court, in pursuance of the said libel, and are now in custody by virtue thereof; and such proceedings have been thereupon had, that by the interlocutory sentence and decree of the said court, in this cause made and pronounced, on the seventh day of November, one thousand eight hundred and twenty-nine, the said ship, her tackle, apparel, and furniture and cargo, were ordered to be sold by you, the said marshal, after giving six days' notice of such sale, according to law. Therefore you, the said marshal, are hereby commanded to cause the said ship Waterloo, her tackle, apparel, and furniture and cargo, so ordered to be sold, to be sold in manner and form, upon the notice, and at the time and place by law required, and that you have the moneys arising from such sale in said court, at the city of New York, on the third Tuesday of November next, and that you then pay the same to the clerk of the court; and have you also then and there this writ.

Witness, the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this seventh day of November, in the year of our Lord one thousand eight hundred and twenty-nine, and of our independence, the fifty-third.

Fred J. Betts, clerk.
Benedict's Adm. 439.

B. Venditioni Exponas on Final Decree.

Southern District of New York, ss. The president of the United States of America to the marshal of the southern district of New York, greeting:

Whereas, a libel of information was filed in the district court of the United States for the southern district of New York, on the first day of March, in the year of our Lord one thousand eight hundred and forty-nine, against the ship *Rover*, her tackle, apparel, and furniture; praying that the same may be condemned and sold, for the causes alleged in the said libel of information. And whereas the said ship has been attached by the process issued out of the said district court, in pursuance of the said libel of information, and is now in custody by virtue thereof; and such proceedings have been thereupon had, that by the final sentence and decree of the said court, in this cause made and pronounced, on the first Tuesday of June, one thousand eight hundred and forty-nine, the said ship, her tackle, apparel, and furniture are condemned and ordered to be sold by you, the said marshal, after giving six days' notice of such sale, according to law. Therefore, you, the said marshal, are hereby commanded to cause the said ship, her tackle, etc., so condemned and ordered to be sold, to be sold in manner and form, upon the notice and at the time and place by law required. And that you have the moneys arising from such sale, in said court, at the city hall in the city of New York, on the first Tuesday of July, one thousand eight hundred and forty-nine, and that you then pay the same to the clerk of the court, and have you also then and there this writ.

Witness, the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this twenty-fourth day of June, in the year of our Lord one thousand eight hundred and

forty-nine, and of our independence the seventy-third.

Jas. W. Metcalf, clerk.
C. L. Benedict, proctor.
Benedict's Adm. 306.

C. The Return of the Marshal to Venditioni Exponas.

In obedience to the above precept, I have sold the ship *Waterloo*, her tackle, apparel, and furniture and cargo, and such sale amounts to thirty-nine thousand two hundred and sixty-two dollars and ninety cents, which sum I have paid to the clerk of this court as I am above commanded.

Dated this 22d day of February, 1830.
Thomas Morris, U. S. marshal.
Benedict's Adm. 440.

XVIII. A Fieri Facias Against Goods, Chattels and Lands.

The president of the United States of America to the marshal of the southern district of New York, greeting:

Whereas, a libel was filed in the district court of the United States for the southern district of New York, on the eighteenth day of October, eighteen hundred and forty-one, by Thomas Davis, James Williams, James Collins, and Charles E. Trescott, against Francis Hathaway and Edward Faucon. And such proceedings were thereupon had that by the judgment and decree of the said court in the said cause entered, on the fifth day of October, one thousand eight hundred and forty-three, the said Francis Hathaway and Edward Faucon were required to pay to the libelant, James Williams, the sum of ninety-six dollars and eighty cents, and to the libelant Thomas Davis, fifty-nine dollars and twenty cents, besides their costs in this suit, to be taxed, and execution was ordered therefor. And whereas the said costs have been taxed at ——— as by the records and files of said court fully appear. Now, therefore, we command you, that of the goods and chattels of the said Francis Hathaway and Edward Faucon in your district, and in default of goods and chattels of them, then of the lands and tenements in your district of which they were seised on the day you shall receive this writ, you cause to be made the sum of ——— dollars, and further, that you have those moneys in said court at the city hall in the city of New York, on the third Tuesday of June, instant, to

render to the libelants in satisfaction of said decree.

Witness the honorable Samuel R. Betts, judge of the said court, the first Tuesday of June, 1845.

_____, clerk.

_____, proctors.

Benedict's Adm. 591.

XIX. Appeal From District Court.

A. *Notice of Appeal to Circuit Court of Appeals.*

United States District Court, _____
district of _____.

(Title of cause.)

Please take notice that the libellant (respondent) appeals to the United States Circuit Court of Appeals for the second circuit, to be holden in and for said circuit, at the city of _____, from the decree made and entered herein on the _____ day of _____, 19____.

Dated, etc.

Yours, etc.,

Proctor for _____,

To _____, proctor for
_____, and _____,
clerk.

See Rule 1, C. C. A., 2d Circuit.

Appeal to Supreme Court.

The Steamboat New Jersey, her tackle, apparel, etc. Isaac Newton, claimant and appellant v. John H. Stebbins, respondent. To the honorable the supreme court of the United States:

The appeal of Isaac Newton, the above named claimant and appellant, respectfully sheweth that on the fourteenth day of November, 1845, the above named John H. Stebbins filed his bill in the district court of the United States, for the southern district of New York, against the Steamboat New Jersey, her tackle, apparel, etc., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by him to the sloop Hamlet and her cargo, by collision with the said Steamboat New Jersey, on the Hudson river, in the state of New York, and that the said Steamboat New Jersey was arrested upon process issued upon said libel, and was discharged on your petitioner's filing his claim and entering into stipulations, and your petitioner thereupon filed his answer to said libel, and the said libellant replied thereto, and such proceedings were had in the said cause that, on the fourteenth day of October, 1846, a final

decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellant recover against the Steamboat New Jersey, her tackle, etc., the sum of two thousand four hundred and three dollars and seventy-five cents, together with costs.

Wherefore, this appellant appeals from the whole of said decree of said (district court) to the supreme court of the United States (to the circuit court of appeals of the _____ judicial circuit), and respectfully prays that the said decree of the said (district court), and the libel, answer, pleadings, depositions, evidence and proceedings, in the said cause may be sent to the supreme court of the United States without delay, and that the said supreme court will proceed to hear the said cause anew, and that the said decree of the (district court), and every part thereof, may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said supreme court shall seem just.

I. Newton.

Dated, New York, Nov. 30, 1847.
C. Vansantvoord, proctor for appellant.
H. S. Dodge, advocate.
Benedict's Adm. 598.

Note.—Appeals in admiralty cases are now taken from the district court to the circuit court of appeals, except in prize cases, which are taken to the supreme court.

B. *Bond on Appeal.*

District court of the U. S. of America. Southern district of New York, in the second circuit. The Steamboat New Jersey, her tackle, etc., Isaac Newton, claimant and appellant v. John H. Stebbins, libellant and appellee.

Know all men by these presents, that we, Isaac Newton and Daniel Drew, of the city of New York, and Elijah Peck, of Flushing, in the county of Queens, are held and firmly bound, unto the above named John H. Stebbins, in the sum of five thousand dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twentieth day of November, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas, the above named appellant has prosecuted an appeal to the supreme court of the United States, at the city of Washington, in the district of Columbia, to reverse the decree rendered in the above suit by the district court of the United States, for the southern district of New York.

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

I. Newton (Seal),
Daniel Drew (Seal),
Elijah Peck (Seal).

Sealed and delivered, and taken and acknowledged, this 20th day of November, 1847, before me.

David L. Gardiner, U. S. commissioner
United States of America, southern
district of New York, ss:

Daniel Drew and Elijah Peck, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

Daniel Drew,
Elijah Peck.

Sworn, etc.

I approve the above bond and the sufficiency of the sureties thereto.

Saml. R. Betts.

Nov. 20, 1847.

Benedict's Adm. 599.

See note to I, A.

*Condition of Bond for Costs on Appeal
to Circuit Court of Appeals.*

Now, therefore, the condition of this obligation is such, that if the above named appellant "shall prosecute his appeal to effect and pay costs which may be awarded against him as such appellant, if the appeal is not sustained," * then this obligation shall be void, otherwise the same shall be and remain in full force and virtue. See Rule 2, C. C. A., 2d Circuit.

*Condition of Bond on Appeal to Circuit
Court of Appeal To Stay Execu-
tion.*

(To * above, and then insert as follows:) and shall "abide by and perform whatever decree may be rendered by" the United States Circuit Court of Appeals for the second circuit "in the cause or on the mandate

of" said "court by the court below." See Rule 2, C. C. A., 2d Circuit.

Notice of Filing Bond on Appeal.

Please take notice that a bond on the appeal herein for costs (and staying the execution of the decree herein) in the penal sum of _____ has been on the _____ day of _____, 19____, filed in the office of the clerk of the United States District Court for the _____ district of _____, and that _____ residing at _____, and _____ residing at _____ are sureties thereon.

Dated, etc.

Yours, etc., _____,

Proctor for appellant.

To _____, proctor for ap-
pellee.

See Rule 2, C. C. A., 2d Circuit.

C. Citation on Appeal.

By the honorable Samuel R. Betts, one of the judges of the district court of the United States, for the southern district of New York, in the second circuit, to John H. Stebbins:

Whereas, Isaac Newton, claimant, of the Steamboat New Jersey, her tackle, etc., has lately appealed to the supreme court of the United States, for the southern district of New York, in the second circuit, made in favor of you, the said John H. Stebbins, against the said Steamboat New Jersey, her tackle, etc., and has filed the security required by law; you are, therefore, hereby cited to appear before the said supreme court, at the city of Washington, on the 22nd day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 22nd day of November, in the year of our Lord 1847, and of the independence of the United States the seventy-second.

Saml. R. Betts.

Benedict's Adm., 600.

See note to I, A.

*D. Affidavit of Service of Citation
and Appeal.*

Southern District of New York, ss:

Andrew H. Hitchcock being duly sworn, saith that he served on the appellee, John H. Stebbins, on the 22nd day of November, 1847, a copy of the appeal and a copy of the citation, filed in this cause with the clerk of the

district court, in and for the southern district of New York, on said twenty-second day of November, by delivering said copy of the citation to the said appellee personally, and by leaving said copy appeal for said appellee in the clerk's office of the district court aforesaid.

A. H. Hitchcock.

Sworn, etc. Benedict's Adm., 600.

E. Return, From District Court to Supreme Court.

United States of America, Southern District of New York, ss.:

I, Alexander Gardiner, clerk of the district court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office, in the cause within named.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourth day of December, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the said United States the seventy-third.

Alex. Gardiner.

Benedict's Adm. 601.

F. Bond to the Clerk for Costs.

Supreme Court of the United States of America. A. B., claimant of the schooner Sea Flower, her tackle, etc., appellant, v. C. D., libellant and appellee. Bond for Costs.

Know all men by these presents, that we, E. F. and G. H., are held and firmly bound unto William T. Carroll, Esq., clerk of the supreme court of the United States, in the sum of two hundred dollars, to be paid to the said clerk, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the _____ day of _____ in the year of our Lord one thousand eight hundred and _____.

Whereas, the above named appellant has prosecuted an appeal from the district court of the United States for the southern district of New York, to this court, to reverse the final decree ren-

dered in the above entitled suit, by the district court of the United States for the southern district of New York, in the second circuit:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall pay to said clerk all costs which he may be entitled to demand of said appellant in this cause, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

E. F.

G. H.

Sealed and delivered, and taken and acknowledged, this _____ day of _____, 184—, before me, Richard E. Stilwell, U. S. Commissioner.

United States of America, southern district of New York, ss:

E. F. and G. H., the within obligors, being duly sworn, depose and say each for himself, that he is worth the sum of four hundred dollars over and above all his just debts and liabilities.

Sworn, etc. Benedict's Adm. 601.

G. Notice of Appearance.

Supreme court of the United States. Isaac Newton, claimant of the Steamboat New Jersey, appellant, v. John H. Stebbins, appellee.

Sir: You will please to enter my appearance for the appellee in this cause.

December 3, 1849.

E. C. Benedict, proctor for appellee.

To Wm. T. Carroll, Esq., clerk.

Benedict's Adm. 333.

H. Decree of District Court, After Remittitur From Supreme Court.

On reading and filing the remittitur and mandate of the supreme court, and on motion of Mr. _____, proctor for the libellant (or the defendant, or the claimant): It is ordered, adjudged, and decreed (according to the mandate), and that the said _____ have execution of this decree. Benedict's Adm. 602.

ADULTERATION.

I. Indictment for Selling Adulterated Milk, 46

II. Indictment for Having in Possession Adulterated Milk, 47

III. Complaint for Keeping Adulterated Liquors, 47

I. Indictment for Selling Adulterated Milk (a).

Indictment charging that the de-

fendant on March 6, 1869, at Boston, "with force and arms did unlawfully offer for sale and sell to one Gilman Currier, for the sum of eighteen cents, a large quantity, that is to say, two quarts, of adulterated milk, that is to say, a certain quantity, to-wit, two quarts of milk, to which a certain quantity, to-wit, one pint, of water had been added." *Com. v. Smith*, 103 Mass. 444.

Indictment (b).

"Did unlawfully keep, offer for sale and sell to one Bridget Donegan, for the sum of forty cents, a large quantity, that is to say, eight quarts, of adulterated milk, to which a large quantity, that is to say, four quarts, of water had been added; he the said Farren well knowing said milk so sold to be adulterated, and well knowing that said large quantity of water had been added to said milk." *Com. v. Farren*, 9 Allen (Mass.) 489.

Indictment (c).

"Did unlawfully keep, offer for sale and sell to one Patrick Keenan, for the sum of forty cents, a large quantity, that is to say, eight quarts of adulterated milk, to which a large quantity, that is to say, six quarts of water had been added; he the said Nichols well knowing said milk so sold to be adulterated, and well knowing that said large quantity of water had been added to said milk." *Com. v. Nichols*, 10 Allen (Mass.) 199.

Complaint (d).

"Did sell and deliver to one William J. Wilson one pint of milk, and received in payment therefor the sum of three cents, and that the said pint of milk so sold as aforesaid was adulterated with water, the said Flannelly then and there having reason to believe the said milk to be so adulterated; against the peace of said commonwealth, and the form of the statute in such case made and provided." *Com. v. Flannelly*, 15 Gray (Mass.) 195.

II. Indictment for Having in Possession Adulterated Milk.

"Had in his custody and possession one pint of adulterated milk, to which milk water had been added, with intent to sell the same in said Lawrence." *Com. v. Luscomb*, 130 Mass. 42.

III. Complaint for Keeping Adulterated Liquors.

"That on the 7th day of February, 1870, at said town of Stonington, Henry C. Stanton, of said Stonington, did keep for sale intoxicating liquors, which were at said time adulterated with deleterious ingredients, against the peace, and contrary to the form of the statute in such case provided.

"And said grand juror further complains that the said Henry C. Stanton, on the 7th day of February, 1870, at said town of Stonington, did keep other spirituous liquor for sale, to-wit, a quantity of spirituous liquor made and compounded in imitation of the liquor known as Port wine, and which was at said time adulterated with poisonous ingredients, against the peace, and contrary to the form of the statute in in such case made and provided." *State v. Stanton*, 37 Conn. 421.

ADULTERY.

I. Indictment for Adultery, 47

II. Continuous Acts, 48

For other forms, see 1 STANDARD PROC. 601-603, 607-609.

CROSS-REFERENCES:

DIVORCE:

Counterclaim for Divorce for Plaintiff's Adultery;
Answer, Condonation of Adultery;
Answer, Denial of Adultery;
Complaint for Divorce on Ground of Adultery.

LEWDNESS:

Indictment for Cohabiting Together as Man and Wife;
Indictment for Lascivious Cohabitation.

I. Indictment for Adultery.

That "on the first day of August, in the year of our Lord one thousand eight hundred and fifty-three, at the city of Racine, aforesaid," the defendant "did commit the crime of adultery with one Caroline White, the wife of one Orrin White, by then and there having carnal knowledge of the body of her, the said Caroline White, he the said James Ketchingman, then and there being a married man, and having a lawful wife then alive, and she, the said Caroline White, then and there being a married woman, and the lawful wife of said Orrin White, contrary to the

form of the statute," etc. *Ketchingman v. State*, 6 Wis. 426.

II. Indictment for Adultery, Continuous Act.

"R. Griffin Golden and Jemima Scott did, in said county and state aforesaid, on or about the 15th of February, 1868, commit adultery by living together, and cohabiting, or having carnal knowledge of each other, at divers times, at and before the time aforesaid, in said state and county, he, the said R. Griffin Golden, at the time of committing the adultery with the said Jemima Scott, being a married man, and his wife, _____, then living." *Golden v. State*, 32 Tex. 737.

Note.—For correct form of continuous do see **Indictments V**, this volume.

ADVERSE POSSESSION.

I. Answers, 48

- A. *Avoiding Deed*, 48
- B. *In Ejectment by People*, 48
- C. *Setting Out Adverse Possession*, 48

I. Answers.

- A. *Answer, Adverse Possession, Avoiding Deed.*

I. That at the time of the delivery of the deed alleged in the complaint (or, the deed under which the plaintiff claims) the lands therein described were in the actual possession of one M. N., claiming under a title adverse to that of the grantor in said deed. 2 Abb. Forms 155.

Note. *Ford v. Sampson*, 8 Abb. Pr. (N. Y.) 332.

- B. *Statute of Limitations Pleaded Against Ejectment by the People.*

That no right or title in or to the said lands and premises, or any part thereof, accrued to the plaintiffs within the space of forty years next before the commencement of this action; and that if any right or title ever accrued to the said plaintiffs, the same accrued more than forty years before the time of the commencement of this action; and that neither the said plaintiffs, nor those from or under whom they claim, have received the rents and profits of the said lands and premises, or of any part thereof, within the space of forty years before the commencement of this action. 2 Abb. Forms 156; *People v. Arnold*, 4 N. Y. 508.

C. Answer Setting Out Adverse Possession.

I. That neither plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises described in the complaint, or any part thereof (except, etc.) within twenty years before the commencement of this action, but that defendant (or, said M. N., under whom defendant holds by lease) his ancestors, predecessors and grantors, have held and possessed the premises (except, etc.) adversely to the pretended title of the plaintiff, for twenty years last past before the commencement of this action (and before the time of the acts alleged in the complaint), under a claim of title in fee, exclusive of any other right. (If it be desired to allege the title and occupation, which is not usually necessary, they may be added thus.)

II. That said M. N. entered into possession of said premises under claim of title, exclusive of any other right, founding such claim upon a written instrument, to-wit, a deed from one O. P., as being a conveyance of the premises in question (said deed being duly recorded in the office of the _____ in the county of _____, in book (or volume) _____ of (deeds) on page _____, on the _____ day of _____), (or, upon the decree or judgment of a competent court, to-wit, of the _____ court of _____, duly rendered on the _____ day of _____, for (here state briefly the relief respecting the land).

III. That there has been a continued occupation and possession of the premises included in such instrument (or, decree, etc.) under such claim, for twenty years last before this action, by the defendant (or, said M. N.), and those under whom he claims as aforesaid.

(Or where only a part has been occupied): III. That there has been a continued occupation and possession of a part of said premises included in said instrument (or, decree, or judgment), under such claim, for twenty years last before this action; which part so occupied is described as follows (description):

IV. That during all said time, said occupied premises have been usually cultivated or improved (or, have been protected by a substantial inclosure, or, have been used for the supply of fuel, and of fencing timber, or either, for

the purposes of husbandry, and for the ordinary use of the occupant, or either. 2 Abb. Forms 155.

Note.—That plaintiff's possession was adverse must be alleged as above (par. I). *White v. Spencer*, 14 N. Y. 247; *Clarke v. Hughes*, 13 Barb. (N. Y.) 147. It is proper to set out place of record of instrument in II.

AFFIDAVITS. — See **MOTIONS** and other titles.

AFFIDAVITS OF MERITS AND DEFENSE.

I. Affidavit of Merits by Defendant, 49

II. Affidavit of Merits by Counsel, 49
For other forms, see 1 **STANDARD PROC.** 676, 685.

CROSS-REFERENCES:

BILLS OF PARTICULARS:

Affidavit To Obtain Order for a Bill of Particulars.

CHANGE OF VENUE:

Affidavit for Change of Venue, and Service of Demand.

CONTINUANCES:

Affidavit To Move for Postponement on Account of Absence or Sickness of Witness.

I. Affidavit of Merits by Defendant (a).

County, ss.: C. D., the defendant in the above entitled cause, being duly sworn, deposes and says that he has fully and fairly stated the case in this cause to J. D., esquire, his counsel in said cause, who resides in (the said city of New York), and that he has a good and substantial defense upon the merits thereof, as he is advised by his said counsel, after such statement made as aforesaid, and verily believes to be true.

C. D.

Sworn, etc. 1 Burr. App. 17, §35.
Affidavit of Merits by Defendant (b).

County, ss.: C. D., the above named defendant, being duly sworn, says that he has fully and fairly stated the case in this cause to G. H., of the (city of Brooklyn), in said county, his counsel therein, and that he has a good and substantial defense upon the merits to the plaintiff's demand on the bill of exchange (or promissory note, or other written instrument, or judgment, or recognizance, or other record), on which this action is brought, as he is advised by his said counsel, and verily believes to be true. 1 Burr. App. 17, §36.

Affidavit of Merits by Defendant (c).

That this defendant has fully and fairly stated the case to ———, his counsel, who resides at ——— (specifying his residence), and that he has a good and substantial defense on the merits to the action, as he is advised by his said counsel, after such statement, and verily believes. 2 Abb. Forms 692.

II. Affidavit of Merits, Made by Counsel.

That he is the attorney and counsel of the above named defendant Y. Z. in this action, and that from a statement of the case in this action, made to deponent by defendant, deponent verily believes that defendant has a good and substantial defense upon the merits to the cause of action set forth in the complaint, or to some part thereof. (Add also reason why the affidavit is not made by the defendant.) 2 Abb. Forms 692.

AFFRAY.

For other forms see 1 **STANDARD PROC.** 725, 726, 730.

Indictment for an Affray.

Middlesex, to-wit: The jurors for our lady the queen upon their oath present, that J. S., late of the parish of B., in the county of M., laborer, and J. W., late of the same, carpenter, on the third day of August, in the ninth year of the reign of our sovereign lady Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, being unlawfully assembled together and arrayed in a warlike manner, then and there in a certain public street and highway there situate, unlawfully, and to the great terror and disturbance of divers liege subjects of our said lady the queen, then and there being did make an affray; in contempt of our said lady the queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the queen, her crown and dignity. Archb. Crim. Pl. 708.

AGENT.—See **PRINCIPAL AND AGENT.**

AGREED CASE.

I. Statement of the Case, 50

II. Verification, 50

III. Judgment, 50

For other forms, see 1 **STANDARD PROC.** 754, 756, 759, 764.

CROSS-REFERENCE:

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Order for Dismissal on Case Agreed.

I. Statement of Case.

(Entitle as if in an action.) Case agreed upon in a controversy submitted without action.

A. B. claims to recover of Y. Z. _____ dollars (or otherwise), and Y. Z. resists said claim.

The following are the facts upon which the said controversy depends. (Here state, as concisely as may be, all the facts important either as the ground of the claim or of the defense.)

None of the admissions herein contained are in any wise to affect either party, or to be regarded as made, except for the purpose of this submission of this controversy.

The questions submitted to the court upon this case are as follows: (Here state accurately all questions intended to be raised on the facts submitted, e. g., thus):

I. Was the notice of protest which was mailed on the _____ day of _____, 18—, to Y. Z., sent in time to charge him as indorser?

If this question is answered in the affirmative, then judgment is to be rendered against the said Y. Z. for the amount claimed.

If this question is answered in the negative, then:

II. Did the promise made by Y. Z. to A. B., on the _____ day of _____, 18—, that he would pay the note, render him liable to pay the same?

If this question is answered in the affirmative, then judgment is to be rendered against Y. Z. for the whole amount claimed.

If answered in the negative, judgment is to be rendered in favor of A. B. for his costs.

(Signature of both parties.)

(Date.) 2 Abb. Forms 710.

II. Verification.

A. B. and Y. Z., being duly severally sworn, say, each for himself, that the controversy mentioned in the foregoing case is real, and the proceedings in good faith to determine the rights of the parties. 2 Abb. Forms 711.

III. Judgment.

(Title of the cause.) (At a general term, etc.)

A case agreed between the parties

above named, without action, dated the _____ day of _____, 18—, and duly verified, having been submitted to this court, and after hearing M. N., for the said A. B. and O. P., for the said Y. Z., and due deliberation having been had thereon:

It is adjudged (here state relief granted as in other judgments). 2 Abb. Forms 711.

ALIENATING AFFECTIONS.

I. Declaration, 50

II. Complaint, 51

For other forms, see 1 STANDARD PROC. 775, 777, 778.

I. Declaration.

The declaration contained four counts. The first stated that on the 1st of January, 1741, Mary then and until the 24th of December, 1742, being the wife of the plaintiff (but since deceased) unlawfully and without his leave and against his consent departed and went away from him, etc., and lived and continued absent and apart from him from thence until and upon the 8th of August, 1742, and during the said time that the said Mary so lived and continued absent a large estate both real and personal to the value of 30,000*l*, was devised to her by W. Worth, D. D., her late father for her sole and separate use and at her sole and separate disposal; that thereupon she was desirous of being and intended to be again reconciled to the plaintiff and to live and cohabit with him, whereby he would have had and received the benefit and advantage of the said real and personal estate (the plaintiff being willing and desirous to be reconciled, etc.) yet the defendant knowing the said premises and having notice of the said Mary's intention, but contriving to injure the plaintiff, and to prevent Mary the wife from being reconciled to him, etc., on the 8th of August, 1742, unlawfully and unjustly persuaded, procured and enticed the said Mary to continue absent and apart from the plaintiff and to secrete, hide and conceal herself from the plaintiff, by means of which persuasion, procuration and enticement the said Mary from the said 8th of August, 1742, until the time of her death on the 24th of December, 1742, continued absent and apart and secreted herself, etc.; whereby the plaintiff during all that time totally lost the comfort and

society of his said wife and her aid and assistance in his domestic affairs and the profit and advantage that he would and ought to have had of and from the said real and personal estates, etc., and was put to great charges and expenses in endeavoring to find out and gain access to his said wife in order to persuade and procure her to be reconciled to him.

The second count stated that on the 7th of August, 1742, Dr. Worth died, on whose death the plaintiff's wife became seised and possessed of real and personal estates to the value of 30,000*l* to her sole and separate use and at her sole and separate disposal, yet the defendant maliciously and wickedly intending to injure the plaintiff, and to deprive him of the aid, assistance and comfort of his wife, and to raise, foment and continue discords and quarrels between the plaintiff and his wife; and to alienate the affections of the wife from the plaintiff, and to deprive the plaintiff from having or receiving any advantage or benefit from the said estates, etc., on the 8th of August, 1742, unlawfully and unjustly persuaded, procured and enticed the said wife to depart and absent herself from the plaintiff and to secrete herself from him, by means of which persuasion, procuration and enticement the said Mary on the said 8th of August, departed and absented herself from the plaintiff without the plaintiff's consent and continued absent until her death, etc.; whereby the plaintiff, etc. (as in the first count).

The third count stated that on the 8th of August, 1742, the plaintiff's wife without and against his consent went away from him, and went to the defendant, yet the defendant, well knowing the said Mary to be the wife of the plaintiff, received her, and concealed her from the plaintiff, and kept her so concealed from him until the time of her death, and wholly refused to deliver her to the plaintiff or to discover her place of residence (although on, etc., at, etc., he was requested, etc.) but unlawfully entertained, harbored, concealed and secreted her from the plaintiff from the 8th of August, 1742, until the time of her death; whereby the plaintiff, etc. (as before only omitting that the plaintiff was deprived of the benefit of the fortune, etc.) *Winsmore v. Greenbank*, Willes 578, 125 Eng. Reprint 330.

II. Complaint for Enticing Away Plaintiff's Wife.

I. That M. B. is, and at the times hereinafter mentioned was, the wife of the plaintiff.

II. That in the month of ———, 18——, while the plaintiff was living and cohabiting with and supporting her, in ———, and while they were living together happily as man and wife, the defendant, well knowing her to be the wife of the plaintiff, and wrongfully contriving and intending to injure the plaintiff, and to deprive him of her comfort, society, and aid (while this plaintiff was temporarily absent), maliciously enticed her away from the plaintiff's and her then residence in ———, to a separate residence, in ———, and has ever since there detained and harbored her, against the consent of the plaintiff, and in opposition to his utmost peaceable efforts to obtain her from the defendant's custody, control and influence.

III. That by reason of the premises, the plaintiff has been and still is wrongfully deprived by the defendant of the comfort, society, and aid of his said wife, and has been put to great trouble and expense in endeavoring to recover her from the defendant, and has suffered great distress of body and mind, to his damage ——— dollars. 1 Abb. Forms 504.

ALIENS.

For forms, see 1 STANDARD PROC. 803, 811.

CROSS-REFERENCE:

JURISDICTION:

Answer by a Consul, No Jurisdiction of Person.

ALTERATION OF INSTRUMENTS.

I. Answers, 51

A. *Alteration of Bill or Note*, 51

B. *By Surety, Alteration of Contract*, 52

For other forms, see 1 STANDARD PROC. 828, 834, 835.

I. Answers.

A. *Alteration of Bill or Note*.

That after the making (or acceptance) and issue of said note (or bill) and before this action, the same was materially altered, without the consent of the defendant, by adding the signature of M. N. as a joint maker thereof (or by cutting off the signature of

M. N., who was a joint maker thereof, or by adding the words "payable at _____," or otherwise, as the case may be). 2 Abb. Forms 70.

B. Answer by Surety, Alleging Alteration of Contract.

I. That the defendant gave said bond to the plaintiff as surety for one M. N., to secure the performance, on the part of said M. N., of (here state the principal contract briefly; or, if in writing, it may be annexed and referred to as a part of the complaint).

II. That thereafter, and without the knowledge or consent of this defendant, the plaintiff agreed with said M. N. (by writing under seal, here state modification). 2 Abb. Forms 56.

AMENDMENTS AND JEOPAILS.

I. Notice of Motion, 52

- A. *For Leave To Amend*, 52
- B. *For Leave To Amend Declaration*, 52
- C. *For Leave To Amend Complaint*, 52
- D. *To Make Co-Plaintiffs Defendants*, 53
- E. *To Add Defendants*, 53
- F. *To Serve Amended Pleading*, 53
- G. *To Correct Fictitious Name*, 53

II. Affidavit To Correct Fictitious Name, 53

III. Orders, 53

- A. *For Leave To Amend*, 53
- B. *To Serve Amended Pleading*, 53
- C. *To Amend Formal Error*, 53
- D. *To Correct Fictitious Name*, 53
- E. *To Conform to Proofs*, 54

IV. Notice of Amended Pleading, 54

CROSS-REFERENCES:

ADMIRALTY:

Supplemental and Amendatory Libel.

EQUITY JURISDICTION AND PROCEDURE:

Affidavit in Support of Application To Amend Bill Before Filing Replication;

Petition for Leave To Withdraw Replication and Amend Bill;

Petition To Amend Bill by Adding Defendant;

Petition To Amend Bill Requiring Further Answer;

Petition To Amend Bill Not Requiring Further Answer;

Order for Leave To Withdraw and Amend Bill;

Order for Leave To Amend Bill After Plea to Part Is Allowed;
Order for Leave To Amend Bill After General Demurrer;
Order for Leave To Amend an Injunction Bill.

I. Notice of Motion.

A. Notice of Motion for Leave to Amend.

(Title of cause.)

Sir: Please to take notice that, on the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol of the city of Albany, on the first Tuesday of (April) next, that the plaintiff (or "defendant") in this cause have leave to amend the *capias ad respondendum* (or other writ, naming it), issued in this cause (or "the declaration [or other pleading] filed in this cause, etc.," according to the case, and specifying the amendment proposed), on such terms as the said court may direct. Dated (March 17th, 1846).

Yours, etc.,

G. H., attorney for defendant.

To E. F., esquire, attorney for plaintiff. Burr. App. 216, §437.

B. Notice of Motion for Leave To Amend Declaration.

Sir: Please to take notice that, upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol in the city of Albany, on the first Tuesday of (April) next, that the plaintiff in this cause be allowed to amend the declaration filed therein, by adding thereto the common counts for money had and received, and for money lent and advanced, and for money paid, laid out and expended (or whatever the subject-matter of the amendment may be). Dated, etc.

Yours, etc.,

E. F., Esq., Pliffs. Atty.

To G. H., Defts. Atty.

Burr. App. 208, §407.

C. Notice of Motion for Leave To Amend Complaint.

Please take notice that on the affidavit herewith served, and on all the proceedings in this action, the undersigned will move the court, at a special term thereof to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____-noon,* for leave to amend his complaint here-

in, by the insertion of the following clause in place of the fifth paragraph thereof: (or otherwise indicate the nature of the amendment sought to be made), or for such other or further relief as may be just. 2 Abb. Forms 198.

D. Notice of Motion To Amend Complaint by Striking Out Co-Plaintiffs and Making Them Defendants.

(As in preceding form to the *, continuing): that the plaintiffs may be at liberty to amend their complaint by striking out A. B. and C. D. from being plaintiffs, and making them defendants, without costs as to the other defendants; and for such other relief as may be just. 2 Abb. Forms 199.

E. Notice of Motion To Amend Complaint by Adding Defendant.

(As in I, C, to the *, continuing): that the plaintiff may have leave to amend his summons and complaint in this action by adding W. X. as a defendant therein, with apt words to charge him; and for such other relief as may be just. 2 Abb. Forms 200.

F. Notice of Motion for Leave To Serve Proposed Original or Amended Pleading.

Please take notice that upon an affidavit and proposed answer (or amended answer, or other pleading), copies of which are herewith served, and upon the pleadings served in this action, the undersigned will move the court, at a special term to be held at _____, in the city of _____, on the _____ day of _____ next, at _____ o'clock in the _____ noon, for leave to serve such answer (or amended answer, or other pleading) in this action, or for such other and further order as may be just. 2 Abb. Forms 197.

G. Notice of Motion To Amend by Correcting Fictitious Name.

(As in I, C to the *, continuing): that the plaintiff have leave to substitute the name of _____, as the real name of the defendant in this action, wherever the name Richard Roe occurs in the papers filed in this action; or for such other relief as may be just. 2 Abb. Forms 200.

II. Affidavit To Obtain Leave To Correct Fictitious Name.

A. B., being duly sworn, says:

I. That he is the plaintiff in this action.

II. That he was not acquainted with the real name of the defendant in this action until after the commencement of this action, and (about one week ago).

III. That the defendant's real name is _____, and not _____. 2 Abb. Forms 200.

III. Orders.

A. Order for Leave To Amend.

On reading and filing an affidavit of the due service of notice of motion in this cause, and on motion of Mr. J., of counsel for the plaintiff, after hearing counsel in opposition (or "no one appearing to oppose"), ordered that the plaintiff have leave to amend the declaration in this cause by (adding money counts thereto) on payment of seven dollars costs, and that the defendant have twenty days to plead to the amended declaration (or and that the defendant have leave to withdraw his plea, and plead de novo, etc.). Burr App. 467, §950.

B. Order Giving Leave To Serve Amended Pleading.

On reading and filing the affidavit of A. B. and the notice of this motion (and proof of due service), and on motion of Q. R. for plaintiff, after hearing S. T. (or no one appearing) in opposition:

Ordered that the plaintiff have leave to * serve a complaint in this action, amended as he may be advised (or state nature of amendment, e. g., thus: by substituting for the fifth paragraph of the original complaint the words _____), within _____ days from the date of this order, on payment of _____ dollars costs to the defendant (and that defendant have leave to answer or demur thereto within the usual time). 2 Abb. Forms 198.

C. Order Giving Leave To Amend Formal Error.

(Commencement as in III, B, to *): amend his complaint, on file in this action, by inserting (or canceling) the word (designating the error) after the word _____, in folio _____. 2 Abb. Forms 199.

D. Order Granting Leave To Correct Fictitious Name.

(Commencement as in III, B.)

Ordered that the name of _____ be substituted in place of that of _____, as the real name of the defendant in this action. 2 Abb. Forms 200.

E. Order After Trial, Granting Leave To Amend Complaint To Conform To Proofs.

On reading and filing (designate motion papers), and on motion of M. N. for the plaintiff, and after hearing O. P. for the defendant:

Ordered that the plaintiff have leave to amend his complaint so as to conform the same to the copy served on the defendant's attorney (with the proposed case in this cause made on the part of the plaintiff); and that the complaint so amended be filed (and be included in the case), on payment by the plaintiff to the defendant of ——— dollars, costs of opposing this motion (and on filing with the clerk of the county of ——— a bond in the penalty of ——— dollars, conditioned that in case the defendant shall finally recover costs against the plaintiff, such costs, so far as they have already accrued, shall be paid; and until such bond be filed, the proceedings on the part of the plaintiff are stayed. 2 Abb. Forms 201.

IV. Notice of Amended Pleading.

Please take notice that the within is a copy of the amended complaint (or answer, or reply) in this action. 2 Abb. Forms 199.

AMICABLE ACTIONS.

For forms, see 1 STANDARD PROC. 933.

ANIMALS.

I. Injuries to Persons, 54

- A. *Declaration for Keeping Dog Accustomed To Bite*, 54
- B. *Complaint for Keeping Mischievous Dog*, 55

II. Injuries to Other Animals, 55

- A. *Declaration for Keeping Dog Accustomed To Bite Other Animals*, 55
- B. *Complaint for Keeping Dog Accustomed To Bite Other Animals*, 55

III. Injuring or Killing Animals, 56

- A. *Declaration for Shooting Dog*, 56
- B. *Complaint for Shooting Dog*, 56
- C. *Complaint for Chasing Cattle*, 56
- D. *Complaint for Immoderately Driving Horse*, 56

IV. Declaration for Agistment, 56

V. Declaration on Exchange of Horses, 56

VI. Indictment, Nuisance for Keeping Furious Dog, 57

VII. Defenses, 57

- A. *Denial of Injury*, 57
- B. *Denial of Ownership*, 57
- C. *Denial of Scierter*, 57
- D. *Plea, Dog Killed Worriying Sheep*, 57
- E. *Answer, Dog Killed Worriying Sheep*, 57

CROSS-REFERENCES:

MALICIOUS MISCHIEF:

- Indictment for Disfiguring Horse by Cutting Off Mane and Hair From Tail;
- Indictment for Malicious Mischief, Injuring Stock.

REPLEVIN:

- Answer, Property Distrained Doing Damage;
- Plea to an Avowry of Damage Feasant, Escape of Cattle by Defective Fence;
- Plea to Avowry, Damage Feasant, Tender Before Impounding;
- Replication to Plea to Avowry, Denial of Duty To Repair Fences;
- Replication to Plea to Avowry, Denial of Defect of Fences.

TRESPASSING ANIMALS:

- Rejoinder, That Cattle Escaped by Defect of Fences;
- Plea of Escape of Cattle by Defect of Fences;
- Replication to Plea of Distress, Damage Feasant, Defect of Fences;
- Replication to Plea of Escape of Cattle Through Defective Fence;
- Replication to Plea of Distress, Damage Feasant, That Defendant Turned Cattle Into Locus in Quo.

USE AND OCCUPATION:

- Complaint for Pasturing;
- Complaint for Driving on Different Journey From That Agreed, and for Negligence.

WARRANTY:

- Declaration for False Warranty of Horse;
- Declaration on Warranty of Horse.

WORK AND LABOR:

- Complaint for Stabling of Horses.

I. Injuries to Persons.

- A. *Declaration for Keeping Dog Accustomed To Bite Mankind.*

For that whereas the said defendant, heretofore, to-wit, on, etc., and from thence, for a long space of time, to-wit, until, and at the time of the damage and injury to the said plaintiff as here-

inafter mentioned, to-wit, at, etc., wrongfully and injuriously did keep a certain dog, he the said defendant, during all that time, well knowing that the said dog then was used and accustomed* to attack and bite mankind (this scienter must be alleged and proved), to-wit, at, etc., aforesaid, and which said dog afterwards, and whilst the said defendant so kept the same as aforesaid, to-wit, on, etc., aforesaid, at, etc., aforesaid, did attack and bite the said plaintiff, and did then and there greatly lacerate, hurt, and wound one of the legs of him the said plaintiff; and thereby he, the said plaintiff, then and there became, and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to-wit, for the space of six months thence next following, during all which time he, the said plaintiff, thereby suffered and underwent great pain, and was thereby then and there hindered and prevented from performing and transacting his lawful affairs and business, by him during that time to be performed and transacted; and also, by means of the premises, he, the said plaintiff, was thereby then and there put to great expense, costs and charges, in the whole amounting to a large sum of money, to-wit, the sum of ——— dollars, in and about endeavoring to be cured of the said wounds, sickness, lameness, and disorder so occasioned as aforesaid, and hath been, and is, by means of the premises, otherwise greatly injured and damnified, to-wit, at, etc., aforesaid. To the damage of the said plaintiff of ——— dollars, and therefore he brings his suit, etc. Burr. App. 308, §577; 2 Chit. Pl. 597.

B. Complaint for Keeping Mischievous Dog by Which Plaintiff Was Bitten.

I. That at the time hereinafter mentioned, the defendant wrongfully kept a dog, well knowing him to be of ferocious and mischievous disposition, and accustomed to attack and bite mankind.

(II. That the defendant, while he kept his dog as aforesaid, wrongfully and negligently suffered such dog to go at large, without being properly guarded or confined.)

III. That on the ——— day of ———, 18—, at ———, the said dog, while in the keeping of the defendant, attacked and bit the plaintiff, and

wounded him in the leg, whereby this plaintiff became lame, and so remained for ——— weeks, and was thereby occasioned great pain, and prevented from going on with his business as ———, and was obliged to, and actually did expend ——— dollars in endeavoring to heal himself of said wound, to his damage ——— dollars. 1 Abb. Forms 442.

Note.—As to necessity for negating contributory negligence, see 1 STANDARD PROC. 951.

If injuries are permanent the better rule is to add an allegation to that effect.

If loss of earnings are to be recovered, special allegations must be included. *Slaughter v. Metropolitan St. R. Co.*, 116 Mo. 269, 23 S. W. 760.

II. Injuries to Other Animals.

A. Declaration for Keeping Dog Accustomed To Bite Sheep and Other Animals.

As in I, A, to *, continuing: To hurt, chase, bite, worry, and kill sheep and lambs, which said dog afterwards, to-wit, on the day and year aforesaid, and on divers other days and times, between that day and the day of commencing this suit, to-wit, at, etc. (venue) aforesaid did hunt, chase, bite, and worry divers, to-wit (one hundred) sheep and (one hundred) lambs of the said plaintiff, of great value, to-wit, of the value of £——, there then found and being; by means whereof, divers, to-wit (fifty) of the said sheep, and (fifty) of the said lambs of the said plaintiff, being of great value, to-wit, of the value of £——, then and there died, and became of no value to the said plaintiff, and the residue of the said sheep and lambs of the said plaintiff, being also of great value, were then and there greatly terrified, damaged, and injured, and rendered of no use or value to this said plaintiff, to-wit, at, etc. (venue) aforesaid. 2 Chit. Pl. 598.

B. Complaint for Keeping Dog Accustomed To Bite Sheep and Other Animals.

I. That at the time hereinafter mentioned, the defendant wrongfully kept a dog (well knowing him to be accustomed to hunt, chase, bit, worry, and kill sheep and lambs), which said dog, on the ——— day of ———, 18—, and on other days between that and the commencement of this action

(wrongfully came upon the plaintiff's land, and there) hunted, chased, bit, and worried _____ sheep and _____ lambs of the plaintiff, being of the value of _____ dollars.

II. That by means thereof _____ of the said sheep and lambs of the plaintiff, being of the value of _____ dollars, died, and became of no value to the plaintiff, and the residue of the said sheep and lambs of the said plaintiff, being also of great value, were injured, and rendered of no value to the plaintiff, to his damage _____ dollars. 1 Abb. Forms 444.

III. Injuring or Killing Animals.

A. Declaration for Shooting Plaintiff's Dog.

For that the said defendant, on, etc., with force and arms, etc., to-wit, at, etc. (venue) shot off and discharged a certain gun, then and there loaded with gun powder and shot, at and against a certain dog of the said plaintiff, of great value, to-wit, of the value of \$_____ and thereby and therewith then and there so greatly shot, hurt, and wounded the said dog, that by reason thereof the said dog, being of the value aforesaid, afterwards, to-wit, on the day and year aforesaid, died, to-wit, at, etc. (venue) aforesaid. 2 Chit. Pl. 860.

B. Complaint for Shooting Plaintiff's Dog.

That on the _____ day of _____, 18____, at _____, the defendant maliciously shot and killed a dog, the property of the plaintiff, of the value of _____ dollars, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 467.

C. Complaint for Chasing Plaintiff's Cattle.

That on the _____ day of _____, 18____, at _____, the defendant chased and drove about (designate the cattle) of the plaintiff, of the value of _____ dollars, whereby they were greatly damaged and injured, and _____ of them were killed (or, bruised, according to the fact), to the damage of the plaintiff _____ dollars. 1 Abb. Forms 467.

D. Complaint for Immoderately Driving Horse.

I. That on the _____ day of _____, 18____, at _____, the defendant hired and received from the plaintiff a horse of the plaintiff, of the

value of _____ dollars, to drive.

II. That the defendant drove the horse so immoderately, and so neglected the care of him, that the said horse afterwards, on the _____ day of _____, 18____, died (or, that he became lame and hurt, and remained so ever since), to the damage of the plaintiff _____ dollars. 1 Abb. Forms 404.

IV. Declaration in Assumpsit for Agistment.

For that whereas the said defendant heretofore, to-wit, on the _____ day of _____, in the year of our Lord _____, at _____, in the county of _____, was indebted to the said plaintiff in the sum of _____ of like lawful money, or, "for the agisting, depasturing, and feeding of divers cattle, by the said plaintiff before that time agisted, depastured, and fed in certain pastures and premises of the said plaintiff for the said defendant, and at his special instance, etc.; and being so indebted," he the said defendant, in consideration thereof, afterwards, to-wit, on the day and year last aforesaid, at (the venue) aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money, when he the said defendant should be thereunto afterwards requested. 2 Chit. Pl. 37, 59.

V. Declaration on Promise To Pay on Exchange of Horses.

For that whereas heretofore, on, etc., at, etc., in consideration that the said plaintiff, at the special instance and request of the said defendant, would deliver to him, the said defendant, a certain horse of him, the said plaintiff, of great value, in exchange for a certain horse of him, the said defendant, he, the said defendant, undertook, and then and there faithfully promised the said plaintiff, to deliver the said horse of him, the said defendant, to him, the said plaintiff, and to pay him a certain sum of money, to-wit, the sum of _____ dollars of lawful money of the United States of America, in exchange for the said horse of the said plaintiff. And the said plaintiff avers, that he, confiding in the said promise and undertaking of the said defendant, did afterwards, to-wit, on, etc., aforesaid, at, etc., aforesaid, deliver to the said defendant the said horse of him, the said plaintiff. And although the

said defendant, in part performance of his said promise and undertaking, did then and there deliver to the said plaintiff the said horse of him, the said defendant, in exchange for the said horse of him, the said plaintiff; yet the said defendant, not further regarding his said promise and undertaking, hath not (although often requested so to do) as yet paid to him the said plaintiff, the said sum of ——— dollars, or any part thereof, but hath hitherto wholly neglected and refused, and still wholly neglects and refuses so to do, to-wit, at, etc., aforesaid (add a count "for horses, mares and geldings, bargained and sold," and "for horses, etc., sold and delivered," and the account stated and breach.) Burr. App. 262, §525; 2 Chit. Pl. 274.

VI. Indictment, Nuisance for Keeping Furious Dog Unmuzzled Near Highway.

"That W. B., late of, etc., on, etc., and on divers other days and times between that day and the day of the taking of this inquisition, at, etc., aforesaid, near the king's common highway there, unlawfully did keep, and still doth keep, a certain large dog, of a very fierce and furious nature, and the said dog, on the said, etc., and on the said other days and times, at, etc., aforesaid, near unto the said highway there, unlawfully did permit and suffer, and still doth permit and suffer, to go unmuzzled and at large, by reason whereof the liege subjects of our said lord the king, on the said, etc., at, etc., aforesaid, could not, nor can they now go, return, pass, and labor in and through the said highway there, without great hazard and danger of being bit, maimed, and torn by the said dog, and losing their lives, to the great damage, terror, and common nuisance of all the liege subjects of our said lord the king, in, by, and through the said highway there, going, returning, passing, re-passing, and laboring, to the evil example, etc., and against the peace, etc." 3 Chit. Cr. L. 643.

VII. Defenses.

A. Answer, Denial of Injury by Dog

That said dog did not kill (or injure) the sheep alleged. 2 Abb. Forms 117.

B. Denial of Ownership of Dog.

That the defendant was not the owner or the possessor of the said dog

at the time of the grievances alleged. 2 Abb. Forms 116.

C. Denial of Scienter.

That at the time of the grievances alleged the defendant did not know, and had no reason to believe, that said dog was accustomed to bite mankind, or was of a mischievous nature (or otherwise, according to the allegations of the complaint). 2 Abb. Forms 116.

D. Plea, Dog Killed Worriying Sheep.

Because he says that the said dog, in the said first count of the said declaration mentioned (before the said time when, etc., in that count mentioned, had been, and was, used and accustomed to hurt and worry sheep, to-wit, at, etc. (venue), aforesaid. And the said defendant further saith that the said dog being so used and accustomed to hurt and worry sheep), just before the said time when, etc., to-wit, on the day and year in the said first count mentioned, at the, etc., aforesaid, was hunting and worrying certain sheep of one E. F., of great value (in a certain close of him the said E. F. there situate), for which reason, and because the said dog could not otherwise be restrained or hindered from hunting and worrying the said sheep, he the said defendant, at the said time when, etc., as the servant of the said E. F., and by his command, shot off, fired off, and discharged the said gun, in the said first count of the said declaration mentioned, at, towards, and against the said dog, and then and there shot, hit, struck and wounded the said dog, as it was lawful for him to do for the cause aforesaid, which is the said supposed trespass in the introductory part of this plea mentioned, and whereof the said plaintiff hath above complained against the said defendant, and this, etc. 3 Chit. Pl. 1097.

E. Answer, Dog Killed Worriying Sheep (Statutory).

That at and before the committing of the said trespasses in said petition mentioned, the said dog of the said plaintiff was found, by this defendant, running, worrying, and injuring the sheep of him the said defendant (or the sheep of one M. N.); and thereupon the said defendant killed the said dog of the said plaintiff so found running, worrying, and injuring the said sheep, as he lawfully might. 2 Abb. Forms 121.

ANNUITIES.

- I. Bill for Annuity, 58
- II. Order That Receiver Pay Annuities, 60
- III. Decree for Recovery of Annuity, 60
- I. Bill for Dower and Annuity Against Executors, Devises in Trust.

Humbly complaining sheweth unto your lordship your oratrix E. H., of, etc., the widow and relict of R. H., of, etc., deceased, that the said R. H. was in his lifetime and at the time of his death, and also at the time of making his said will hereinafter stated, seised or entitled in fee simple in possession of or to divers messuages, lands and hereditaments situate in R. aforesaid or elsewhere in the county of C., and being so seised or entitled he the said R. H. when of sound mind, memory and understanding duly made and published his last will and testament in writing, bearing date, etc., which was executed by him and attested and published in such manner as by law is required in devises of real estates, and thereby gave and devised unto his son-in-law T. T., of, etc., and W. W., of, etc., and to the survivor of them and to the heirs, executors and administrators of such survivor, all that his messuage, etc., upon trust to sell, etc., and at the decease of his then wife your oratrix, he the said testator gave and devised all other, his messuages, etc., to his said trustees to be sold in manner thereinbefore limited and appointed respecting his other estates; and the said testator gave and bequeathed unto your oratrix during her life the annual or yearly sum of £5 to be paid to her out of the rents arising from the said messuages, etc.; and the said testator gave and bequeathed all the moneys arising from the said sales after payment thereof of his debts, funeral expenses and the charges of the probate and execution thereof, and all other his worldly estate not otherwise therein before bequeathed, to be equally divided amongst his children, their executors and administrators share and share alike (except his son R., who was therein mentioned to have been otherwise provided for); and the said testator thereby appointed the said T. T. and W. W. to be executors of that his will. As by, etc.

That the said testator departed this life on or about ——— without alter-

ing or revoking his said will, leaving your oratrix his widow, J. H., of, etc., his eldest son and heir at law, John H., W. H. and M. H., all of, etc., and M. T. the wife of the said T. T. his only other children him surviving; and upon or soon after the said testator's death the said T. T. and W. W. duly proved his said will in the proper ecclesiastical court and undertook the executorship thereof, and they or one of them as such devisees in trust as aforesaid entered into the possession or receipt of the rents and profits of all the said testator's freehold estates, and have or hath ever since been and now are or is in the possession or receipt of the rents and profits thereof.

That under or by virtue of the said will your oratrix is entitled to an annuity or annual sum of £5 to be paid to her during her life out of such part of the said testator's estate as is devised by his said will and charged with the payment thereof; and that no settlement or provision in lieu of dower having been made upon or for the benefit of your oratrix upon or before her marriage with the said testator, your oratrix upon the death of her said late husband also became and now is entitled, over and beside the said annuity, to dower in or out of all the said testator's freehold estates of which he was seised in fee at the time of his death, or at any time during their coverture, and particularly those which are by his said will devised and directed to be sold as aforesaid, but no sum of money hath been paid or satisfied to your oratrix either on account of the said annuity or of her said dower; and your oratrix being entitled in manner aforesaid, hath frequently by herself and her agents applied in a friendly manner to the said T. T. and W. W. and requested them to account with her and pay to her the arrears of her said annuity, and also the amount of one-third part of the net income, proceeds, rents and profits of the said freehold estates accrued due since the said testator's decease, and received by them or either of them; and to let your oratrix into the possession of one-third part of the rents and profits of the said freehold estates and premises; and to assign and set out for your oratrix a full third part of the said freehold estates as and for her dower therein; and your oratrix well hoped that such her reasonable requests would have

been complied with, as in justice and equity they ought. But now so it is may it please your lordship that the said T. T. and W. W., colluding and confederating with each other refuse to comply with such requests, and the said T. T. and W. W. sometimes pretend that they have not received any rents and profits of the said real estates late of the said testator or any part thereof, or if they have received any of such rents, that they have accounted with your oratrix for and paid to her a full third part thereof in lieu and satisfaction of her dower, the contrary of which they at other times admit to be true. But they nevertheless refuse to set forth a rental and particular of the said real estates, and also to set forth a full and just account of all the rents and profits of all the said real estates accrued due since the said testator's decease, as they ought to do; and they and the said other confederates who claim to be interested in the said freehold estates under the said testator's will, sometimes pretend that according to the true meaning and construction of the said will and the intention of the said testator therein, your oratrix is not entitled to both the said annuity of £5 and her dower in and out of the said testator's freehold estates; and that she ought to make her election either to take her dower only, or to accept the said annuity of £5 in lieu and bar thereof. Whereas your oratrix charges the contrary of such pretenses, and that according to the true meaning and proper construction of the said will and the intention of the said testator apparent therein, your oratrix is entitled as well to her dower in the said freehold estates of her said late husband by common law, as to the said annuity of £5 by virtue of the said will; for your oratrix charges that it is not expressed in the said will, nor can or ought to be inferred or implied from anything contained therein that the said testator meant to exclude your oratrix from her right to dower out of his freehold estates, or that she should take the said annuity of £5 in lieu of or satisfaction for such dower; and as evidence that the said testator could not so mean or intend, your oratrix charges that such annuity is considerably less than the annual value of your oratrix's dower in the said freehold estates. And your oratrix charges that her said claims

are by no means repugnant to or inconsistent with, nor will in any manner disappoint any gifts or bequests contained in the said will; and therefore your oratrix humbly submits that she ought not to be put to her election either to take her said dower only, or to accept the said annuity of £5 given to her by the said will in lieu thereof; but the said confederates insist on the contrary, and under such or the like pretenses as aforesaid or some others equally unjust and unreasonable, the said T. T. and W. W. refuse to comply with your oratrix's aforesaid requests; and your oratrix not knowing the particular description of the said freehold estates and premises, and being unable to discover the same by reason of the title deeds and writings relating thereto being in the possession of the said defendants, is unable to proceed with effect at law to recover her dower out of the said estates; and the said T. T. and W. W. also threaten and intend in case your oratrix shall proceed at law for this purpose, they will set up some term or other estate or interest in the said estates by virtue of some deeds or deed in their custody or possession which will effectually defeat your oratrix's proceedings at law; and sometimes the said J. H. (the heir) alleges that the said R. H., his late father, never made any such or the like will as aforesaid, or if he did, the same was not duly executed and attested so as to pass real estates, or that he was not of sound and disposing mind, memory and understanding at the time of making the same; and that therefore on his death all his said freehold estates descended to him the said J. H. as his heir at law; and that he is accordingly seized thereof in fee simple, not subject to the payment of any such annuity to your oratrix. Whereas your oratrix charges the contrary of such pretenses to be the truth. All which actings, doings, pretenses and refusals are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators in the premises. In consideration whereof and forasmuch as your orators can only have adequate relief in the premises in a court of equity where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said T. T. and W. W. and their confederates when discovered may upon

their several and respective corporal oaths to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto.

And that the said T. T. and W. W. may set forth a full, true and just rental and particular of all the freehold estates, messuages, lands and hereditaments whatsoever, which the said testator was seised of or entitled unto in possession in his lifetime and at the time of his death, and where the same and each and every part thereof are situate, and in whose custody, possession or power the same have been during each and every part of the time since the death of the said testator, and at what yearly or other rents or rent; and that they the said last-named defendants may also set forth a full and particular account of all and every the sums and sum of money which have or hath been received by the order or for the use of them or either and which of them, on account of the rents and profits of the said freehold estates, messuages, or tenements and premises which have accrued due since the said testator's death; and when and from whom and for what rent and of what part of the said premises and when due the same were respectively received.

And that the aforesaid will of the said testator R. H. may be established; and that your oratrix may be declared by the decree of this honorable court to be entitled as well to her dower out of the freehold estates or estate and premises of which her said late husband died seised as to the said annuity of £5 given to her by his said will; and that the said annuity may be ordered to be paid to her accordingly, and an account taken of what is due to her in that behalf. And that an account may be taken of the real estates or estate of which the said testator was seised at the time of his death; and that your oratrix may be let into the possession and receipt of the rents and profits of one-third part thereof, and may be declared to be entitled to hold and enjoy the same for her life as and for her dower. And (if necessary) that a commission may

issue for the purpose of assigning and setting out such dower or third part of the said real estates or estate, so that your oratrix may hold and enjoy the same in severalty as and for her dower. And that an account may be taken of the rents and profits of the said freehold or real estates received by or by the order or for the use of the said T. T. and W. W. which have accrued due since your oratrix's late husband's decease, and that they may pay unto your oratrix a full third part thereof, and whatsoever may hereafter become due from them in that behalf. And that your oratrix may have such further or other relief in the premises as the nature of the circumstances of this case may require and to your lordship shall seem meet. May it please your lordship to grant unto your oratrix his majesty's most gracious writ of subpoena to be directed to the said T. T. and W. W., thereby commanding them at a certain day and under a certain pain therein to be limited personally to be and appear before your lordship in this honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to perform and abide such further order, direction and decree therein as to your lordship shall seem meet. And your oratrix shall ever pray, etc. Van Heyth. Eq. Dr. 175, 179.

II. Order That Receiver Pay Annuities.

Let the receiver appointed, etc., out of the rents and profits of the real estate of H., the testator in, etc., pay to the annuitants in his will named the arrears now due (to them in respect) of their several annuities, as the same shall from time to time become due, at the times and in the manner in the said will mentioned; such payments to be allowed in his accounts. 3 Dan. Ch. Pl. & Pr. (Perkin's ed.) 2339; Hopkins v. Walker, 2 Seton Dec. (Eng. ed., 1862) 1026.

III. Decree for Recovery of Annuity.

This cause came on to be heard 9th November, 1747, before the lord chancellor, when his lordship was pleased to order and decree that it should be referred to master Allen, one of the masters of this court, to take an account of what was due to the complainant for the arrears of an annuity of 30*l* a year secured by bond, and to compute interest on each respective

half-yearly payment from the end of six months after the same respectively became due after the rate of 4 per cent. per annum; and the defendant having by her answer admitted that the personal and real estate of her said father were together more than sufficient to answer the said annuity, it was further ordered that the plaintiff should pay to the said defendant what should be found due for the arrears of the said annuity and interest at such time and place as the said master should appoint, and continue to pay to plaintiff the growing payments of the said annuity as they should become due half-yearly; and in case the defendant should not pay what should be found due for the arrears of the said annuity and interest as aforesaid, then the plaintiff was to be at liberty to apply to the court for a sale of a sufficient part of the real estate in question; and it was further ordered that the said master should see a sufficient part of the said real estate set apart for securing to the plaintiff the growing payments of the said annuity during her mother's life; and it was further ordered that the defendant should execute to the plaintiff a proper conveyance of the said estate or grant thereout for securing the growing payments of the said annuity accordingly with the approbation of the said master; and that the defendant should pay to plaintiff her costs of this suit up to this time to be taxed by the said master; the consideration of subsequent costs reserved till the master should make his report; liberty to parties to apply, etc. Van Heyth. Eq. Dr. 823.

ANOTHER ACTION PENDING.

- I. Plea of Autre Action Pendant, 61
- II. Answer, 61
- III. Answer in Case of Counterclaim, 61
- IV. Pendency of Partnership Cause, 61
- V. Order of Reference on Plea in Equity, 62

For other forms, see 1 STANDARD PROC. 1035, 1036.

CROSS-REFERENCE:

PLEA IN EQUITY:

Plea of Former Suit Depending, Witnesses Examined.

I. Plea of Autre Action Pendant.

Because he says that before the (exhibiting of the said bill), to-wit, in ——— term, in the year of our Lord

one thousand eight hundred and ———, in this same court (or if in any other court, describing the court by its proper title), the said plaintiff impleaded the said defendant, and (exhibited his certain bill) against him in a plea of debt, of and upon the said identical writing obligatory (or "in a certain plea of trespass on the case upon the very same identical promises and undertakings"), in the said declaration in this present suit mentioned; as by the record and proceedings thereof remaining in the said court of the said people before the aforesaid justices thereof, to-wit, at the ———, in the ——— of ——— more fully appears. And the said defendant further saith that the parties in this and the said former suit are the same, and not other or different persons; and that the said former suit so brought and prosecuted against him the said defendant by the said plaintiff as aforesaid, is still depending in the said court of the said people before the aforesaid justices thereof. And this the said defendant is ready to verify. Wherefore he prays judgment of the said bill in this suit, and that the same may be quashed. (Usual conclusion and affidavit.) Burr. App. 336, §609.

II. Answer in Abatement, Another Action Pending.

That at the commencement of this action there was, and now is, another action pending in the ——— court, in and for the county of ———, in this state, between the same parties as this action, * and for the same cause as that set forth in the complaint herein. 2 Abb. Forms 26.

III. Answer in Abatement, Another Action Pending in Case of Counterclaim.

(As in the preceding form to the *, continuing): in which the plaintiff in this action, being the defendant, has set up the same cause of action, alleged in the complaint as a counterclaim, against this defendant, who is the plaintiff in the said action. 2 Abb. Forms 27.

IV. Answer in Abatement, Pendency of Partnership Cause, in Answer to Partition Suit.

I. That the premises of which the plaintiff seeks partition belong to the parties to the action as tenants in common.

II. That the parties were partners in trade, and carried on business on said premises, and that the said premises were owned by them as such co-partners.

III. That in the month of ———, 18—, the partnership was dissolved by the retirement of one of the defendants therefrom; and in ———, 18—, and before this action, the defendant D. commenced an action in the ——— court of ———, against the plaintiff in this action and the defendant R., demanding judgment that the defendants therein be decreed to render an account of the stock, fixtures, machinery, and effects, and that the plaintiff's interest be adjusted and stated, and that he have judgment for the amount of his interest therein, or that a receiver be appointed to take and sell the property, and distribute it among the partners according to their respective interests; which action is still pending and undetermined. 2 Abb. Forms 27.

Note.—*Danvers v. Dorrity*, 14 Abb. Pr. (N. Y.) 206.

V. Order of Reference on Plea in Equity.

On filing a plea in this cause averring that there is a former suit depending in this court for the same matters as are involved in the present suit, and on motion of Mr. D., of counsel for the defendant, ordered that it be referred to one of the masters of this court residing in the county of S. to look into the bill and the plea in this cause, and the bill in the said plea alleged to have been exhibited by the complainant against the defendant previous to the commencement of this suit, and into the other pleadings and proceedings therein, and to report whether the said plea is true. 2 Barb. Ch. Pr. 410.

ANSWERS.

I. General Forms, 67

- A. *General Form of Answer*, 67
- B. *Several Defenses*, 68
- C. *Counterclaim*, 68
- D. *Commencements*, 68
 - 1. *By Defendant in Person*, 68
 - 2. *Sued by Wrong Name*, 68
 - 3. *By Infant*, 68
 - 4. *By Lunatic*, 68

II. Denials, 68

- A. *General Denials*, 68

- B. *Of One Cause of Action*, 68
- C. *Of Deed*, 68
- D. *Of Conditional Delivery*, 69
- E. *Of Covenant*, 69
- F. *Of Breach of Covenant*, 69
- G. *Of Agreement*, 69
- H. *Of Contract*, 69
- I. *Of Indebtedness*, 69
- J. *Of Indebtedness Admitting Part*, 69
- K. *That Money Was Lent*, 69
- L. *That Money Was Received*, 69
- M. *Of Request To Pay*, 69
- N. *Of Loss by Carrier*, 69
- O. *Of Delivery to Carrier*, 69
- P. *Of Employment as Carrier*, 69
- Q. *Not a Common Carrier*, 69
- R. *Of Bailment*, 69

III. New Matter, 70

- A. *Bona Fide Purchaser*, 70
- B. *Delivery in Escrow*, 70
- C. *Coverture*, 70
- D. *Rescission of Contract*, 70
- E. *Accounting and Payment*, 70
- F. *Former Judgment*, 70
- G. *By Carrier, Plaintiff's Fault*, 71
- H. *By Carrier, Risk Excluded by Contract*, 71

For other forms, see 2 STANDARD PROC. 71-74. For Answers in Equity, see **Bills and Answers**.

CROSS-REFERENCES:

ABATEMENT, PLEAS OF:

- Answer in Abatement, Alien Enemy;
- Answer in Abatement, No Such Corporation;
- Answer in Abatement, Coverture of Plaintiff;
- Answer in Abatement, Death of a Defendant Before Suit;
- Answer in Abatement, Misnomer.

ACCORD AND SATISFACTION:

- Answer of Accord and Satisfaction.

ACCOUNT AND ACCOUNTING:

- Answer Alleging Accounting and Payment;
- Answer, Denial of Error in Account.

ADVERSE POSSESSION:

- Answer Setting Out Adverse Possession;
- Answer, Adverse Possession, Avoiding Deed;
- Statute of Limitations Pleaded Against Ejectment by the People.

ADMIRALTY:

- See Admiralty.

ALTERATION OF INSTRUMENTS:

- Answer, Alteration of Bill or note;
- Answer by Surety Alleging an Alteration of Contract.

ANIMALS:

Denial of Ownership of Dog;
 Denial of Scienter;
 Answer, Denial of Injury by Dog;
 Answer, Dog Killed Worriyng Sheep
 (Statutory).

ANOTHER ACTION PENDING:

Answer in Abatement, Another Action Pending;
 Answer in Abatement, Another Action Pending in Case of Counterclaim;
 Answer in Abatement, Pendency of Partnership Cause, in Answer to Partition Suit.

ARBITRATION:

Answer, Denial of Award;
 Answer, Denial of Parol Submission;
 Answer Setting Up Award and Performance;
 Answer, Invalidity of Award;
 Denial of Performance by Plaintiff;
 Performance by Defendant.

ARCHITECTS AND BUILDERS:

Answer, Plaintiff's Work Not Finished, and Architect's Certificate Not Obtained.

ASSAULT AND BATTERY:

Answer, General Denial;
 Answer, Denial of Battery;
 Answer, Resistance of Entry of Dwelling;
 Answer, Defense of Possession of Dwelling;
 Answer, Defense of Possession of Inn;
 Answer, Removing From Railroad Car for Non-Payment of Fare;
 Plaintiff Aggressor (Son Assault Demesne), (a), (b);
 Answer, To Preserve the Peace (Moliter Manus Imposuit);
 Answer, To Preserve the Peace by Captain of Vessel.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS:

Answer, Averment of Fraudulent Assignment;
 Action Against Sheriff.

ASSIGNMENTS:

Answer, Denial of Assignment of Instrument;
 Answer in Abatement, Assignment of Cause of Action by Plaintiff to Third Person.

BILLS AND NOTES:

Answer, Denial of Indorsement (a, b, c);
 Answer, Denial of Making or Accepting of Note or Bill;
 Answer, Note Was for Accommodation, and Was Misapplied;

Answer, Notes Were Given for Purchase-Money, and Plaintiff Failed To Convey;

Answer, Note or Acceptance Was Given for Goods Sold, But Never Delivered;

Answer by Accommodation Indorser, Extension Given to Makers;

Answer, Unauthorized Acceptance in Name of Corporation;

Answer, Denial of Acceptance, Presentment and Protest;

Answer, Denial of Notice of Dishonor;

Answer, Denial of Presentment;

Answer, Breach of Special Agreement as to Presenting and Giving Notice;

Answer, Denial of Excuse for Non-presentment;

Answer, Payment of Bill to Drawer Before Indorsement;

Answer, Denial of Guaranty;

Answer by Surety Alleging an Extension of Time;

Answer, Defendant Indorsed as Agent, Where Complaint Set Forth Contract Untruly in This Respect;

Answer, Mistake in Amount of Note;

Answer, Qualified Admission of Note, and Denial of Plaintiff's Title;

Answer, Fraud in the Making;

Answer, That the Note Was for Goods Sold by Means of Deceit;

Answer, Denial of Transfer to the Plaintiff;

Answer, Wrongful Transfer by Partner;

Answer, Note was for Goods Sold With False Warranty;

Answer, Illegal Interest in Note;

Answer, Defendant Was Surety and Plaintiff Holds Collateral Securities, Defendant Asks To Be Subrogated.

BONDS:

Answer, Failure of Consideration;

Answer, Failure of Consideration of Bond for Purchase Money;

Answer, That Bond Was on Condition, and Defendant Has Fulfilled.

BREACH OF PROMISE:

Answer, Denial of Promise;

Answer, Denial of Breach;

Answer, Denial of Plaintiff's Readiness;

Answer, That Plaintiff Was of Bad Character.

COMPOSITION WITH CREDITORS:

Answer, Composition Deed.

COMPROMISE AND SETTLEMENT:

Answer, Compromise and Payment.

CORPORATIONS:

Answer, Denial of Holding Stock;

Answer, Denial of Incorporation;

Answer, Ultra Vires of Corporation.

CREDITORS' SUITS:

Answer, Defendant Has Assets;

Answer, Denial of Possession of Assets Belonging to Judgment Debtor;

Denial That Conveyance Was Fraudulent;

Answer in Creditor's Suit, Denial of Execution;

Answer in Creditors' Suit, Denial of Judgment;

Answer, Denial of Residence Where Execution Issued.

DEATH BY WRONGFUL ACT:

Answer, Setting Up Contributory Negligence.

DISCLAIMER:

Answer (Code);

Answer and Disclaimer (Equity);

Disclaimer in Ejectment to Entire Property.

DIVORCE:

General Denial;

Answer, Denial of Adultery;

Answer, Condonation of Adultery;

Counterclaim for Divorce for Plaintiff's Adultery.

DURESS:

Answer, Duress by Imprisonment;

Answer, Duress by Threats.

EASEMENTS:

Answer, Enjoyment of Easement for Twenty Years.

EJECTMENT:

Answer, Denial of Title.

EMINENT DOMAIN:

Answer, by Landowner in Condemnation Proceedings (a, b);

Supplemental Answer in Condemnation Proceedings.

ESTOPPEL:

Answer, Interposing an Estoppel;

Answer Setting Up Deed as Estoppel;

Answer, Acquiescence as Estoppel.

EXECUTORS AND ADMINISTRATORS:

Answer, That Executor Renounced;

Answer, That the Estate Is Fully Administered (Plene Administravit).

FALSE IMPRISONMENT:

Answer, Justification of Arrest Upon Suspicion of Felony;

Answer, Justification by Officer of Arrest on Suspicion of Felony;

Answer, Justification by Officer of

Arrest Under Criminal Process;

Answer, Justification by Officer of Arrest Under Civil Process;

Answer, Justification by Officer Under Order of Arrest;

Answer, Denial of Want of Probable Cause;

Answer, Denial of Arrest.

FRAUD AND DECEIT:

Answer, Denial of Scienter;

Answer, Denial of Falsity;

Answer, Denial of Fraud in Obtaining Deed.

FRAUDS, STATUTE OF:

Answer, Statute of Frauds; as to Leasing or Sale of Lands (a), (b);

Answer, Statute of Frauds; as to Special Promise To Answer for Default, etc., of Another;

Answer, Statute of Frauds; as to Agreement Not To Be Performed Within a Year;

Answer, Statute of Frauds, as to Agreement in Consideration of Marriage;

Answer, Statute of Frauds, as to Sale of Personal Property;

GARNISHMENT:

Answer by Garnishee Claiming Exemption on Behalf of Defendant;

Answer of Garnishee, Acceptance of Order To Pay to Third Party.

GENERAL ISSUE AND GENERAL DENIAL:

Answer, General Denial in all Allegations;

Answer, General Denial of One of Several Causes of Action;

Answer, General Denial as to Part of the Pleading;

Answer, General Denial of Knowledge or Information Sufficient To Form a Belief;

Answer, General Denial of Knowledge or Information, Etc., by Several Defendants Answering Together;

Answer, Denial Etc., Explaining Ignorance.

GUARANTY:

Answer, Denial of Notice;

Answer, Denial of Plaintiff's Performance;

Denial of Plaintiff's Performance, Departure From Guaranty;

Answer on Guaranty, Want of Privity.

HOMESTEAD AND EXEMPTION:

Answer to Affidavit Setting Up Exemption.

ILLEGALITY, HOW PLEADED:

Answer, Usury by Antedating Security;

Answer, That the Contract Is Foreign One, Void by Law of Place;

Answer, That Note Was Given To Compound Felony;

Answer, That the Contract Was Cover for Wager;

Answer, That Debt Was for Money Lost at Play;

Answer, Note for Liquors Sold Without License.

INFANTS:

Answer in Abatement, Infancy of Plaintiff;

General Answer of Infant or Lunatic in Foreclosure, Partition, etc.;

Answer, Infancy of Defendant in Bar;

Answer, Infancy and Want of Discretion as to Hired Horse;

Answer, Ratification by Infant After Coming of Age.

INFORMATION AND BELIEF:

Answer, General Denial of Knowledge or Information Sufficient To Form a Belief (a, b);

Answer, General Denial on Information, etc., by Several Defendants;

Answer, Specific Denial of Knowledge, or Information Sufficient To Form a Belief;

Answer, Denial of Knowledge, etc., Explaining Ignorance.

INHERITANCE:

Answer by Heir or Devisee, Nothing by Descent, etc.

INJURIES TO PERSONS:

Answer, Alleging Failure To Use Proper Care;

Answer, Failure To Observe the Approach of Train;

Answer, Claim Satisfied and Discharged;

Answer, Setting Up "Act of God;"

Answer, Accord and Satisfaction for Personal Injury by Co-Defendant.

INSANE PERSONS:

Answer, Insanity of Defendant.

Answer In Equity by a Lunatic or Idiot, etc.

INSURANCE:

Answer, Existence of Liens;

Answer, Failure To Give Notice of Loss;

Answer, Denial of Policy;

Answer, Denial of Account of Loss;

Answer, Denial of Plaintiff's Interest;

Answer, That Plaintiff Gave in a Fraudulent Account of Loss;

Answer, Transfer Without Insurer's Consent;

Answer, Extra-hazardous Risk;

Answer, That Policy Was Obtained by Misrepresentations;

Answer, Denial of Loss.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Answer, Invalidity of Foreign Judgment;

Answer, Fraud in Recovery of Judgment;

Answer, Invalidity of Judgment Against Non-resident.

JURISDICTION:

Answer, No Jurisdiction of the Person;

Answer, No Jurisdiction of the Subject;

Answer by a Consul, No Jurisdiction of Person;

Answer, No Jurisdiction by Domestic Corporation Sued in Local Court;

Answer, No Jurisdiction by Foreign Corporation;

Answer, That Court of United States Possesses Exclusive Jurisdiction.

LANDLORD AND TENANT:

Answer, Surrender of the Premises;

Answer, Tender of Rent Upon the Land;

Answer, Eviction;

Answer, Assignee's Assignment to Third Person;

Answer, Denial of Use and Occupation;

Answer, That Landlord Accepted an Assignee as His Tenant;

Answer, Denial of Hiring;

Answer, Denial by Assignee of Occupation.

LIBEL AND SLANDER:

Answer, Justification of Charge of Perjury;

Answer, Truth of Words;

Answer, Justification and Mitigation in Publishing Account of Arrest;

Answer, Justification and Denial of Malice in Charge of Larceny;

Answer, Alleged Libel Was Privileged Communication;

Answer, Alleged Slander Was Privileged Communication to Employer;

Answer, Alleged Libel Fair Report of Public Official Proceedings;

Answer, Denial of Inducement.

LIMITATION OF ACTIONS:

Answer, Statute of Limitations, Did Not Accrue;

Answer, Statute of Limitations, Not Guilty Within Period;

Answer, Statute of Limitations From Date of Right To Make Demand.

MALICIOUS PROSECUTION:

Answer, Pleading Justification in Malicious Prosecution.

MECHANICS' LIENS:

Answer, Denial of Plaintiff's Employment;

Answer, That Lien Was Not Filed Within Prescribed Time.

MORTGAGES:

Answer, Denial of Mortgage;

Answer, Denial of Having Assumed Mortgage;

Answer, Defendant, Having Equity of Redemption in Part of Premises, Is Entitled To Have Residue Sold First;

Answer, Non-Joiner of Owner of Equity of Redemption.

NEGLIGENCE:

Answer, Denial of Ownership of Cause of Injury;

Answer, Denial of Ownership of Plaintiff;

Answer, Plaintiff's Own Negligence, Falling in Hole.

NUISANCE:

Answer, Denial of Nuisance;

Answer, Denial of Plaintiff's Title; Denial of Act;

Answer, Alleging Prescriptive Right To Maintain Nuisance.

PARTIES:

Answer in Abatement, Non-joinder of Co-executor;

Answer in Abatement, Non-joinder in Case of Indorsement;

Answer in Abatement, Non-joinder of Other Owners in Action Relative to Land;

Answer in Abatement, Non-joinder of Partner of Defendants;

Answer in Abatement, Joint Interest in Plaintiff and Third Person;

Answer in Abatement, Non-joinder of Necessary Defendant;

Answer in Abatement, Non-Joiner of One Party to Contract;

Answer in Abatement, Non-joinder of Co-administrator;

Answer in Abatement, Non-joinder of Tenant in Common as to Part of the Goods.

PARTNERSHIP:

Answer, Overdrawing Done by Plaintiff's Assent;

Answer, That Term of Partnership Is Not Expired;

Answer, Denial of Partnership.

PAYMENT:

Answer, Payment (a), (b);

Answer, Payment in Services;

Answer, Bill Accepted in Payment, Where Plaintiff Has Lost;

Answer That Defendant Accepted a Bill for Part of the Debt Which Plaintiff Has Negotiated;

Answer That Defendant Indorsed a Bill to the Plaintiff;

Answer That Defendant Gave His Note or Acceptance;

Answer That Plaintiff Has Taken Higher Security by Bond;

Answer That Plaintiff Has Taken Higher Security by Judgment;

Answer, Plaintiff Took Mortgaged Property;

Answer Denying the Promise as to Part, and Pleading Payment as to Residue;

Answer Reducing Value and Pleading Payment.

PERFORMANCE:

Answer, That Plaintiff Failed To Perform His Contract, Which Prevented Defendant's Performing;

Answer, Denial of Plaintiff's Performance;

Answer, Traverse of Plaintiff's General Allegation of Performance;

Answer, Excuse for Non-performance;

Performance by Defendant (a, b).

PRINCIPAL AND AGENT:

Answer, Denial of Negligence in Selling Goods;

Answer, Denial of Negligence in Giving Credit.

PRINCIPAL AND SURETY:

Answer by Bail, No Execution;

Answer, by Bail, Death of Principal;

Answer, That Note Was Extended

Without Consent of Surety;

Answer, That Signing of Note by Surety Was on Condition That Co-surety Sign.

RELEASE:

Answer Setting up Release;

Supplemental Answer, Release and Discharge Since Continuance.

REPLEVIN:

Answer, Defendant Part Owner;

Answer, Title in Defendant or in Stranger;

Answer, Lien for Storage on Freight;

Answer, Property Distrained Doing

Damage;

Answer, Lien for Services;

Answer, Denial of Taking.

RESCUE AND ESCAPE:

Answer, Return of Debtor After Escape.

SALES:

Answer, Denial of Sale;

Answer, Denial That Credit Has Expired;

Answer, Alleging Breach as to Quality;

Answer, Denial of Plaintiff's Title to Goods When Sold;

Answer, Plaintiff Agreed To Take Note in Part Payment;

Answer, Sales of Personal Property, Explaining Contract of Sale, and Alleging Breach as to Delivery;

Answer, Denial of Necessaries;

Answer, Not Necessaries.

SET-OFF, COUNTERCLAIM AND RECOUPMENT:

Answer, Counterclaim Against Carriers for Negligence;

Answer, Set-Off by Executors;

Answer, Set-Off in Action by Executors;

Answer, Defenses and Counterclaims, Plead Together;

Answer, Set-Off, General;

Statement Admitting Counterclaim;

Answer, Recoupment for Breach of Warranty.

SPECIAL ASSESSMENTS:

Answer, Pleading Exemption of Property From Special Assessment;

Answer, Pleading Illegality of Assessment.

SPECIFIC PERFORMANCE:

Answer, Denial of Payment or Tender;

Answer, Denial of Part Performance;

Answer, Denial of Delivery of Possession;

Answer, Denial of Readiness To Convey;

Answer, Denial of Title.

TENDER:

Answer, Tender of Payment;

Answer, Tender as to Part, and Payment as to Part;

Answer, Denial of Part, and Tender of Residue;

Answer, Demand Before or After Plaintiff's Tender.

TRESPASS:

Answer, Denial of Breaking;

Answer, Denial of Taking;

Answer, Denial of Plaintiff's Title;

Answer, Denial of Plaintiff's Title, as to Part;

Answer, Denial of Plaintiff's Possession;

Answer, Denial of Right to Possession;

Answer, License;

Answer, Acts Were Not Committed on Land Alleged;

Answer, Goods Were Attached, and Plaintiff Fraudulent Grantee.

TROVER AND CONVERSION:

Answer, Denial of Bailment;

Answer, Denial of Detention;

Answer, Denial of Conversion;

Answer, Denial of Plaintiff's Ownership;

Answer, Denial of Assignment of Cause of Action;

Answer, That Plaintiff Has Lien on Goods by Pledge.

TRUSTS AND TRUSTEES:

Answer by Trustee That He Declines To Act;

Answer by Trustee With Denial of Having Acted;

Answer, Denial of Trusteeship.

Statement in Answer of Trustee Acquiescence of Cestui Qui Trust;

USURY:

Answer, Usury in Making Note, (a), (b);

Answer, Bill Was Given To Secure Performance of Usurious Contract Between Acceptor and Third Person;

Usury in Transfer of Accommodation Note;

Answer, Usury in Loan.

WARRANTY:

Answer, Denial of Representations;

Answer, Denial of Warranty;

Answer, Breach of Warranty in Sale;

Answer, Denial of Breach.

WASTE:

Answer, Denial of Waste.

I. General Forms.

A. General Form of Answer.

The defendant, John Doe (by M. N., his attorney), answering the complaint herein, denies (or, if the defense is new matter, alleges, or, if the new matter be available as a counterclaim, alleges for a counterclaim thereto) that, etc.

If affirmative relief is sought, but not otherwise, add, after statement of facts:

Wherefore, defendant demands (stating what).

(Signature.)

(Verification, if the complaint is verified.) 2 Abb. Forms 11.

Note.—It is a common practice to add to an answer *not* asking affirmative relief, a prayer in this or similar form: Wherefore the defendant demands judgment dismissing the complaint (on the merits) with costs.

B. General Form of Answer Where There Are Several Defenses.

The defendant (by M. N., his attorney), answering the complaint herein:

First. For a first defense to the first alleged cause of action, denies (etc., generally or specifically).

Second. For a further defense to said cause of action, said defendant alleges (here set forth the facts constituting it).

Third. For a further defense to said first cause of action, said defendant alleges (here set forth the facts constituting it, except that if any of them have been alleged above, an express reference to those allegations will suffice instead of a repetition of them).

Fourth. For a counterclaim to the second alleged cause of action, said defendant alleges, etc.

Wherefore, said defendant demands, etc. 2 Abb. Forms 12.

Note.—If a defense be intended as a "partial defense" it is essential that it be so stated, and it must be expressly stated to be a partial defense to the entire complaint or to one or more separate causes of action therein set forth.

Note.—2 STANDARD PROC. 55, 56.

C. General Form of Counterclaim.

The defendant (naming him, if he is one of several, answering separately), by M. N., his attorney, answering the complaint herein, for a counterclaim (to the first cause of action) says:

That on the _____ day of _____, 18—, and before the commencement of this action, the plaintiff became, and still is, indebted to this defendant upon an account (etc., or otherwise, stating cause of action as in a complaint).

Wherefore, etc. 2 Abb. Forms 172.

D. Commencements.

1. Commencement of Answer by Defendant Appearing in Person.

The defendant Y. Z., in person, answering the plaintiff's complaint herein, alleges (or, denies): 2 Abb. Forms 13.

2. Commencement of Answer by a Defendant Sued by a Wrong Name.

This defendant, Y. Z., in the summons and complaint in this action called G. E., answering the plaintiff's complaint herein, alleges (or, denies): 2 Abb. Forms 13.

3. Commencement of Answer, by Infant.

This defendant, an infant under the age of twenty-one years, by C. D., his guardian, answering the plaintiff's complaint herein, alleges (or, denies): 2 Abb. Forms 13.

4. Commencement of Answer by a Lunatic, Etc.

The defendant, Y. Z., a lunatic (or, a person of unsound mind, or, an idiot, or, an habitual drunkard), by M. B., his committee and guardian, answering the plaintiff's complaint herein, alleges (or, denies): 2 Abb. Forms 14.

II. Denials.

A. Answer, General Denial (a).

The defendant answering the complaint herein denies each and every allegation thereof. 2 Abb. Forms 17.

General Denial (b).

The defendant answers (or, the defendants answer, or if only part of the defendants join, the defendants, W. X. and Y. Z., answer) to the complaint: That no allegation thereof is true. 2 Abb. Forms 17.

Note.—7 STANDARD PROC. 36. At common law affirmative allegations were denied in negative form, thus: "And the said defendant, by _____, his attorney, says that the windows of the said message or tenement *were not* in any part thereof ruinous, or in decay, or out of repair," etc. This is sufficient and proper under the codes; but the profession in most cases have adopted a denial of the affirmative, thus: "The defendant _____, by _____, his attorney, answering the complaint herein, denies that the windows of the said message or tenement *were* in any part thereof ruinous, or in decay, or out of repair," etc. Negative allegations at common law were traversed by affirmative allegations.

The negative denials following, B—M, may be changed to the affirmative form and "denied."

B. Answer, General Denial of One of Several Causes of Action.

The defendant answering the first cause of action contained in the complaint herein denies each and every allegation of the complaint respecting the same. 2 Abb. Forms 17.

C. Answer, Denial of Deed (a).

Says that the alleged deed is not his deed. 2 Abb. Forms 39.

Answer, Denial of Deed (b).

That the defendant (or, the plaintiff)

did not execute such deed to the plaintiff (or, the defendant), as alleged. 2 Abb. Forms 39.

Answer, Denial of Deed (c).

That the defendant (or, the plaintiff) did not convey to the plaintiff (or defendant) the possession (or the equity of redemption) in said premises, as alleged. 2 Abb. Forms 39.

D. Answer, Denial of Conditional Delivery.

That the said promissory note (or deed), etc., was not executed and delivered by the plaintiff on the condition and understanding alleged, but was delivered by him absolutely and without condition. 2 Abb. Forms 39.

E. Answer, Denial of Covenant.

That he did not covenant or agree with the plaintiff, as alleged. 2 Abb. Forms 103.

F. Answer, Denial of Breach of Covenant.

That the defendant duly performed said covenant (or all the conditions of said contract) on his part; and (here state performance, pursuing the words of the covenant, if it be in the affirmative; and stating particular acts, if it be in the alternative, or in any case, where this can be done without too great prolixity). 2 Abb. Forms 104.

G. Answer, Denial of Breach of Agreement.

That he did not agree with the plaintiff, as alleged. 2 Abb. Forms 104.

H. Answer, Denial of Contract.

Says that he never promised (or warranted, or agreed, or covenanted), as alleged. 2 Abb. Forms 39.

I. Answer, Denial of Indebtedness.

Denies that he ever was indebted as alleged. 2 Abb. Forms 40.

J. Answer, Denial of Indebtedness, Admitting Part.

Admits that he owes the plaintiff ——— dollars, part of the sum of ——— dollars demanded in the complaint, and consents that the plaintiff have judgment therefor; but as to the residue of said sum, he denies that he ever was so indebted. 2 Abb. Forms 40.

K. Answer, Denial That Money Was Lent.

That the plaintiff did not lend him the money mentioned in the complaint, nor any part thereof. 2 Abb. Forms 61.

L. Answer, Denial That Money Was Received.

That he has not received the money

mentioned in the complaint, nor any part thereof. 2 Abb. Forms 61.

M. Answer, Denial of Request To Pay, Etc.

I. That he never requested the plaintiff to pay any money to said (naming the person to whom, or object for which, payment is alleged to have been made).

(II. That he never promised to pay any money to the plaintiff on account of any money paid to the said M. N.) 2 Abb. Forms 61.

N. Answer, Denial of Loss by Common Carrier.

That the said goods were not lost to said ——— through any negligence or misbehavior of the defendants, and they have no knowledge or information sufficient to form a belief whether the said goods were ever lost to said ———. 2 Abb. Forms 110.

Note.—The use of this form will depend upon whether negligence or misbehavior of the carrier is alleged in the complaint, defendant's liability not being based necessarily upon the presence of either of these facts.

O. Answer, Denial of Delivery of Goods to Common Carrier.

That said ——— never delivered to them the goods mentioned in said complaint, and they never received the same. 2 Abb. Forms 109.

Note.—See note to II, A.

P. Answer, Denial of Employment as Common Carrier.

That they never undertook or agreed to safely carry the said goods to ———, or to deliver them there to ———, and that said ——— never paid them any reward for any such service. 2 Abb. Forms 109.

Note.—See note to II, A.

Q. Answer, Not a Common Carrier.

That he is not, and was not at the time mentioned in the complaint, a common carrier. 2 Abb. Forms 109.

Note.—This is substantially the form set forth in *Beach v. Berdell*, 2 Duer (N. Y.) 327.

R. Answer, Denial of Bailment.

I. That said (subject of bailment) was not the property of said (alleged bailor), and it was not deposited with the defendant by him or his agents.

II. That the same was the property of one M. N., to whom the possession of it belonged when this action was brought.

III. That before the commencement of this action the defendant had, on the demand of said M. N., the true owner, delivered the same to him. 2 Abb. Forms 109.

III. New Matter.

A. Answer, That Defendant is a Bona Fide Purchaser Without Notice.

I. That on the _____ day of _____, 18—, M. N., was, or pretended to be, the owner in fee simple of the lands and premises described in the complaint, free from all incumbrances; and he then was in the actual possession thereof.

II. That the defendant, believing such to be the fact, on that day agreed with him for the purchase thereof in fee simple, for the price of _____ dollars; whereupon the said M. N. conveyed the said premises to this defendant, by his deed, dated on the _____ day of _____, which deed contained a covenant on the part of said M. N. that he was absolutely seized of said premises, and that the same were free from all incumbrances.

III. That said sum of _____ dollars was actually paid by this defendant to said M. N. (at the time of the date of said deed).

IV. That this defendant had not, at or before the time of the said conveyance, or of the said payment of the purchase money, any notice whatsoever, either express or implied, of the said (annuity of _____ dollars), now claimed by the plaintiff, or of any other incumbrance whatsoever that affected the said premises. 2 Abb. Forms 167.

Note.—It would be better to state definitely in II that the defendant believed M. N. to be the owner in fee simple.

B. Answer, That the Delivery Was in Escrow.

I. That he gave said deed (or other writing) to secure the repayment of _____ dollars, then lent by the plaintiff to one M. N., and that he delivered said deed, not to the plaintiff or his agent, but to one O. P. as an escrow, to be kept by him upon condition that if the said M. N. should within _____ months secure the repayment of said sum of money to the plaintiff by a mortgage upon his freehold at _____; that then the said deed should be im-

mediately discharged and annulled, and returned to the defendant, and that only in case of default of the said M. N. so securing the repayment of the said sum, should the said deed of the defendant stand in force.

II. That within the time agreed, and on the _____ day of _____, 18—, said M. N. did secure the repayment of the said sum to the plaintiff by a mortgage upon said freehold, which the plaintiff then and there accepted as such security; whereby the deed of the defendant so delivered in escrow became void. 2 Abb. Forms 40.

C. Answer, Coverture of the Defendant.

That at the time of the making of the supposed (contract) alleged in the complaint, this defendant was (and still is) the wife of one M. N. 2 Abb. Forms 40.

D. Answer, Rescission of Contract.

That after the contract alleged in the complaint, and before any breach thereof, it was agreed by and between the plaintiff and the defendant that the said contract should be waived, abandoned, and rescinded; and they then waived, abandoned, and rescinded the same accordingly. 2 Abb. Forms 56.

Note.—Date of rescission might be inserted.

E. Answer, Accounting and Payment.

That on the _____ day of _____, 18—, this defendant accounted with and paid over to the plaintiff all moneys received by this defendant, up to that day, as such agent of the plaintiff. 2 Abb. Forms 62.

Note.—Or, fully accounted with plaintiff concerning all matters alleged in the complaint, etc.

F. Answer of Former Judgment.

That on the _____ day of _____, 18—, at _____ in an action brought in the _____ court (or before M. N., a justice of the peace in and for _____), by _____ against _____, for the same cause of action as that set forth in the complaint herein, said _____ recovered judgment duly given, upon the merits thereof, against said _____, for _____ dollars (or state other relief adjudged). 2 Abb. Forms 33.

Note.—If parties are not the same their privy must be alleged.

G. Answer by Common Carrier That the Damage Was by Plaintiff's Fault.

I. That the goods mentioned in the complaint, called ———, were a corrosive and destructive substance, rotting casks and cask-hoops, and other substances in contact with it, which the plaintiffs knew, but which the defendant did not know, and could not reasonably be expected to know.

II. That the plaintiffs did not inform the defendant of the destructive nature of the goods, and negligently delivered the same to the defendant in bulk, and thereby induced the defendant to believe that the same might be placed in contact with casks, cask-hoops, and other substances, safely; and they in consequence stowed the same among ———, whereby the injury complained of was caused, and not otherwise. 2 Abb. Forms 110.

Note.—As to sufficiency of this form see *Hutchinson v. Guion*, 28 L. J. (N. S.) C. P. 63.

H. Answer by Common Carrier That the Goods Were Lost by Risk Excluded by Contract.

I. That the merchandise mentioned in the complaint was delivered by the plaintiffs to the defendants, and by them received on board the steamer *Lexington*, under and in pursuance of a special contract made between them for the transportation of the same from New York to Stonington, of which the following is a copy: (Copy of the contract.)

II. That while the merchandise was well and properly stowed on board the steamboat, and being carried pursuant to the contract, and without any carelessness or misconduct of defendants or their servants, or any defect of the boat or its equipments, the boat, by mere casualty and accident, took fire, and was consumed, with its cargo, including the merchandise of the plaintiffs; and thereby, by accident and casualty of fire, and not by any negligence, misconduct or default of the defendants, the merchandise was not delivered at Stonington, and became lost to the plaintiffs. 2 Abb. Forms 111.

Note.—Substance of form is approved in *Dorr v. New Jersey S. N. Co.*, 11 N. Y. 485.

ANSWERS IN EQUITY.—See **BILLS AND ANSWERS.**

APPEAL BONDS.

For other forms, see 2 STANDARD PROC. 98.

CROSS-REFERENCES:

ADMIRALTY:

Bond to the Clerk for Costs;
Bond on Appeal.

APPEALS:

Bond on Appeal.

WRIT OF ERROR:

Bond in Error.

Complaint on Undertaking for Costs of Appeal.

I. That on the ——— day of ———, 18—, judgment was duly given at (a general term of this court, or by the ——— court) in favor of the above named plaintiffs, against one M. N. for the sum of ——— dollars; and that on the ——— day of ———, 18—, the said M. N. appealed to the (court of appeals) from the said judgment.

II. That upon said appeal, the defendants duly made and filed with the clerk of said court, for the use of these plaintiffs, their written undertaking and justification therein, of which the following is a copy: (copy of undertaking).

III. That by an order of the said (appellate court), made on the ——— day of ———, 18—, the judgment appealed from was in all respects affirmed, and the sum of ——— dollars, costs and damages on the appeal, was awarded against the appellant, but that no part of the same has been paid. 1 Abb. Forms 330.

APPEALS.

I. Notice of Judgment To Limit Time, 73

II. Taking Appeals, 73

- A. *Application*, 73
- B. *Petition*, 73
- C. *Order Granting Appeal*, 73
- D. *Notice*, 74
- E. *Notice From Justice's Court*, 75

III. Perfecting Appeals, 75

- A. *Bond*, 75
- B. *Undertaking*, 75
- C. *Justification of Sureties*, 76
- D. *Acknowledgment of Undertaking*, 76
- E. *Proof of Undertaking*, 76
- F. *Indorsement of Judge's Approval*, 76
- G. *Notice of Exception to Sureties*, 76
- H. *Notice of Sureties Justifying*, 76

- I. *Waiver of Security*, 76
- J. *Certificate of Clerk to Record*, 76
- IV. Staying Proceedings**, 76
 - A. *Undertaking on Money Judgment*, 76
 - B. *Undertaking on Judgment for Possession of Personal Property*, 76
 - C. *Undertaking on Judgment for Possession of Real Property*, 77
 - D. *Undertaking on Justice's Judgment*, 77
 - E. *Affidavit, Order Directing Delivery of Personal Property*, 77
 - F. *Notice of Motion*, 77
 - G. *Order*, 77
- V. In Appellate Court**, 77
 - A. *Notice of Argument*, 77
 - B. *Notice of Motion for Re-argument*, 77
 - C. *Order for Re-argument*, 78
 - D. *Dismissal*, 78
 - 1. *Notice of Motion To Dismiss*, 78
 - 2. *Motion by Appellant*, 78
 - 3. *Motion To Dismiss*, 78
 - E. *Order Dismissing*, 78
 - F. *Judgment of Affirmance*, 78
 - G. *Judgment of Reversal*, 78
 - H. *Judgment, Modification and Affirmance*, 79
 - I. *Order for Reversal Unless Consent to Reduction*, 79
 - J. *Judgment on Consent to Reduction*, 79
 - K. *Order for Restitution*, 79
 - L. *Judgment on Appeal by Both Parties*, 79
 - M. *Judgment on Dismissal*, 79

VI. In Court Below, 79

- A. *Notice of Filing Remittitur*, 79
- B. *Order for Judgment*, 80

VII. Complaint for Repayment of Judgment, 80

For other forms, see 2 STANDARD PROC. 221, 294, 295, 314, 372, 373.

CROSS-REFERENCES:**ADMIRALTY:**

- Decree of District Court. After Remittitur From Supreme Court;
- Notice of Appeal to Circuit Court of Appeals;
- Appeal From District Court to Supreme Court;
- Citation on Appeal;
- Bond on Appeal;
- Bond to the Clerk for Costs;
- Affidavit of Service of Citation and Appeal;
- Notice of Appearance;

Return From District Court to Supreme Court.

BILLS OF EXCEPTIONS:

- Defendant's Bill of Exceptions to Charge to Jury;
- Indorsement on Bill of Exceptions; Plaintiff's Bill of Exceptions to Charge to Jury;
- Bill of Exceptions to Decision Admitting Evidence;
- Bill of Exceptions to Decision Rejecting Evidence;
- Bill of Exceptions Setting Forth Pleadings;
- Bill of Exceptions Prepared for Settlement;
- Bills of Exception Under Florida Rules ;
- Amendments to Bill of Exceptions;
- Notice of Settlement of Bill of Exceptions;
- Judge's Certificate to Bill of Exceptions.

CASE ON APPEAL:

- Case Containing Exceptions Upon Trial by Jury;
- Case Containing Exceptions on Trial by Court or Referee;
- Amendments Proposed to Case, Etc.;
- Notice of Settlement of Case, Etc.;
- Indorsement on Case or Bill of Exceptions;
- Case;
- Order for Time To Prepare Case or Exceptions, With Stay;
- Case Setting Out Evidence;
- Certificate of Judge to Case;
- Transcript of Record Under Florida Rules;
- Caption of Transcript, Texas Rules;
- Caption and Commencement, etc. (Nebraska);
- Certificate of Clerk (California);
- Certificate of Justice of Peace, etc. (Mississippi).

CERTIORARI:

- Certiorari on Allegation of Diminution.

EMINENT DOMAIN:

- Notice of Appeal From Assessment by Commissioners;
- Appeal From Order of Board of Aldermen.

FINDINGS AND CONCLUSIONS:

- Notice of Exceptions to Finding of Fact;
- Notice of Exceptions to Findings of Court or Referee.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

- Fieri Facias After Non Pros. or Affirmation in Supreme Court,

MANDATE:

Mandate, United States Supreme Court to State Court;
Mandate, Appellate Court to Common Pleas;
Mandate From United States Supreme Court to District Court;
Mandate of State Supreme Court.

REMITTITUR:

Remittitur From Appellate Court;
Remittitur From Appellate Court, With Costs;
Remittitur From Appellate Court, With Costs and Damages.

STAY OF PROCEEDINGS:

Order To Stay Proceedings on Appeal From Decision of Circuit Judge.

WRIT OF ERROR:

Writ of Error to Trial Court From Supreme Court;
Notice of Issuing Writ of Error.

I. Notice of Judgment, To Limit Time.

Take notice that judgment was entered in this action, in favor of the (plaintiff) for (——— dollars, damages and costs), in the office of the clerk of the county of ——— (or the clerk of this court), on the ——— day of ———, 18— (and affirming the judgment theretofore recovered herein by said plaintiff). 2 Abb. Forms 636.

II. Taking Appeals.

A. Application for Appeal.

The United States, by E. P. Norton, its solicitor, makes application to the honorable court of claims for an appeal of the case of Theodore Adams v. The United States, to the supreme court of the United States.

E. P. Norton,

Solicitor for the United States.

United States v. Adams, 6 Wall. (U. S.) 101, 18 L. ed. 792.

B. Petition for Appeal.

"Your petitioner, James T. Shields, Jr., suing as receiver of the Morristown and Cumberland Gap Railroad Company, respectfully represents that there is manifest error committed, to the injury of the petitioner, by the final decree pronounced in this cause on the 31st day of January, 1894, and by the interlocutory orders and decrees theretofore pronounced in these ———, in and by which said interlocutory orders and final decrees this court assumed and asserted jurisdiction of the property and effects belonging

to and constituting the estate of the defendant Morristown and Cumberland Gap Railroad Company as against the lawful custody and possession of this petitioner under orders and decrees theretofore pronounced by the chancery court of Hamblen county, Tennessee, in the cause pending in said chancery court entitled 'Thomas B. Crosby et al v. Morristown and Cumberland Gap Railroad Company, et al,' under jurisdiction theretofore lawfully exercised and assumed, said chancery court being a court of equity of concurrent jurisdiction with this court, and which said chancery court of Hamblen county, Tennessee, was thereby ousted of the lawful jurisdiction, and this petitioner, as such receiver, became deprived of the lawful custody of the property and estate of said Morristown and Cumberland Gap Railroad Company, the subject-matter of controversy in the cause then and there pending in said court.

"Wherefore petitioner, James T. Shields, Jr., receiver, etc., considering himself aggrieved, prays an order granting an appeal from said final decree and interlocutory orders, taking and exercising jurisdiction as aforesaid, to the supreme court of the United States, as authorized by section 5 of the act of congress of the United States, approved March 3, 1891, and petitioner herewith filed his bond in the penal sum of five hundred dollars, which bond is approved by the Honorable D. M. Key, one of the judges of this court." *Shields v. Coleman*, 157 U. S. 168, 15 Sup. Ct. 570, 39 L. ed. 660.

Note.—In many jurisdictions the "reasons" or "assignments of error" must be stated in the petition, as indicated above.

The general rule that an appeal must be taken in the name of all parties against whom the judgment is rendered must be observed, unless there be an exception under the procedure in the jurisdiction where the form is to be used, and the use of the article in 2 STANDARD PROC. 106 in connection with the preparation of the necessary papers is particularly advisable.

C. Order Granting Appeal (a).

"Upon consideration of the petition for appeal to the supreme court of the United States filed herein by James T. Shields, Jr., as receiver of the M. & C,

G. R. R. Co., under appointment by the chancery court of Hamblen county, Tennessee, it is ordered that said appeal be granted, bond therefor in the penalty of five hundred dollars having been executed and approved by the court." *Shields v. Coleman*, 157 U. S. 168, 15 Sup. Ct. 570, 39 L. ed. 660.

Order Allowing Appeal (b).—"Upon consideration of the petition for appeal to the Supreme Court of the United States filed herein by James T. Shields, Jr., as receiver of the M. & C. G. R. R. Co. under the appointment by the chancery court of Hamblen county, Tennessee, it is ordered that said appeal be granted, bond therefor in the penalty of five hundred dollars having been executed and approved by the court.

"It is further ordered that the petition for supersedeas be denied.

"This appeal is granted solely upon the question of jurisdiction, and unless counsel shall agree by stipulation, filed with the clerk, in respect to the portions of the record to be transcribed and filed in said United States Supreme Court under said appeal as prayed and granted, the appellant has leave to present the record to the court on Saturday, the 29th day of July, inst., for the determination of what portion of the record shall be certified to said Supreme Court under said appeal." *Shields v. Coleman*, 157 U. S. 168, 15 Sup. Ct. 570, 39 L. ed. 660.

Order Allowing Appeal (c).—"On motion of Roselius & Phillips and Horner & Benedict, of counsel for Wm. Stackhouse, Sarah F. Brooks, widow in community of Haywood Stackhouse, deceased and natural tutrix of her minor children, Herbert, Maude, Blanche and Mabel Stackhouse, and Lilla Stackhouse, wife of J. W. Bryant, duly authorized and assisted by her husband, and the legal heirs of James P. Waters, deceased, to-wit: Henrietta A. Waters, wife of William Stackhouse, and by her husband duly assisted and authorized Mrs. Widow Mary Upton, widow of Wheelock S. Upton, deceased, and William H. Waters, and on suggesting to the court that said appellants and movers have been informed and believe that there is error to their prejudice in the final judgment rendered in the above entitled case by this honorable court, on the 20th of February, 1872, and that they are desirous of appealing suspensively from

the same to the supreme court of the state of Louisiana, and on showing that the clerk requires time till the third Monday of April next to make the transcript of appeal, it is ordered that a suspensive appeal be accorded to said appellants and movers from said final judgment to the supreme court of Louisiana, the same to be therein returnable on the third Monday of April, 1872, upon said appellants giving bond and security conditioned according to law in the sum of \$30,000." *Montgomery v. Sawyer*, 100 U. S. 571, 25 L. ed. 692.

Order Allowing Appeal (d).—"And now comes appellant, and prays an appeal in this cause to the supreme court of the state of Illinois; and it is ordered by the undersigned, judges of said court, that an appeal be allowed on the complainant giving bond, with approved security,—bond in the sum of \$300, security to be approved by the clerk of this court.

In witness whereof we have hereunto set our hands and seals this 19th day of September, A. D. 1889.

Jesse J. Phillips, J., (seal.)

Owen T. Reeves, P. J., (seal.)"

Indiana & I. S. R. Co. v. Sampson, 132 Ill. 527, 24 N. E. 609.

Order Allowing Appeal (e).—"And the complainant prays an appeal from the foregoing decree, which appeal is by the court hereby allowed, and the penalty of the appeal bond, if the same is to operate as a supersedeas, is fixed at _____ dollars, but if the same is not to operate as a supersedeas, then the penalty of the appeal bond is fixed at _____ dollars." *Radford v. Folsom*, 123 U. S. 725, 8 Sup. Ct. 334, 31 L. ed. 292.

Note.—Where the statute permits an appeal and prescribes no method, it is taken by a motion. If not taken in open court during the term, a citation signed by the judge of the trial court or a judge of the appellate court must be served. *Brown v. McConnell*, 124 U. S. 489, 8 Sup. Ct. 559, 31 L. ed. 495.

For form of citation, see *Admiralty*, XIX, C, in this volume.

In many code states the method of taking appeal is by serving a notice on the party and on the clerk, which appeal is perfected by filing the required undertaking.

D. Notice of Appeal (a).

Take notice that the plaintiff (or

defendant), and if only a part of several co-parties appeal, designate the appellants (by name) appeals * to the court of appeals from the judgment (or order) of the general term of the _____ court in this action, entered on the _____ day of _____, 18—, affirming (or reversing) the judgment (or order) of the special term (or of the _____ court), entered on the _____ day of _____, 18—.

(Address to the adverse party, or his attorney, and to the clerk of the court below.) 2 Abb. Forms 636.

Notice of Appeal (b).—“To the above named plaintiff, Louis Dietrich, and to Messrs. Luce & Luce, attorneys for plaintiff:

“You will take notice that the Commercial National Bank of Cleveland, hereby appeals to the supreme court of the state of Montana from the order and judgment of the above entitled district court in refusing to entertain the demurrer filed in said cause by said bank, and in overruling the same and entering judgment for plaintiff in said cause, and from the order refusing to open up said judgment, and in refusing to allow the said Commercial National Bank to file its petition in intervention, and make a defense to said action of plaintiff, and to the whole of said orders and judgment, and to each of them, and the said Commercial National Bank objects, and from the same, and each of them, this appeal is prosecuted this January 30th, 1893.

L. M. Cuthbert and R. B. Smith,
“Attorneys for Commercial National Bank of Cleveland.”

Dietrich v. Steam Dredge, 14 Mont. 261, 36 Pac. 81.

Note.—If the appeal is also from the order denying a motion for a new trial, the notice of appeal should so state.

E. Notice of Appeal From a Justice's Court.

County of _____. In the justice's court, before J. L., esq., justice of the peace for the town of _____.
(Title of the cause.)

(As in preceding form (a) to *.) To the county court of the county of _____, from the judgment rendered herein on the _____ day of _____, 18—, in favor of the _____ for _____ dollars, damages and costs; and demands that the same be altogether reversed

(or be modified, stating precisely in what respects), upon the following grounds (designating them, e. g., thus):

I. That the testimony of M. N., a witness offered on behalf of the defendant, was erroneously excluded.

II. That testimony was erroneously admitted on behalf of the plaintiff, to show the value of the plaintiff's services.

III. That the justice erroneously refused to nonsuit the plaintiff.

(Address to the respondent in person, and to the justice.) 2 Abb. Forms 637.

III. Perfecting Appeals.

A. Bond on Appeal.

Know all men by these presents, that we, A. B., of _____, the party appealing, J. D., of _____, and R. F., of _____, are held and firmly bound unto C. D., of _____ (the successful party) in the sum of two hundred dollars, lawful money, etc. (penal part in the usual form).

Whereas (the above bounden) A. B. has appealed from the decision of (John W. Edmonds), esquire, circuit judge of the (first) circuit, on a case (or bill of exceptions, etc.), made and settled in a cause pending in the supreme court of judicature of the people of this state, wherein the said A. B. is plaintiff, and the said C. D. is defendant; now the condition of this obligation is such that if the said A. B. shall pay all such costs as shall accrue and be adjudged against him upon such appeal, then this obligation to be void; otherwise to remain in full force and virtue.

(Signatures and seals of obligors.)

Sealed and delivered in the presence of (subscribing witnesses).

(Endorsed.) Approved. (Date.)

J. W. Edmonds, circuit judge.

Burr. App. 44, §83.

B. *Undertaking for Costs Only on Appeal.*

Whereas, on the _____ day of _____, 18—, the (plaintiff) recovered judgment against the (defendant) in the _____ court, for _____ dollars (or for recovery of possession of certain personal property, or otherwise as the case may be).

And whereas, the appellant intends to appeal from the said judgment to the court of appeals (or to the supreme court).

Now, therefore, we, A. B., of the village of _____, and county of

_____ (or of No. _____, street, in the city of _____, county of _____), merchant, and C. D., of the village of _____, county of _____, physician, and E. F., of the village of _____, county of _____, merchant, undertake, pursuant to the statute,* that the said appellant shall pay all costs and damages that may be awarded against him on such appeal, not exceeding two hundred and fifty dollars. 2 Abb. Forms 638.

C. Justification, Separate Affidavits of Sureties.

A. B., one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and house (or free) holder within this state, and is worth the sum of (double the sum specified in undertaking) _____ hundred dollars, over and above all his debts and liabilities, and exclusive of property by law exempt from execution.

C. D., one of the subscribers, etc. (continuing as above). 2 Abb. Forms 282.

D. Acknowledgment of Undertaking.

I certify that on this _____ day of _____, 18—, A. B., C. D. and E. F., above named, to me known to be the persons described in and who executed the above, personally appeared before me, and severally acknowledged that they executed the above undertaking as their own free act, for the uses and purposes therein mentioned. 2 Abb. Forms 282.

E. Proof by Witness of Signing of Undertaking.

On this _____ day of _____, 18—, before me came G. H., of said city, the subscribing witness to the within undertaking, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. _____ street, in said city; that he knew A. B., C. D. and E. F., the persons described in and who executed the above undertaking; that they severally acknowledged they executed the same; and that he the said G. H. thereupon subscribed his name as a witness thereto. 2 Abb. Forms 282.

F. Indorsement of Judge's Approval of Undertaking.

I approve the within undertaking, and the sufficiency of the sureties therein named. 2 Abb. Forms 282.

G. Notice of Exception To Sureties.

Take notice that the respondent excepts to the sureties on appeal offered by the appellant Y. Z. in this action. 2 Abb. Forms 640.

H. Notice of Sureties Justifying.

Take notice that the sureties on appeal in this action will justify before M. N., a justice of this court (or the county judge of _____ county, or a justice of the peace of the town of _____), at _____, on the _____ day of _____ next, at _____ o'clock in the _____-noon. 2 Abb. Forms 640.

I. Waiver of Security.

The (plaintiff) hereby consents that the (defendant) may appeal to the _____ from the judgment (or order) entered in this action on the _____ day of _____, 18—, and that proceedings under the said judgment (or order) shall be stayed until the decision of the said appeal, without security. 2 Abb. Forms 640.

J. Certificate of Clerk to Record in Court Below.

"I, Austin H. Brown, do hereby certify that the foregoing is a full, true and complete copy of all the papers filed, proceedings had, and judgment rendered in the above entitled cause in said court, on file and of record in my office. In witness," etc. *Logan v. Smith*, 70 Ind. 597.

IV. Staying Proceedings.

A. Undertaking To Stay Proceedings on a Money Judgment.

(Inserting at the end of III, B): And do also undertake, pursuant to the statute, that, if said judgment, or any part thereof, be affirmed, or the appeal be dismissed, the said appellant shall pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which may be awarded against the appellant on such appeal. 2 Abb. Forms 638.

B. Undertaking To Stay Proceedings on Judgment for Possession of Personal Property.

(Inserting at the end of III, B): And do also undertake, pursuant to the statute, in the sum of _____ dollars, that he shall obey the order or judgment of the appellate court on such appeal. 2 Abb. Forms 639.

C. Undertaking To Stay Proceedings on Judgment for Possession of Real Property.

(Inserting at the end of III, B): And do also undertake, pursuant to the statute, in the further sum of _____ dollars, that during the possession of the said property by the said appellant he will not commit, or suffer to be committed, any waste thereon, and that, if the said judgment be affirmed, the said appellant will pay the value of the use and occupation of the said property, from the time of the said appeal until the delivery of the possession thereof, pursuant to the judgment.

(If judgment has been rendered for damages, or for a deficiency on foreclosure of a mortgage, add): And also in the further sum of _____ dollars, that if the said judgment, or any part thereof, be affirmed, the said appellant shall pay such amount as may be awarded against him on his appeal. 2 Abb. Forms 639.

D. Undertaking To Stay Proceedings on a Justice's Judgment.

(Title as in II, E, continue as in III, B, to *.) That if judgment is rendered against the said appellant on such appeal, and execution thereon is returned unsatisfied, in whole or in part, we will pay the amount unsatisfied. 2 Abb. Forms 639.

E. Affidavit To Obtain Stay on Appeal From Order Directing Delivery of Personal Property.

Y. Z. (defendant), above named, being duly sworn, says:

I. That on the _____ day of _____, 18—, an order was entered in this action, at a special term of this court, directing deponent to deliver to the plaintiff certain property alleged to be in deponent's custody or control.

II. That the value of the said property is not more than _____ dollars.

III. That deponent intends, in good faith, to (or has perfected an) appeal from said order, and will suffer serious inconvenience and loss if proceedings under the said order are not stayed until the decision of the appeal (stating briefly how and why). 2 Abb. Forms 640.

F. Notice of Motion To Stay Proceedings.

Take notice that, on the affidavit of which a copy is herewith served, and on all the proceedings in this cause, the undersigned will move the court,

at a special term thereof, to be held at _____, on the _____ day of _____, 18—, at _____ o'clock, in the _____ noon, to stay all proceedings on the part of the respondent under the order (or judgment) entered herein on the _____ day of _____, 18— (or describe the nature of the order, if necessary to identify it), until the decision of the (general term) upon the appeal taken from the said (order) by the appellant, or for such other relief as may be just. 2 Abb. Forms 641.

G. Order on Affidavit To Stay Proceedings.

On reading and filing the affidavit of Y. Z., and on motion of O. P. for the (defendant), and after hearing Q. R. (or and on reading and filing proof of service of due notice of this motion, and no one appearing) for the (plaintiff), in opposition thereto:

Ordered, that (upon the appellant's filing with the clerk of _____, an undertaking, in due form to stay proceedings, for the payment of the sum of _____ dollars, in case of the failure of the appellant to comply with the determination of the appeal taken by him from the order of the special term entered herein, on the _____ day of _____, 18—), all proceedings on behalf of the respondent, under the order appealed from, be stayed until the decision of the said appeal. 2 Abb. Forms 641.

V. In Appellate Court.

A. Notice of Argument.

Take notice that the appeal from the judgment in this action (or from the order, etc., describing it) will be brought to a hearing (and a motion made to dismiss the same) before this court, at a (general) term thereof, to be held at the city hall, in the city of _____, on the _____ day of _____, 18—. (And on an appeal to the court of appeals in a cause entitled to preference, add): And the undersigned claims this to be a preferred cause, upon the ground that it is (specifying the ground so as to show the class; and if the appeal is from an order, state the general character of the order). 2 Abb. Forms 642.

B. Notice of Motion for Re-Arument of Appeal.

Take notice that the undersigned will move the court (at a general term thereof, to be held) at _____, on,

etc., to allow the appeal taken from the judgment (or order) entered herein on the _____ day of _____, 18—, to be re-argued, and to stay the entry of the judgment of (affirmance) meantime, or for such other relief as may be just. 2 Abb. Forms 643.

C. Order for Re-Argument.

On reading and filing notice of motion (and the affidavit of C. D., if any), and on motion of M. N. for the (appellant), after hearing O. P. for the respondent:

Ordered, that the appeal from the judgment (or order) entered herein (describing it, if necessary) be re-argued, and that the entry of the (judgment of affirmance) heretofore rendered be stayed until the decision of the court upon such re-argument. 2 Abb. Forms 643.

D. Dismissal.

1. Notice of Motion To Dismiss Appeal (a).

Take notice that (on the affidavits herewith served) the respondent will move the court, at a (general) term thereof, to be held at the city hall, in the city of _____, on the _____ day of _____, or as soon thereafter as counsel can be heard, to dismiss the appeal from the judgment herein (or from the order, describing it) (and if the ground of the motion is irregularity, state what), and for such other relief as may be just, with costs of motion. 2 Abb. Forms 643.

Notice of Motion To Dismiss Appeal (b).—Take notice, that a motion will be made in this court to dismiss the appeal taken by Charles S. Compton, one of the defendants, on the twelfth day of February last from the decree of the seventh judicial district court, county of Marin, entered on the fifth day of March, 1862, in favor of the plaintiff.

And that the grounds of the said motion will be:

1. That the defendant Compton did not take the appeal. (Here followed fifteen other reasons).

Gregory Yale, for respondent Ricketson.

Ricketson v. Compton, 23 Cal. 636.

2. Motion by Appellant Dismissing Appeal.

"State of Illinois, County of Cook, ss. In the Circuit Court.

"In the matter of the estate of Wil-

bur F. Storey, deceased—Appeal of Mary E. Farrand:

"And now comes the appellant, Mary E. Farrand, by John P. Altgeld, her attorney, and dismisses her appeal from the probate court herein, and moves that an order be entered dismissing the said appeal at appellant's costs.

Mary E. Farrand,

By John P. Altgeld, her attorney."

Endorsed: "Filed January 29, 1886. Henry Best, clerk. John P. Altgeld, attorney."

In re Storey, 120 Ill. 244, 11 N. E. 209.

3. Motion To Dismiss Appeal.

"Comes now the plaintiff, by F. P. Green and Lasley & Perry, his attorneys, appearing specially for the purposes of this motion, and moves the court to dismiss the appeal taken by defendants in the above entitled action, and for ground of said motion says: that said appeal was not taken within ten days after the rendition of judgment as is by law required, reference being had to the amended transcript filed herein, which is made a part of this motion." *Bubb v. Cain*, 37 Kan. 692, 16 Pac. 89.

E. Order Dismissing Appeal.

On reading and filing notice of motion and affidavit of C. D., and on motion of M. N. for the respondent, after hearing O. P. (or no one appearing) for the appellant:

Ordered, that the appeal taken by A. B. from the judgment (or order) entered herein on the _____ day of _____, 18—, be dismissed with _____ dollars costs to respondent. 2 Abb. Forms 644.

F. Judgment of Affirmance.

The appeal from the judgment (or order) entered in this action on the _____ day of _____, 18—, for _____ dollars (or, if for special relief, designate it), having been heard (at the general term), it is now, on motion of M. N. for respondent, after hearing O. P. for the appellant, adjudged * (or ordered) that the said judgment (or order) be affirmed, with _____ dollars costs to the respondent. 2 Abb. Forms 644.

G. Judgment of Reversal.

(Commencement as in preceding form to *.) That the said judgment be reversed, and a new trial ordered, costs to abide the event (or reversed,

and the complaint be dismissed, and that the appellant recover _____ dollars costs, or otherwise, from the respondent). 2 Abb. Forms 644.

H. Judgment Modification and Affirmance as Modified.

(Commencement as in V, F, to *.) That the words ("unless the vacancy shall be sooner supplied by an election to be held according to law") shall be inserted at the end of the entry of said judgment; and it is further adjudged that the said judgment of the special term as thus modified be, and the same hereby is, affirmed. 2 Abb. Forms 644.

I. Order for Reversal Unless Respondent Consents to Reduction.

(Commencement as in V, F, to *.) That the judgment in this action be reversed, and a new trial granted therein, with costs to abide the event, unless the plaintiffs consent to reduce the recovery for damages (or for the debt and interest) to _____ dollars, as of the _____ day of _____; and if the judgment be so reduced, then it is ordered that the judgment so reduced be in all things affirmed, with costs already adjusted, and the costs of this appeal. 2 Abb. Forms 645.

J. Judgment on Order for Reversal Unless Respondent Consents to Reduction.

The defendant in this action having appealed to (the general term) of this court from the judgment entered on the _____ day of _____, in favor of the plaintiff, and the annexed decision of the said court thereon having been made and filed, whereby said judgment is affirmed in case the plaintiff consents to reduce the recovery for damages (or for debt and interest) to _____ dollars, as of the _____ day of _____, 18—, and the plaintiff having consented to such reduction: now on motion of M. N. for the plaintiff it is adjudged that the plaintiff, (etc., as in other cases). 2 Abb. Forms 645.

K. Order for Restitution.

And it appearing to the court that, notwithstanding the appeal herein, the respondent executed and collected the amount of the judgment below, costs, and sheriff's fees, to-wit, the sum of _____ dollars, therefore it is further ordered and adjudged that the said respondent make restitution to the said appellant by paying into court to the

_____ of the county of _____, within _____ days after service of this judgment on him or his attorney, the said sum of _____ dollars, with interest from the _____ day of _____, 18—, the date of said collection by the said respondent, * to abide the order of this court after such new trial is had (or where payment into court is not necessary, say: by paying to the appellant or his attorney within _____ days after, etc., as above, down to the *). 2 Abb. Forms 645.

L. Judgment on Appeal by Both Parties.

This cause having been brought to a hearing upon an appeal taken by the plaintiff from (the last sentence contained in the judgment entered in this action), on the _____ day of _____, 18—, at a special term held before Mr. Justice _____, which sentence is in the following words (reciting it).

And M. N. having been heard for the plaintiff, and O. P. for the defendant, it is now ordered and adjudged that the said portion of the said judgment so appealed from by the plaintiff be, and the same hereby is, in all things reversed.

And the appeal of the defendant from the whole of said judgment having also been brought to a hearing, and the said counsel for the said parties respectively having been heard, it is now ordered and adjudged that all that part of the said judgment of the special term, which follows the words ("the plaintiff shall be actually dead"), be, and the same hereby is in all things reversed; and this court, proceeding to direct, in lieu thereof, such order and judgment in the premises as ought in that behalf to have been made at the said special term, it is ordered and adjudged (etc., as in other cases). 2 Abb. Forms 646.

M. Judgment on Dismissal of Appeal.

(Commencement as in V, F, to *.) That the said appeal be dismissed, with _____ dollars costs to the respondent. 2 Abb. Forms 646.

VI. In Court Below.

A. Notice of Filing Remittitur.

Take notice that the remittitur in the above action has been filed in the office of the clerk of the county of _____ (or of this court), and that, on the _____ day of _____, 18—, the undersigned will move this court

at a general term, at the city hall, in _____, on the _____ day of _____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, for an order that judgment be entered thereon. 2 Abb. Forms 646.

B. Order for Judgment of Court Below on Filing Remittitur.

A. B., having appealed to the court of appeals from the judgment of the general term of this court, bearing date the _____ day of _____, 18—, which judgment was signed by the clerk of this court, and duly entered in his office, on the _____ day of _____, 18—, and said court of appeals having affirmed the judgment of this court, now, on reading and filing the remittitur from the said court of appeals, and on motion of M. N., attorney for the respondent, it is ordered that the judgment of the court of appeals be, and the same is, hereby made the judgment of this court, and that the respondent Y. Z. have execution thereon. 2 Abb. Forms 647.

VII. Complaint for Repayment of Judgment Paid and Afterwards Reversed.

I. That on or about the _____ day of _____, 18—, the defendant recovered judgment duly given against this plaintiff in the _____ court, in and for the county of _____, in an action wherein the defendant was plaintiff, and this plaintiff was defendant, for the sum of _____ dollars.

II. That on the _____ day of _____, 18—, at _____, the plaintiff was compelled to pay, and did pay to the defendant the sum of _____ in satisfaction thereof.

III. That afterwards on the _____ day of _____, 18—, by the judgment of said court (or other appellate court) said first mentioned judgment was duly reversed; but that no part of the sum paid in satisfaction thereof has been repaid to this plaintiff. 1 Abb. Forms 181.

APPEARANCES.

I. Notice of Retainer, 80

II. Order for Defendant's Appearance, 80

III. Order To Indorse Defendant's Appearance, 80

IV. Leave for Defendant To Appear, and Consenting To Be Bound, 81

CROSS-REFERENCES:

ADMIRALTY:

Stipulation To Appear and Abide Decree;

Notice of Appearance by Defendant or Claimant.

CORPORATIONS:

Order Permitting Appearance of Foreign Corporation.

EJECTMENT:

Order To Appear and Plead;

Order To Appear and Plead on Motion in Open Court;

Notice With Declaration in Ejectment;

Affidavit of Personal Service of Declaration in Ejectment;

Affidavit of Personal Service of Declaration in Ejectment at Residence.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Plea, No Appearance in Foreign Court (a, b).

SEQUESTRATION:

Writ of Sequestration To Compel Appearance of Corporation;

Order for Sequestration.

SERVICE OF PROCESS AND PAPERS:

Affidavit of Defendant's Non-Appearence.

I. Notice of Retainer.

Sir: Please to take notice that I am retained as attorney for the defendant in this cause. Dated (New York, October 21st, 1845).

Yours, etc.,

G. H., defendant's attorney.

No. _____ Nassau St.

To E. F., plaintiff's attorney.

Burr. App. 192, §349.

Note.—It is usual to demand service of all papers in the notice.

II. Order for Defendant's Appearance.

On motion of E. F., attorney for the plaintiff, ordered that the defendant's appearance in this cause be, and the same hereby is entered, pursuant to the statute in such case made and provided. Burr. App. 444, §863a.

III. Order To Indorse Defendant's Appearance.

The sheriff of the (city and) county of _____ having returned the writ of *capias ad respondendum* issued in this cause, with the defendant's appearance endorsed thereon, on motion of E. F., attorney for the plaintiff, ordered that the defendant's appearance

be, and the same is hereby entered accordingly. Burr. App. 445, §864.

IV. Order, Leave for Defendant To Enter Appearance on Return, and Consenting To Be Bound.

Upon motion, etc., who alleged that the defendants, other than the defendant A., who was out of the jurisdiction of this court, having appeared to the plaintiff's bill, a decree has been made, dated, etc., directing certain accounts and inquiries to be taken and made, and that the said defendant A. has since returned within the jurisdiction of this court, and is desirous of attending the proceedings under the said decree; and upon hearing counsel for the plaintiff (or upon reading an affidavit, etc., of notice to the plaintiff), and the defendant by his counsel submitting to be bound by the said decree, dated, etc., and the several proceedings already had in this cause, this court doth (by consent) order that the defendant A. be at liberty to enter an appearance to the plaintiff's bill in this cause, and have the like benefit of the decree, and to attend all subsequent proceedings in this cause, as if he had appeared at the hearing of the same. 3 Dan. Ch. Pl. & Pr. (Perkin's ed.) 2359; 2 Seton Dec. (Eng. ed., 1862) 1250.

APPRENTICES.

I. Complaint Against Master, 81

II. Complaint Against Father of Apprentice, 81

For other forms, see 2 STANDARD PROC. 570.

CROSS-REFERENCE:

PERFORMANCE:

Plea in Excuse for Non-performance in Covenant, Apprentice Left Service.

I. Complaint by Apprentice Against Master.

I. That on the _____ day of _____, 18—, at _____, the defendant, with his (father), M. N., made an indenture under his hand and seal with the plaintiff, a copy of which is annexed, as a part of this complaint.

II. That the plaintiff has duly performed all the conditions thereof on his part.

III. That the defendant has not instructed the plaintiff in the business of _____, according to his covenant; to his damage _____ dollars.

IV. And for a further breach the

plaintiff alleges that the defendant has not allowed or provided for the plaintiff, meat, drink, washing, lodging, and other necessities according to his covenant; to his damage _____ dollars. 1 Abb. Forms 354.

II. Complaint by Master Against Father of Apprentice.

I. That on the _____ day of _____, 18—, at _____, M. N. (the apprentice), with the consent of the defendant, made an indenture under his hand and seal, a copy of which is annexed, as a part of this complaint, and marked Exhibit A.

II. That at the same time and place, the defendant made an agreement under his hand and seal, a copy of which is also annexed as a part of this complaint, and marked Exhibit B.

III. That the plaintiff duly performed all the conditions of said indenture and agreement on his part.

IV. That from and ever since the _____ day of _____, 18—, the said M. N. has wilfully absented himself from the service of the plaintiff, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 354.

Note.—In alleging the breach the better form is to say that the apprentice left and abandoned the service of plaintiff and has refused to return, and also that the defendant has not used any endeavors and refused to do anything in securing the return of the apprentice. Van Dorn v. Young, 13 Barb. (N. Y.) 286.

ARBITRATION.

I. Declaration on Award, 82

II. Complaint on Award, 82

- A. *Of Arbitrators*, 82
- B. *Of Umpire*, 83
- C. *Enlargement of Time*, 83

III. Plea of Award, 83

IV. Answer, 84

- A. *Award and Performance*, 84
- B. *Denial of Parol Submission*, 84
- C. *Denial of Award*, 84
- D. *Invalidity of Award*, 84
- E. *Denial of Performance by Plaintiff*, 85
- F. *Performance by Defendant*, 85

V. Replication to Plea of Arbitration, 85

For other forms, see 2 STANDARD PROC. 677, 674.

CROSS REFERENCE:

BONDS:

Complaint on Arbitration Bond for

Refusal To Comply With Award;
Complaint on Arbitration Bond for
Revoking Arbitrator's Powers.

I. Declaration on Award on Bonds of Submission.

(Title and usual commencement in debt, for the sum in the award, not for the penalty of the bond.) For that whereas certain differences having arisen and being depending between the said plaintiff and the said defendant, the said plaintiff heretofore, to-wit, on, etc., at, etc., by a certain bond of arbitration, bearing date, etc., became bound to the said defendant in a certain penal sum, in the said bond mentioned; and the said defendant, then and there by a certain other bond of arbitration, bearing date, etc., became and was bound to the said plaintiff, in a certain penal sum in the same bond mentioned, which said bonds were respectively conditioned to abide the award and determination of J. K., of, etc., an arbitrator indifferently elected and named, as well by and on the part and behalf of the said defendant, as by and on the behalf of the said plaintiff to arbitrate, award, order, adjudge and determine of and concerning all, and all manner of action and actions, cause and causes of action, suits, bills, bonds, specialties, judgments, executions, quarrels, controversies, trespasses, damages and demands whatsoever, at any time theretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending by and between the said parties, or any or either of them, so as the said award should be made in writing, under the hand of the said J. K. (this will depend on the terms of the bond), and ready to be delivered to the said parties in difference, or such of them as should desire the same, on or before, etc. And the said plaintiff further saith, that the said J. K. having taken upon himself the burden of the said arbitration, did in due manner and within the time for that purpose appointed, to-wit, on, etc., at, etc., duly make and publish his award in writing, subscribed with his own proper hand, of and concerning the said matters in difference between the said parties, ready to be delivered to the said parties in difference, or such of them as should desire the same, and bearing date, etc.; and did thereby award and direct (it is sufficient to

show so much of the award, only, as to entitle the plaintiff to his action) that the said defendant should pay to the said plaintiff for, etc. (set out the award so far as relates to the payment of the money), which when paid should be in full satisfaction of all claims and demands of him the said plaintiff, upon or against the said defendant, for or in respect of the said matters in difference; and the said J. K. did thereby further award and direct that the said plaintiff should pay (ninety-six) dollars, as and for the costs of that, his award, and that the said defendant should upon demand repay to the said plaintiff, one moiety of such sum of (ninety-six) dollars, and that in all other respects the said parties respectively should bear their own costs of that reference: As by the said award, reference being thereunto had will more fully appear, which said award the said defendant afterwards, to-wit, on, etc., at, etc., had notice. And although the said defendant did afterwards, to-wit, on, etc., pay to the said plaintiff the said sum of (forty-eight) dollars, in the said award mentioned, yet the said defendant did not, on the said day, in the said award in that behalf mentioned, pay to the said plaintiff the said sum of (one thousand two hundred and thirty-six) dollars, in the said award mentioned, or any part thereof, nor hath he since been paid the same or any part thereof, although to pay the said last mentioned sum of money the said defendant was requested, by the said plaintiff, to-wit, on, etc., appointed to the payment of the said sum of (one thousand two hundred and thirty-six) dollars, to-wit, at, etc., whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of (one thousand two hundred and thirty-six) dollars, parcel of the said sum above demanded. (Add counts for money paid and an account stated in debt, and common conclusion.) Burr. App. 281, §550; 2 Chit. Pl. 395.

II. Complaint on Award.

A. Complaint on Award of Arbitrators.

I. That on the _____ day of _____, 18—, at _____, disputes and differences were subsisting between the plaintiff and the defendant, touching a demand by the plaintiff against said defendant, for the sum of _____

dollars for (services rendered by this plaintiff to the said defendant, at his request, in drawing plans and specifications of a dwelling house for the defendant, which demand the defendant disputed and refused to pay (or state other claims, according to the circumstances of the case).

II. That for the purpose of putting an end to said disputes and differences, they then and there (by an agreement in writing) submitted themselves to the award, arbitrament, and final determination of one M. N., an arbitrator (or M. N. and O. P., two arbitrators), indifferently chosen on behalf of the plaintiff and the defendant, to arbitrate and determine concerning said disputes and differences; and mutually promised each other to abide by and perform his award (or they then and there, by an agreement in writing, a copy of which is hereto annexed, and marked "Exhibit A," agreed to submit the same to the award of M. N.)

III. That thereafter the said arbitrator, having undertaken the arbitration, heard the plaintiff and the defendant, and on the _____ day of _____, 18—, at _____, duly made and published (and where such notice is required by the submission, add, and notified the said parties of) his award (in writing) of and concerning the matter so referred (which award bears date the _____ day of _____, 18—); and thereby he awarded and declared, that after due appearance before him on behalf of this plaintiff and said defendant, he found that the said defendant was justly indebted to this plaintiff in the said sum of _____ dollars for the services aforesaid (or otherwise, according to the facts).

(Or, where the award is in writing, the pleader may substitute for this paragraph the following: III. That thereafter said arbitrator, having undertaken the arbitration, duly made and published his award in writing, of which the following is a copy; or, a copy of which is hereto annexed and marked "Exhibit B.")

IV. That the plaintiff duly performed all the conditions thereof on his part, and (afterwards, and on or about the _____ day of _____, 18—, at _____) gave notice of said award to the defendant, and demanded of him payment of the said sum of _____ dollars.

V. That the defendant then and

ever since has refused to pay the same; and there is now due from the defendant to the plaintiff thereon, the sum of _____ dollars, with interest from, etc. 1 Abb. Forms 263.

Note.—If property be the subject of the award, par. V should read: That the defendant has neglected and refused, and still neglects to surrender possession of, and refuses to deliver to plaintiff the said property, to-wit: _____ although due demand therefor has been made, to plaintiff's damage in the sum of _____ dollars.

B. *Complaint on Award of Umpire.*

Substitute for the first part of paragraph III in the preceding form: That said M. N. and O. P. (arbitrators), before they proceeded upon the said arbitration, on the _____ day of _____, 18—, by writing, under their hands, appointed one Q. R. to be umpire in the matter so submitted; and the said arbitrators, after hearing the plaintiff and defendant, and not being agreed concerning the matters submitted, the said Q. R. afterwards undertook said arbitration, and heard the plaintiff and defendant, and on the _____ day of _____ (proceed to allege the award as in preceding form). 1 Abb. forms 265.

Note.—This form does not cover a case where an umpire is chosen for the purpose of making a final decision, the award being his act independent of the action of the arbitrators. It is then proper to allege the award as having been made by the umpire and also to allege that he was chosen as provided for by the submission.

C. *Complaint, Allegation of Enlargement of Time.*

That on the _____ day of _____, 18— (or thereafter, and within the time limited for making the award), the plaintiff and defendant by agreement (in writing, of which a copy is hereto annexed, and marked "Exhibit C"), extended the time for making the award until the _____ day of _____, 1 Abb. Forms 266.

III. *Plea of Arbitrament and Award (in Assumpsit).*

Because he says, that after the making of the said several promises and undertakings in the said declaration mentioned, and, before the commencement of this suit, to-wit, on, etc., at, etc., aforesaid, the said plaintiff and the said defendant submitted them-

selves (that is to say), by two mutual bonds of arbitration, bearing date respectively the day and year last aforesaid, to the arbitration of, and engaged in all things, well and truly to stand to, obey, abide, perform, fulfil and keep the award, order, arbitrament, final end and determination of J. K. and L. M., arbitrators, indifferently elected and named, as well on the part and behalf of the said plaintiff as of the said defendant, to arbitrate, award, order, judge and determine, of and concerning all, and all manner of action and actions, cause and causes of action, suits, bills, bonds, specialties, judgments, executions, quarrels, controversies, trespasses, damages and demands whatsoever, at any time theretofore had, made, moved, brought, commenced, sued, prosecuted, done, suffered, committed or depending by and between the said parties, or either of them, so as the said award should be made by the same arbitrators, under their hands, and ready to be delivered to the parties in difference, or such of them as should desire the same, on or before, etc., next (as in the bonds); which time for making the said award was afterwards and before the time of making the same expired, to-wit, on, etc., at, etc., aforesaid, by consent of the said plaintiff and the said defendant, enlarged until, etc., then next, and it was then and there agreed by and between the said plaintiff and the said defendant, that the award made before that time between them should be binding and conclusive between them; which last mentioned time for making the said award was afterwards and before the said enlarged time for making the said award had elapsed, to-wit, on, etc., at, etc., aforesaid, by consent of the said plaintiff and the said defendant, further enlarged, until, etc., then next, and it was then and there agreed between the said plaintiff and the said defendant that the said award before that time made between them should be binding and conclusive between them. And the said defendant further saith that the said arbitrators, before the expiration of the said last mentioned time limited for making their award, to-wit, on, etc., at, etc., aforesaid, took upon themselves the burden of the said arbitration, and having duly examined and considered the subject-matters in dispute between the said plaintiff and the said defend-

ant, they, the said arbitrators, did make their award in writing under their hands, of and concerning the premises, and of and concerning the said premises and undertakings in the said declaration mentioned, and ready to be delivered to the said parties in difference, and did thereby then and there award that, etc. (here set forth the award), as by the said award bearing date, etc., reference being thereunto had, will more fully appear. And this, etc. (conclude with a verification). Burr. App. 353, §644; 3 Chit. Pl. 927.

IV. Answer.

A. *Answer Setting Up Award and Performance.*

I. That after the maturity of the note (or after the accruing of other cause of action) mentioned in the complaint, to-wit, on the ——— day of ———, 18—, the plaintiff and this defendant (by their bonds of arbitration) mutually submitted the demand alleged in the complaint (among other controversies) to the arbitration of one M. N., who, thereafter and before this action, to-wit, on the ——— day of ———, 18—, by his award then duly made and published, awarded that (etc., stating substance of the award).

II. That the defendant, on the ——— day of ———, 18—, and before this action, duly performed said award on his part by (here state payment or tender). 2 Abb. Forms 32.

B. *Answer, Denial of Parol Submission.*

That he did not agree or promise as alleged. 2 Abb. Forms 86.

C. *Answer, Denial of Award.*

That the said (arbitrator or umpire) did not make and publish any award (or the award alleged in the complaint). 2 Abb. Forms 86.

Note.—If irregularity or excess of award be relied on as a defense, the facts must be pleaded.

D. *Invalidity of Award.*

I. Admits the submission of the controversy to arbitration, and that the time for the delivery of the award was extended, as stated in the complaint.

II. The defendant denies (any knowledge or information sufficient to form a belief) that the arbitrators made an award (in writing, under their hands, and delivered the same to the

plaintiff) within the time so limited therefor.

III. The defendant further says (that he never had any notice of the time or place when or where the said arbitrators would meet to hear the matters submitted to them, or any opportunity of appearing before said arbitrators, nor of producing proof, nor examining witnesses, nor of being heard in his defense before said arbitrators; and the alleged award was made without any information or notice thereof to the defendant, until long after the day when the same is alleged to have been made).

IV. That the said arbitrators, on the _____ day of _____, 18—, and while examining the premises and preparing their award, or immediately prior thereto, and on the same day, examined several witnesses touching the matters submitted to them by the parties, and took and heard their statements in respect thereto, in the presence of the plaintiff, and in the absence of, and unbeknown to, and without the consent of, the defendant.

V. That defendant had a good and substantial defense upon the merits, in the matter submitted to said arbitrators; and that he would have been entitled to an award in his favor, had an opportunity been afforded him of producing his proofs before the said arbitrators.

Wherefore the defendant asks:

1. That the said alleged award be pronounced null and void as to the defendant.

2. For judgment for his costs of this action against said plaintiffs. 2 Abb. Forms 87.

E. *Denial of Performance by Plaintiff.*

That the plaintiff did not perform said award upon his part, but, on the contrary, omitted to (here set forth breach, as would be done in a complaint). 2 Abb. Forms 87.

F. *Performance by Defendant.*

That the defendant duly performed said award upon his part; and, upon the _____ day of _____, 18— (here briefly state what was done). 2 Abb. Forms 87.

V. *Replication To Plea of Arbitration.*

Because he says, that the said arbitrator did not make any such award of and concerning the premises, in man-

ner and form as the said defendant hath above in his said plea in that behalf alleged. And this he, the said plaintiff, prays may be inquired of by the country, etc. Burr. App. 377, §685; 3 Chit. Pl. 1157.

ARCHITECTS AND BUILDERS.

I. Complaints, 85

A. *By Architect*, 85

B. *By Builder*, 85

C. *Against Builder for Not Well Finishing*, 86

D. *Against Builder for Not Completing, Loss of Rent*, 86

II. Answer, Work Not Finished, Certificate Not Obtained, 87

For other forms, see 2 STANDARD PROC. 696, 718.

I. Complaints.

A. *Complaint by Architect for His Services.*

I. That the defendant is indebted to the plaintiff on an account for the work, labor, and services of the plaintiff (and his servants), as architect, in forming and drawing plans, and making estimates for, and superintending the erection of a dwelling house to be known as No. _____, in _____ street. 1 Abb. Forms 202.

Note.—The general form used in complaints precedes this paragraph and it is followed by the usual demand for relief.

B. *Complaint by Builder on Special Contract, Modified by Parol, With Claim for Extra Work.*

First. For a cause of action.

I. That on the _____ day of _____, 18—, at _____, the defendants, under their hands and seals, made a contract in writing with the plaintiff of which the following is a copy: (copy contract).

II. That thereafter, and before the _____ day of _____, 18—, the plaintiff duly performed all the conditions thereof on his part, except that at the request of the defendants he covered the roof of the building in the above contract mentioned with slate instead of shingles, for which the defendant promised to pay a reasonable sum in addition to the price named in said contract; and that at the like request he omitted to put blinds upon the rear of the building, on the agreement with the defendants that a reasonable deduction should be made from the price named in said contract for such omis-

sion; and that by the consent of the defendant the time for completing said work was extended for one month after the day named in said contract, to-wit, to the _____ day of _____, 18—, on which day the whole of said work was completed by the plaintiff.

III. That the sum of _____ dollars is a reasonable payment to be made in addition to the price named in said contract, for covering said roof with slate instead of shingles.

IV. That the sum of _____ dollars is a reasonable deduction to be made from the price named in said contract for the omission to put blinds upon said building.

V. That on the _____ day of _____, 18—, at _____, payment of the sum of _____ dollars, being the balance due on said contract after making such allowance and such deduction, was duly demanded of the defendants by the plaintiff, but no part thereof has been paid (except the sum of, etc.).

Second. And for a second cause of action.

I. That between the _____ day of _____, 18—, and the _____ day of _____, 18—, at _____, he rendered further services to the defendants at their request in (here state extra work done; and materials furnished therefor), for which the defendants promised to pay so much as they should be reasonably worth.

II. That the same are reasonably worth _____ dollars, which sum became due therefor on the _____ day of _____, 18—, but no part thereof has been paid. 1 Abb. Forms 285.

Note.—The contract may be set out according to its legal effect, instead of setting it out in full.

C. Complaint Against Builder for Not Well Finishing Building.

I. That on the _____ day of _____, 18—, at _____, this plaintiff and the defendant entered into an agreement in writing, under their hands and seals, of which a copy is annexed as a part of this complaint.

II. That the plaintiff duly fulfilled all the conditions thereof on his part.

III. That the defendant did not fulfil said contract on his part, but on the contrary erected said building in so unskilful and negligent a manner (and of so unsuitable materials), that, shortly after its completion, the foundation settled, the walls cracked, the

roof and walls became leaky, a considerable portion of the plastering fell, and the house otherwise was, and is, entirely untenable, and nearly useless, through the negligent and unskilful manner of its erection, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 359.

D. Complaint Against Builder for Not Completing His Work; With Special Damage by Loss of Rent.

I. That on the _____ day of _____, 18—, at _____, the plaintiff and the defendant entered into an agreement, under their hands and seals (or the hand and seal of the defendant), of which a copy is annexed as a part of this complaint (or state its legal effect, e. g., thus: whereby the defendant agreed to erect, in a substantial manner, a two-story frame house in the village of _____, county of _____, and to have the said house completed and ready for occupancy on or before the _____ day of _____, 18—, for which this plaintiff agreed to pay him _____ dollars, payable as follows: When the foundations should be laid, the sum of _____ dollars; when the first story should be up and the second tier of beams laid, _____ dollars; when the second story should be put up and the third tier of beams laid, _____ dollars; and when the roof should be on, _____ dollars; and when the house should be entirely completed, the balance of _____ dollars).

II. That the plaintiff duly performed all the conditions thereof on his part.

III. That the defendant entered upon the performance of the work under said contract, and laid the foundations of the said house, and commenced the erection of the first story thereof; but has neglected to finish the said building pursuant to said contract, and has left the same with the foundations laid, and the walls of the first story partly up, and that although the time for the completion of said building expired before this action, he refuses to complete the same.

IV. That the plaintiff, on the _____ day of _____, 18—, at _____, made an agreement with one M. N., whereby he agreed to let, and said M. N. agreed to hire, the said building for one year from the _____ day of _____, at the yearly rent of _____ dollars, of which the defendant had due notice.

V. That by reason of the defendant's failure to complete the contract aforesaid upon his part, the plaintiff has been unable to complete said house so as to give M. N. occupancy thereof, and has been thereby deprived of the profits of said lease, and has been otherwise greatly injured, to his damage ——— dollars. 1 Abb. Forms 357.

II. Answer, Plaintiff's Work Not Finished, and Architect's Certificate Not Obtained.

I. That the said work was not completed in a good and workmanlike manner, on or before the day limited therefor in the contract set forth in the complaint; but, on the contrary, the said work on that day, and from thence to the commencement of this action, was, and still is, incomplete and unfinished.

II. That no certificate from the said architect, that the said work had been completed to his satisfaction, was obtained by the plaintiff before this action. 2 Abb. Forms 90.

ARRAIGNMENT AND PLEA.

I. Arraignment, 87

- A. *The Arraignment*, 87
- B. *Record of*, 87

II. Pleas to Jurisdiction, 88

III. Demurrer, 88

- A. *To Indictment*, 88
- B. *Joinder to Indictment*, 88
- C. *To Plea in Bar*, 89
- D. *Joinder, in Bar*, 89

IV. Pleas in Abatement, 89

- A. *Misnomer*, 89
- B. *No Preliminary Examination*, 89

V. Pleas in Bar, 89

- A. *Mixed of Record and Fact*, 89
 - 1. *Auterfois Acquit*, 89
 - 2. *Auterfois Convict*, 90
 - 3. *Former Jeopardy*, 91
 - 4. *Pardon*, 91
- B. *Pleas to Matter of Indictment*, 91
 - 1. *General Issue*, 91
 - 2. *Special Plea*, 91
 - 3. *Nolo Contendere*, 92

VI. Replications, 92

- A. *General Form*, 92
- D. *To Jurisdiction*, 92
- C. *To Plea in Abatement*, 92
- D. *To Auterfois Acquit*, 92
- E. *To Auterfois Convict*, 93
- F. *To Former Jeopardy*, 93

VII. Rejoinder, 93

- A. *General Form*, 93

For other forms, see 2 STANDARD PROC. 900, 915.

CROSS-REFERENCES:

GRAND JURY:

- Plea in Abatement, Grand Juror Disqualified (a, b);
- Special Plea, Jury Not Properly Selected;
- Plea in Abatement, Full Jury Not Present;
- Replication to Plea That Jurors Were Not Properly Selected.

JEOPARDY:

- Plea, Discharge of Jury Without Verdict;
- Replication to Plea of Jeopardy.

I. Arraignment.

A. *The Arraignment.*

- (a) "A. B., hold up your hand."
- (b) "You stand indicted by the name of A. B., late of, etc., for that you on, etc.," read indictment. (c) "How say you A. B., are you guilty or not guilty?" 1 Chit. Cr. L. 415, 416.
- Plea "not guilty" (if general issue). 1 Chit. Cr. L. 416.

Note.—The first of these ceremonies is intended the more completely to identify the prisoner as the person named in the indictment, because by holding up his hand when his name is called, he acknowledges himself to be properly described under that appellation. But this ceremony is not absolutely necessary, for if the prisoner obstinately refuse to hold up his hand, the same purpose is answered by any admission that he is the person intended. 1 Chit. Cr. L. 414.

Note.—It has been laid down that the prisoner ought to stand at the bar, during his arraignment, without irons, shackles, or any other restraint, unless there is danger of an escape. But a distinction has been taken between the time of arraignment and trial, and it seems to be the better opinion that he is not entitled to have his fetters taken off until after he has pleaded. 1 Chit. Cr. L. 417.

B. *Record of Arraignment and Plea.*

And afterwards, to-wit, at the same delivery of the gaol of the said lord the king of his county aforesaid, on the said Friday, the sixth day of August, in the said second year of the reign of the said lord the king, before the said justices of the lord the king last above named, and others their fellows aforesaid, here cometh the said Peter Hunt, under the custody of William Browne, esquire, sheriff of the county aforesaid (in whose custody in

the gaol of the county aforesaid, for the cause aforesaid, he had been before committed), being brought to the bar here in his proper person by the said sheriff, to whom he is here also committed: And forthwith being demanded concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof, he saith that he is not guilty thereof; and thereof for good and evil, he puts himself upon the country: And John Blencowe, esquire, clerk of the assizes for the county aforesaid, who prosecutes for the said lord the king in this behalf, doth the like. 2 Cooley's Bl. (App.) 478.

II. Pleas to Jurisdiction.

Plea to Jurisdiction (a).

And the said J. S., in his own proper person, cometh into court here, and having heard the said indictment read, saith that the court of our lady the queen here ought not to take cognizance of the (trespass and assault) in the said indictment above specified; because, protesting that he is not guilty of the same, nevertheless the said J. S. saith that (etc., so proceeding to state the matter of the plea. Conclude thus): And this he the said J. S. is ready to verify; wherefore he prays judgment if the said court of our lady the queen now here will or ought to take cognizance of the indictment aforesaid; and that by the court here he may be dismissed and discharged, etc. Arch. Cr. Pl. 81.

Plea to Jurisdiction (b).

"Comes the defendant in proper person, and by plea in abatement to the indictment, filed by leave of the court, says: That the indictment in this case charges the defendant with an assault with intent to commit murder upon the body of one Earl Boyce; that the difficulty or shooting out of which this indictment arises, and upon which the charge is made, was committed on the 6th day of June, 1908; that the territory where said alleged offense was committed was on that day in the county of Wayne; the said indictment was returned by the grand jury of the county of Wayne at the September term, 1908, of said county; but since the commission of said alleged offense, and since the return of said indictment, to-wit, April 30, 1909, the general assembly of the state of Tennessee passed an act by which the

line between the counties of Wayne and Perry was so changed as to place said territory where said alleged offense was committed in the county of Perry, said act being chapter 441 of the Acts of 1909, page 1653. The alleged offense embraced in this indictment against defendant was committed, if committed at all, in the territory described in said act, and by said act taken from Wayne county and annexed to Perry county, and is now a part of Perry county.

"Therefore defendant avers that the circuit court of Wayne county has no jurisdiction to try this defendant upon said indictment for said offense, and prays that said indictment be abated and the defendant be discharged." State v. Marshall, 124 Tenn. 230, 135 S. W. 926.

Note.—This plea must not only object that the court before which the proceedings are taken has no jurisdiction over them, but must show what court has authority to proceed to try them. It is not necessary that it should conclude by answering over to the felony, or put in issue the facts of guilt or innocence, though it may do so. As this is a dilatory plea, it seems necessary to add an affidavit of its truth. 1 Chit. Cr. L. 438.

III. Demurrer.

A. Demurrer To an Indictment or Information.

And the said J. S. in his own proper person cometh into court here, and having heard the said indictment (or information) read, saith, that the said indictment (or information), and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that he the said J. S. is not bound by the law of the land to answer the same; and this he is ready to verify; wherefore, for want of a sufficient indictment (or information in this behalf, the said J. S. prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment (or information) specified. Arch. Cr. Pl. 84.

B. Joinder to Demurrer to Indictment or Information.

And J. N., who prosecutes for our said lady the queen in this behalf, saith that the said indictment, and the matters therein contained, in manner and form as the same are above stated and

set forth, are sufficient in law to compel the said J. S. to answer the same; and the said J. N., who prosecutes as aforesaid, is ready to verify and prove the same, as the court here shall direct and award; wherefore, inasmuch as the said J. S. hath not answered to the said indictment, nor hitherto in any manner denied the same, the said J. N., for our said lady the queen, prays judgment, and that the said J. S. may be convicted of the premises in the said indictment specified. Arch. Cr. Pl. 84.

C. *Demurrer To a Plea in Bar.*

And J. N., who prosecutes for our said lady the queen in this behalf, as to the said plea of the said J. S. by him above pleaded, saith that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude our said lady the queen from prosecuting the said indictment against him the said J. S.; and that our said lady the queen is not bound by the law of the land to answer the same; and this he the said J. N., who prosecutes as aforesaid, is ready to verify; wherefore, for want of a sufficient plea in this behalf, he the said J. N., for our said lady the queen, prays judgment, and that the said J. S. may be convicted of the premises in the said indictment specified. Arch. Cr. Pl. 84.

D. *Joinder in Demurrer To Plea in Bar.*

"And the said J. S. saith, that his said plea by him above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude our said lady the queen from prosecuting the said indictment against him the said J. S.; and the said J. S. is ready to verify and prove the same, as the said court here shall direct and award; wherefore, inasmuch as the said J. N. for our said lady the queen hath not answered the said plea, nor hitherto in any manner denied the same, the said J. S. prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the said indictment specified." The joinder is the same, if the demurrer be to a plea in abatement, except that it concludes with praying "judgment and that the said indictment may be quashed," etc. Arch. Cr. Pl. 85.

IV. Pleas in Abatement.

A. *Plea in Abatement to Indictment; Misnomer.*

"And James Long, who is indicted by the name of George Long, in his own proper person cometh into court here, and having heard the said indictment read, saith that he was baptized by the name of James, to-wit, at the parish aforesaid, in the county aforesaid, and by the Christian name of James hath always since his baptism hitherto been called or known; without this, that he the said James Long now is or at any time hitherto hath been called or known by the Christian name of George, as by the said indictment is supposed; and this he the said James Long is ready to verify; wherefore he prayeth judgment of the said indictment, and that the same may be quashed," etc. Arch. Cr. Pl. 82.

Affidavit.—James Long, of ———, the defendant in this prosecution, maketh oath and saith that the plea hereto annexed is true in substance and matter of fact. Arch. Cr. Pl. 82.

Note.—In criminal proceedings on plea in abatement the orderly method is for the prosecuting attorney to demur or reply. *Martin v. State*, 79 Wis. 165, 48 N. W. 119.

B. *Plea in Abatement, no Preliminary Examination.*

"Now comes the defendant in the above entitled action by ———, his attorneys, and before pleading to the merits enters this his plea in abatement of this action for that the information herein was filed in this court on the ——— day of ———, A. D. 189—, and that this defendant has never had a preliminary examination as provided by law, before a justice of the peace, judge of a court of record, or such commissioner or any other examining magistrate or officer, and that this defendant has never waived his right to such examination." (Prayer.) *State v. Sorenson*, 84 Wis. 27, 53 N. W. 1124.

V. Pleas in Bar.

A. *Mixed of Record and Fact.*

1. *Plea of Auterfois Acquit.*

"And the said J. S. in his own proper person cometh into court here, and having heard the said indictment read, saith that our said lady the queen ought not further to prosecute the said indictment against the said J. S.; be-

cause he saith that heretofore, to-wit, [at the general quarter sessions of the peace, holden at ———, so continuing the caption of the former indictment, "it was presented that the said J. S. (then and there, and thereby described as J. S., late of ———, in the county aforesaid, laborer), on the third day of," etc., continuing the indictment to the end; reciting it, however, in the past, and not in the present, tense. Recite also the remainder of the record to the end of the judgment in the past tense, in like manner. Then proceed thus]: "As by the record thereof more fully and at large appears; which judgment still remains in full force and effect, and not in the least reversed or made void. And the said J. S. in fact saith, that he the said J. S., and the said J. S. so indicted and acquitted as last aforesaid, are one and the same person, and not other and different persons; and that the (felony and larceny) of which he the said J. S. was so indicted and acquitted as aforesaid, and the (felony and larceny), of which he is now indicted, are one and the same (felony and larceny), and not other and different (felonies and larcenies). And this he the said J. S. is ready to verify; wherefore he prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the present indictment specified."

. . . "And as to the felony and larceny of which of the said J. S. now stands indicted, he the said J. S. saith that he is not guilty thereof; and of this he the said J. S. puts himself upon the country." Arch. Cr. Pl. 89.

Note.—If the indictment be for felony or treason, the defendant, besides this plea of *auterfois acquit*, should also plead over to the felony. In such a case, therefore, continue the plea thus: "And as to the felony and larceny of which the said J. S. now stands indicted, he the said J. S. saith, that he is not guilty thereof; and of this he the said J. S. puts himself upon the country." If, however, the defendant pleads *auterfois acquit* without pleading over to the felony, after his special plea is found against him, he may still plead over to the felony. Arch. Cr. Pl. 89.

2. *Plea of Auterfois Convict.*

"And the said J. S. in his own proper person cometh into court here, and having heard the said indictment

read, saith that our said lady the queen ought not further to prosecute the said indictment against him the said J. S. in respect of the offense in the said indictment mentioned, because he saith that heretofore, to-wit, on the ——— day of ———, in the year of our lord ———, at the parish of ———, in the county of ———, he the said J. S. was, upon the complaint of, etc. (reciting the information before the magistrates in the past tense), convicted before the said A. B. clerk, and the said C. D., Esq., two of her majesty's justices of the peace in and for the said county, for that he the said J. S. did, within three calendar months then last past, to-wit, on, etc., at, etc., with force and arms, unlawfully assault and beat the said J. N., in the peace of our said lady the queen then and there being, contrary to the statute in that case made and provided; and the said justices did then and there adjudge the said J. S. for this said offense to forfeit and pay the sum of 5*l* of lawful money of Great Britain; and, in default of immediate payment of the said sum of 5*l* by the said J. S. as aforesaid, they the said justices did adjudge the said J. S. to be imprisoned in the house of correction for the said county for the space of two calendar months, unless the said sum of 5*l* should be sooner paid; and the said justices did direct that the said sum of 5*l* should be paid to E. F., one of the overseers of the poor of the parish of ——— aforesaid, in which parish the said offense was committed, to be by him applied according to the directions of the statute in that case made and provided, as by the record of the said conviction more fully and at large appears; which said judgment and conviction still remains in full force and effect, and not in the least reversed or made void. And the said J. S. further saith that the assault and battery of the said J. N., of which he the said J. S., was so convicted as aforesaid, and the stabbing, cutting, and wounding of the said J. N. in the said indictment mentioned, are one and the same assault and battery, and not other and different. And he the said J. S. further saith that he the said J. S. hath duly paid the whole amount of the said sum of 5*l* so adjudged by the said justices to be paid under the said conviction as aforesaid to the said E. F., etc.,

being such overseer of the said parish of ——— as aforesaid. And this he the said J. S. is ready to verify; wherefore he prays judgment if our said lady the queen ought further to prosecute the said indictment against him the said J. S. in respect of the said offense in the said indictment mentioned, and that he the said J. S. may be dismissed and discharged from the same. And as to the felony aforesaid in the said indictment mentioned, the said J. S. saith that he is not guilty thereof, and therefore he puts himself upon the country," etc. Arch. Cr. Pl. 91.

3. *Plea of Former Jeopardy.*

And the said John Grant comes and says that no further proceedings in the premises ought to be had or taken against him on the said indictment, because he says that on the first day of September, instant, in the court of sessions in said county, the said defendant was put upon his trial upon said indictment, and a jury between the people and the said defendant, upon the said indictment, was in due form of law drawn, impaneled, charged and sworn to well and truly try the said issue. And the said jury, without the consent of the said defendant, have been discharged and separated without having rendered any verdict therein, and without disagreeing or other special cause, but by mere irregularity, and the said defendant says that he has once been in jeopardy upon the said indictment, and cannot by the law of the land be again tried thereon. Grant v. People, 4 Park. Cr. (N. Y.) 527, 529.

Note.—This was the identical indictment of the previous trial.

4. *Plea, Pardon.*

And the said A. B. in his own proper person cometh into court here, and having heard said indictment read, saith that our lord the king ought not further to prosecute the said indictment against him the said A. B. in respect to the offense in the said indictment mentioned, because he saith that heretofore, to-wit, on the ——— day of ———, in the year of our lord ———, the king's most excellent majesty, by his most gracious letters patent of pardon under his great seal of England, bearing date at Westminster the said ——— day of ——— in the year of our lord ———, and here into this most high and honorable court, produced under the said great

seal; of his special grace and certain knowledge, hath pardoned, remised and released to him, the said A. B., the offenses in said indictment mentioned, which letters of patent of pardon follow in these words (set out pardon). And the said A. B. further saith that the offense in said letters patent of pardon mentioned and the offense in the said indictment mentioned are one and the same offense, and not other and different.

By reason of which said letters patent, the said A. B. prays that by the court here he may be dismissed and discharged from the said premises in the said indictment specified. (Compiled by the writer from common-law precedents. Arch. Cr. Pl. 146, 148; Rex v. Danby, 11 How. St. Tr. 599, 764.)

Note.—A pardon may be pleaded in bar. 4 Bl. Com. 337, 402. A pardon may be pleaded in arrest of judgment. 4 Bl. Com. 337, 376, 402. And after sentence, in bar of execution. 4 Bl. Com. 337, 402. "If a man is indicted and has a pardon in his pocket, and afterwards puts himself upon his trial by pleading the general issue, he has waived the benefit of such pardon." Bl. Com. 401, 402. "But if a man avails himself thereof as soon as by the course of law he may, a pardon may be pleaded." 4 Bl. Com. 402. "A court would undoubtedly at this day permit a pardon to be used after the general issue." Marshall, C. J. United States v. Wilson, 7 Pet. (U. S.) 150, 162, 8 L. ed. 640.

B. *Pleas To Matter of Indictment.*

1. *General Issue.*

The general issue is pleaded by the prisoner viva voce at the bar in these words, "not guilty." When the record is made up, the general issue appears upon it thus: "And he the said J. S. forthwith being demanded concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof, saith that he is not guilty thereof." And the similiter is then added thus: "And J. N. (the clerk of the peace, or clerk of arraigns), who prosecutes for our said lady the queen in this behalf, doth the like." Arch. Cr. Pl. 93, 94.

2. *Special Plea.*

And the said J. S. in his own proper person cometh into court here, and having heard the said indictment (or in-

formation) read, saith that our said lady the queen ought not further to prosecute the said indictment against him the said J. S.; because he saith that (etc., so proceeding to state the matter of the plea; and concluding thus): And this he the said J. S. is ready to verify; wherefore he prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the said indictment above specified. Arch. Cr. Pl. 86.

3. *Plea of Nolo Contendere.*

“And now the said George Lane is set to the bar, and has this indictment read to him” (and by leave of this court) “he says he will not contend with the commonwealth, with which the attorney for the commonwealth is content, it is therefore considered,” etc. *Com. v. Horton*, 9 Pick. (Mass.) 206.

Note.—This plea is only by leave of the court.

There has been a revival of this plea in certain jurisdictions to avoid the effect of previous conviction in liquor cases.

Entry of Plea of Nolo Contendere.

That the defendant “non vult contendere cum domina regina et posuit se in gratiam curiae.” 1 Chit. Cr. L. 431; 2 STANDARD PROC. 906, n. 29.

Note.—An implied confession is where, in case not capital, a defendant does not directly own himself to be guilty, but tacitly admits it by throwing himself on the king’s mercy, and desiring to submit to a small fine, which the court may either accept or decline, as they think proper. 1 Chit. Cr. L. 431.

VI. Replications.

A. *Replication, General Form.*

And hereupon J. N., etc., who prosecutes for our said lady the queen in this behalf, says that, by reason of anything in the said plea of the said J. S. above pleaded in bar alleged, our said lady the queen ought not to be precluded from prosecuting the said indictment against the said J. S.; because he says that (etc., so proceeding to state the matter of the replication; and concluding thus): And this he the said J. N. prays may be inquired of by the country. Or, if it conclude with a verification, then thus: And this he the said J. N. is ready to verify; wherefore he prays judgment, and that

the said J. S. may be convicted of the premises in the said indictment above specified. Where the plea is pleaded to an information, the replication is thus: And the said attorney-general of our said lady the queen, who prosecutes as aforesaid, says that, by reason of, etc. And this the said attorney-general of our said lady the queen prays, etc., as above.

If the replication conclude to the country, the similiter is then added, in making up the record: And the said J. S. doth the like. But if the replication conclude with a verification, the defendant must then rejoin. Arch. Cr. Pl. 86.

B. *Replication to Plea to Jurisdiction.*

And hereupon J. N. (the clerk of the peace, or clerk of assigns), who prosecutes for our said lady the queen in this behalf, says that notwithstanding anything by the said J. S. above in pleading alleged, this court ought not to be precluded from taking cognizance of the indictment aforesaid; because he says that (etc., stating the matter of the replication). Arch. Cr. Pl. 81.

C. *Replication to Plea in Abatement.*

And hereupon J. N. (the clerk of the peace, or clerk of the arraigns), who prosecutes for our said lady the queen in this behalf, saith that the said indictment, by reason of anything by the said James Long in his said plea above alleged, ought not to be quashed; because he saith that the said James Long, long before and at the time of the preferring of the said indictment, was, and still is, known as well by the name of George Long as by the name of John Long, to-wit, at the parish aforesaid, in the county aforesaid; and that he the said J. N. prays may be inquired of by the country, etc. Arch. Cr. Pl. 82.

Note.—Instead of replying, the prosecutor may, if the grand jury be still sitting, after the indictment, by substituting the name by which the defendant has pleaded for the name in the indictment, and have it preferred again and found, and the defendant again arraigned upon it; in which case he will be estopped by his plea in abatement from again pleading a misnomer. Arch. Cr. Pl. 82.

D. *Replication to Plea of Auterfois Acquit.*

And hereupon A. B., etc., who prose-

cutes for our said lady the queen in this behalf, says that, by reason of anything in the said plea of the said J. S. above pleaded in bar alleged, our said lady the queen ought not be precluded from prosecuting the said indictment against the said J. S.; because he says that there is not any record of the said supposed acquittal, in manner and form as the said J. S. hath above in his said plea alleged; and this he the said A. B. prays may be inquired of by the country. And the said J. S. doth the like. Arch. Cr. Pl. 90.

E. Replication to Plea of Auterfois Convict.

And hereupon A. B. (the clerk of the peace, or clerk of arraigns), who prosecutes for our said lady the queen in this behalf, says that, by reason of anything in the said plea of the said J. S. above pleaded in bar alleged, our said lady the queen ought not to be precluded from prosecuting the said indictment against the said J. S.; because he says that there is not any record of the said supposed conviction, in manner and form as the said J. S. hath above in his said plea alleged; and this he the said A. B. prays may be inquired of by the country, etc. Arch. Cr. Pl. 92.

F. Replication to Special Plea of Former Jeopardy.

The people of the state of New York, by Thomas V. Russell, district attorney, for the county of St. Lawrence, come and reply to the special plea in bar of the said defendant, and say that said jury was not discharged by the court, in case of the said John; that immediately after the impanneling of the jury in said plea mentioned, and before any further proceedings were had, and before any evidence was given to the said jury, at the special instance and request of the said defendant made in open court, the said jury were allowed by the said court to separate and go without the court house. *Grant v. People*, 4 Park. Cr. (N. Y.) 527, 529.

VII. Rejoinder.

A. Rejoinder, General Form.

And the said J. S., as to the said replication of the said J. N. to the said plea by him the said J. S., saith, that our lady the queen, by reason of anything by the said J. N. in that replication alleged, ought not further to prosecute the said indictment against him the said J. S.; because he saith that

(etc., so proceeding to state the matter of the rejoinder, and concluding thus): And of this he the said S. puts himself upon the country. Or, if it be necessary to conclude with a verification, the conclusion may be in the same form as in a plea. Arch. Cr. Pl. 87.

ARREST IN CIVIL CASES.

I. Capias Ad Respondendum, 94

- A. *General Form*, 94
- B. *Promise of Marriage*, 95
- C. *Penalty and Forfeiture*, 95
- D. *Money Collected by Public Officer*, 95
- E. *Debt on Recognizance*, 95
- F. *Trespass and Assault*, 95
- G. *Assault and Battery*, 95
- H. *Criminal Conversation*, 95
- I. *Debauching Daughter*, 95
- J. *Trespass to Lands*, 95
- K. *Trespass to Personal Property*, 95
- L. *Trespass De Bonis Asportatis*, 95
- M. *Trover*, 96
- N. *Libel*, 96
- O. *Slander*, 96
- P. *Malicious Prosecution*, 96

II. Particular Forms of Capias, 96

- A. *Alias*, 96
- B. *Simul Cum*, 96
- C. *At Suit of Infant*, 96
- D. *At Suit of Executor*, 96
- E. *At Suit of Administrator*, 96
- F. *Against Executor*, 96
- G. *Against Administrator*, 97
- H. *At Suit of Sheriff*, 97
- I. *Against Sheriff in Trespass*, 97
- J. *Against Sheriff in Case*, 97

III. Affidavits for Arrest, 97

- A. *By Plaintiff*, 97
 - 1. *Stating Cause of Action*, 97
 - 2. *Referring to Complaint*, 97
- B. *By One Plaintiff*, 98
- C. *By Third Person*, 98
- D. *By Executor or Administrator*, 98
- E. *Allegation of Non-Residence*, 98
- F. *Money Received in Fiduciary Capacity*, 98
- G. *Money Received in Trust by Partners*, 98
- H. *Money Received by Collecting Agent*, 99
- I. *In Action To Recover Personal Property*, 99
- J. *Injury to Property*, 100
- K. *Assault*, 100
- L. *Several Causes of Action*, 100
- M. *Debt Fraudulently Contracted*, 100
- N. *Intended Departure*, 100

- O. *Disposal With Intent To Defraud*, 100
- IV. Undertaking**, 101
- A. *Undertaking on Arrest*, 101
- B. *Affidavit of Sufficiency*, 101
- C. *Separate Affidavits*, 102
- D. *Acknowledgment*, 102
- E. *Proof by Witnesses*, 102
- F. *Judge's Approval*, 102
- V. Order of Arrest**, 102
- VI. Returns**, 102
1. *To Capias*, 102
2. *Out on Bail*, 102
3. *In Custody*, 102
3. *Non Est Inventus*, 102
4. *Cepi Corpus One, Non Est Inventus Other*, 102
5. *Supersedeas*, 102
- B. *To Order of Arrest*, 103
1. *Defendant Arrested*, 103
2. *Not Found*, 103
3. *Imprisoned for Want of Bail*, 103
4. *One Arrested, Other Not Found*, 103
5. *Deposit in Lieu of Bail*, 103
6. *Arrest and Rescue*, 103
- C. *Certificates*, 103
1. *Clerk's Certificate of Deposit*, 103
2. *Sheriff's Certificate, Bail Instead of Deposit*, 103
- VII. Discharging**, 103
- A. *Notice of Motion To Vacate*, 103
- B. *Notice of Motion To Discharge*, 103
- C. *Order Vacating Arrest*, 104
- D. *Order Vacating Arrest on Condition*, 104
- E. *Order to Show Cause Against Supersedeas*, 104
- VIII. Bail**, 104
- A. *Bail Bond*, 104
- B. *Undertaking*, 104
- C. *Notice of Motion To Reduce Bail*, 105
- D. *Order To Reduce Bail*, 105
- E. *Notice of Exception*, 105
- F. *Justification*, 105
- G. *Notice of Other or Additional Bail*, 105
- H. *Affidavit To Obtain Further Time, Absence*, 105
- I. *Affidavit To Obtain Further Time, Illness*, 105
- J. *Examination of Bail*, 106
- K. *Allowance of Bail*, 106
- L. *Allowance as to One Bail, Time for Other*, 106
- M. *Direction That Money Be Refunded on Allowance*, 106

- N. *Allowance of Added Bail*, 106
- IX. Sheriff's Assignment**, 106
- A. *Of Undertaking*, 106
- B. *Of Bail Bond*, 106
- X. Surrender**, 106
- A. *Authority To Arrest Principal*, 106
- B. *Certificate of Surrender*, 107
- C. *Notice of Motion for Enlargement of Time To Surrender*, 107
- D. *Affidavit in Support of Motion*, 107
- XI. Exoneration**, 107
- A. *Affidavit for Exoneration*, 107
- B. *Notice of Motion To Exonerate*, 107
- C. *Order Exonerating Bail*, 107

CROSS-REFERENCES:

ADMIRALTY:

Warrant of Arrest In Personam.

DECLARATION AND COMPLAINT:

Complaint on Undertaking of Bail.

NE EXEAT:

Writ of Ne Exeat;

Bail-Bond on Arrest on Ne Exeat.

STAY OF PROCEEDINGS:

Supersedeas To Discharge Defendant From Custody on Capias Ad Respondendum.

I. Capias ad Respondendum.

A. *Capias ad Respondendum, General Form.*

The people of the state of New York, to the sheriff of the county of Westchester (or of the city and county of New York, or as the case may be), greeting:

We command you that you take C. D., if he may be found in your county, and him safely keep, so that you may have his body before our justices of our supreme court of judicature, at the capitol in the city of Albany (or at the city hall in the city of New York, or at the academy in the city of Utica, as the case may be), on the third Monday of October next (or on the first Monday of January, of May, or of July, or whatever the return may be), to answer unto A. B., plaintiff, of a plea of trespass.* (a) And also to a bill of the said plaintiff, against the said defendant for (five hundred) dollars, on promises, according to the custom of our said court, before our said justices, then and there to be exhibited. And have you then and there this writ.

Witness (Greene C. Bronson), esquire, our chief justice, at the academy in the city of Utica (or at the capitol in the city of Albany, or at the city

hall in the city of New York, according to the place of the teste), the fifteenth day of July (or whatever the day of the teste may be), in the year of our Lord one thousand eight hundred and (forty-six).

_____, _____, clerks.

E. F., attorney.

(Endorsed.)

Supreme court. A. B. v. C. D.

Capias ad respondendum. Returnable (October term, 1846). Damages, (\$500).

E. F., plaintiff's attorney.

(Add the attorney's residence.) Burr App. 54, §97.

B. *Capias ad Respondendum, Promise of Marriage.*

(As in the last form to the *.) And also to a bill of the said plaintiff against the said defendant, for (five thousand) dollars, upon a promise of marriage made by the said defendant to the said plaintiff; according to the custom of our said court, etc. Burr. App. 55, §98; Laws of 1831, p. 396, §2.

C. *Capias ad Respondendum, Penalty and Forfeiture.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant for (three hundred) dollars, on promises, for a penalty (or forfeiture) imposed by the act (here refer to the statute), according, etc. Burr. App. 55, §98a.

D. *Capias ad Respondendum, Money Collected by Public Officer.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant for (five hundred) dollars, on promises, being moneys collected by the said defendant as a public officer (to-wit, as an attorney of our said court) for the said plaintiff, according to the custom, etc. Burr. App. 55, §98b.

E. *Capias ad Respondendum, Debt on Recognizance.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendants, in a plea of debt on recognizance, according, etc. Burr. App. 56, §99.

F. *Capias ad Respondendum, Trespass and Assault.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant, for a certain trespass and assault committed by the said defendant on the said plaintiff, to his

damage of one thousand dollars, according, etc. Burr. App. 56, §102.

G. *Capias ad Respondendum, Assault and Battery.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant, for beating, ill-treating (wounding and maiming) the said plaintiff, to his damage of one thousand dollars, according, etc. (If the action be for false imprisonment, add: and for falsely and wrongfully imprisoning the said plaintiff, etc. Burr. App. 57, §103.

H. *Capias ad Respondendum, Criminal Conversation.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant, for assaulting and having criminal conversation with A., the wife of the said plaintiff, to his damage of one thousand dollars, according, etc. Burr. App. 57, §104.

I. *Capias ad Respondendum, Debauching Daughter.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant, for breaking and entering the close of the said plaintiff, and assaulting and debauching the daughter and servant of the said plaintiff, to his damage of one thousand dollars, according, etc. Burr. App. 57, §105.

J. *Capias ad Respondendum, Trespass to Lands.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant, for breaking and entering the close of the said plaintiff, and treading down and destroying and consuming the grass, corn, timber, trees and wood (add whatever other property may have been destroyed) of the said plaintiff, thereon growing, to the value of five hundred dollars, according, etc. Burr. App. 57, §106.

K. *Capias ad Respondendum, Trespass to Personal Property.*

(As in I, A, to the *.) And also to a bill, etc., for wounding and maiming (or killing) a horse (or cow) of the said plaintiff, to his damage, etc. or for breaking, spoiling and destroying a certain carriage of the said plaintiff, to his damage, etc., according, etc. Burr. App. 57, §107.

L. *Capias ad Respondendum, Trespass de Bonis Asportatis.*

(As in I, A, to the *.) And also

to a bill of the said plaintiff against the said defendant, for taking and carrying away the goods and chattels of the said plaintiff, to his damage of five hundred dollars, according, etc. Burr. App. 58, §108.

M. *Capias ad Respondendum, Trover.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant, for converting and disposing of the goods and chattels of the said plaintiff, to the value of five hundred dollars, according, etc. Burr. App. 58, §109.

N. *Capias ad Respondendum, Libel.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant, for writing, printing and publishing a certain libel against the said plaintiff, to his damage of five hundred dollars, according, etc. Burr. App. 58, §110.

O. *Capias ad Respondendum, Slander.*

(As in I, A, to the *.) And also to a bill of the said plaintiff against the said defendant, for speaking, uttering and publishing certain scandalous, slanderous, reproachful and actionable words against the said plaintiff, to his damage of five hundred dollars, according, etc. Burr. App. 58, §111.

P. *Capias ad Respondendum, Malicious Prosecution.*

(As in I, A, to the *.) And also to a bill, etc., for falsely, wrongfully and maliciously prosecuting the plaintiff in a suit at law (or procuring the presentment or prosecution of an indictment against him for felony), to his damage, etc., according, etc. Burr. App. 59, §112.

II. Particular Forms of Capias.

A. *Capias ad Respondendum, Alias.*

The people of the state of New York, to the sheriff of ——— (see I, A.), greeting:

We command you, as before we have commanded you, that you take C. D., if he may be found in your county, and him safely keep, etc. (the remainder of the writ is the same as in the first capias, supra I, A, mutatis mutandis). Burr. App. 59, §113.

B. *Capias ad Respondendum Simul Cum.*

(See I, A, inserting after the words, "to answer," the following words: "together with X. Y.," the defendant already taken or served.) Burr. App. 61, §120.

C. *Capias ad Respondendum at Suit of Infant.*

The people of the state of New York, to the sheriff of the (city and) county of ———, greeting:

We command you that you take C. D., if he may be found in your county, and him safely keep, so that you may have his body before our justices of our supreme court of judicature, at the (capitol) in the city of (Albany), on the (third Monday of October next), to answer unto A. B., an infant, who sues by J. N., who is admitted by the said court to prosecute for him as his next friend, plaintiff of a plea of trespass. And also to a bill, etc. (ac etiam clause, if necessary. See I, A). Burr. App. 61, §120a.

D. *Capias ad Respondendum at Suit of Executor.*

The people of the state of New York, to the sheriff of the (city and) county of ———, greeting:

We command you that you take C. D., if he may be found in your county, and him safely keep, so that you may have his body before our justices of our supreme court of judicature, at the (academy) in the city of (Utica), on the (first Monday of July next), to answer unto A. B., executor (or executrix) of the last will and testament of I. S., deceased, plaintiff, of a plea of trespass. And also to a bill of the said plaintiff as executor (or executrix) as aforesaid, against the said defendant, for (taking and carrying away certain goods and chattels of the said I. S., during his lifetime, to his damage of five hundred dollars), according to the custom, etc. (as in I, A, to the end). Burr. App. 62, §121.

E. *Capias at Suit of Administrator.*

(As in II, D, only describing the plaintiff as "administrator [or administratrix] of all and singular the goods, chattels and credits, which were of I. S., deceased, at the time of his death, who died intestate.") Burr. App. 62, §123.

F. *Capias Against an Executor.*

The people of the state of New York, to the sheriff of the (city and) county of ———, greeting:

We command you that you take C. D., executor (or executrix) of the last will and testament of I. S., deceased, if he (or she) may be found in your county, and him (or her) safely keep, etc. (as in I, A. If necessary insert

the *ac etiam* clause, thus: "and also to a bill of the said plaintiff against the said defendant, as executor as aforesaid, for" whatever the cause of action may be). Burr. App. 62, §124.

G. Capias Against an Administrator.

(As in II, F, describing the defendant as "administrator [or administratrix], of all and singular the goods, chattels and credits of I. S., deceased"). Burr. App. 62, §125.

H. Capias at Suit of Sheriff.

The people of the state of New York, to the coroner (or coroners) of the (city and) county of _____, greeting:

We command you that you take C. D., if he may be found in your county, and him safely keep, so that you may have his body before, etc. (the return), to answer unto J. K., sheriff of the (city and) county of _____, plaintiff, of a plea of trespass). And also to a bill of the said plaintiff against the said defendant for taking and carrying away the goods and chattels of the said plaintiff, to his damage of five hundred dollars; according, etc. (as in I, A). Burr. App. 64, §126.

I. Capias Against Sheriff in Trespass.

The people of the state of New York, to the coroner (or coroners) of the (city and) county of _____ (or to W. J., sheriff of the (city and) county of _____), greeting:

We command you that you take J. K., esquire, sheriff (or late sheriff) of the (city and) county of _____, if he may be found in your county, and him safely keep, so that you may have his body before, etc. (the return) to answer unto A. B., plaintiff, of a trespass. And also to a bill of the said plaintiff against the said defendant, for taking and carrying away the goods and chattels of the said plaintiff, to his damage of (five hundred) dollars (or for assaulting, beating and falsely and wrongfully imprisoning the said plaintiff, to his damage of [one thousand] dollars), according, etc. (as in I, A, to the end). Burr. App. 64, §127a.

J. Capias Against Sheriff in Case.

(As in preceding form.) And also to a bill of the said plaintiff against the said defendant, for neglecting and refusing to (execute and) return (or for falsely returning) a certain writ of fieri facias, in favor of the said plaintiff, to him directed and delivered,

to the damage of the said plaintiff of (one thousand) dollars, according, etc. (as in I, A, to the end). Burr. App. 65, §127b.

III. Affidavits for Arrest.

A. By Plaintiff.

1. Affidavit To Obtain Arrest by Plaintiff, Stating Cause of Action.

A. B., the plaintiff above named, being duly sworn, says:

I. That Y. Z., the above named defendant, is justly and truly indebted to the deponent in _____ dollars, for (here state cause of action; see forms of statements in attachment, II, A-L).

(Or, where the cause of action is for a tort: I. That on or about the _____ day of _____, 18—, Y. Z., the above named defendant, assaulted the deponent (here state tort; see III, J, K).)

II. (Where the grounds of arrest are extrinsic to the cause of action, state here facts which bring the case within one of the classes in which the statute allows the arrest. See III, E, F, G, H, and III, M, N, O.)

III. That the plaintiff has commenced (or is about to commence, by the summons hereto annexed) an action in this court against said Y. Z., upon the cause of action above stated). 2 Abb. Forms 255.

Note.—An affidavit by an agent should also state that the agent is personally cognizant of the facts stated in the affidavit.

In all affidavits to secure an order of arrest, it is a general rule that it must appear that an action has been or is about to be begun, and frequently it is necessary to allege that the summons and complaint are annexed to or accompanies the affidavit. Therefore special reference to the statute is suggested in all cases.

2. Affidavit To Obtain Arrest, Referring To Complaint Annexed.

A. B., the plaintiff above named, being duly sworn, says:

I. That a sufficient cause of action exists in his favor against the defendant Y. Z., the grounds of which appear by the sworn complaint in this action, hereto annexed, all the statements contained in which are true, to the knowledge of this deponent (if deponent has not personal knowledge of all the facts,

add: except as to the allegation that, etc., as to which, here state belief and sources of information, and indicate reason why informant's affidavit is not given).

II. (Where the grounds of arrest are extrinsic to the cause of action, state here facts which bring the case within one of the classes on which the statute allows an arrest. See III, E, F, G, H, and III, M, N, O.)

III. (As in preceding form.) 2 Abb. Forms 256.

B. Affidavit To Obtain Arrest by One of Several Plaintiffs.

A. B., one of the above named plaintiffs, being duly sworn, says:

I. That Y. Z., the above named defendant, is justly and truly indebted to the deponent and the above named (co-plaintiff) in _____ dollars, for (continue as in III, A, 1.) 2 Abb. Forms 256.

C. Affidavit To Obtain Arrest by a Third Person.

C. D., being duly sworn, says:

I. That (he is the agent of the above named plaintiff A. B., at _____, for the collection of his rents), and that the above named defendant Y. Z. is justly and truly indebted to said plaintiff, in _____ dollars, for (continue as in III, A, 1.) 2 Abb. Forms 256.

D. Affidavit by Executor or Administrator.

A. B., executor of the will of (or administrator of the goods, chattels and credits which were of) C. D., deceased, being duly sworn, says:

I. That Y. Z., the above named defendant, is justly and truly indebted to the deponent, as executor (or administrator) as aforesaid, in _____ dollars, for (continue as in III, A, 1.) 2 Abb. Forms 257.

E. Affidavit To Obtain Arrest, Allegation of Non-Residence.

That Y. Z., the defendant above named, is not a resident of this state, but resides at (designate residence, if known). 2 Abb. Forms 276.

F. Affidavit To Obtain Arrest, Money Received in a Fiduciary Capacity.

A. B., being duly sworn, says:

I. That on the _____ day of _____, 18—, said Y. Z., of said county, being a note-broker, doing business at _____, offered to deponent to find a purchaser for a promissory

note for _____ dollars, made by one M. N., of _____, payable to the order of deponent.

II. That at the request of said Y. Z., deponent delivered to him the said note in trust, to sell the same for cash, as a broker aforesaid, and to return the proceeds thereof immediately to this deponent, and for no other purpose whatever.

III. That deponent did not sell the said note to said Y. Z., nor did he deliver it to him in any other manner, or for any other purpose, than as a broker aforesaid.

IV. That the said Y. Z. informed deponent on the same day that he had sold the said note for _____ dollars cash, but refused to state to whom he had sold it.

V. That the said Y. Z. has neglected and refused to pay any part of said sum to this deponent, although requested to pay the same, to the damage of deponent _____ dollars.

VI. (Allege suit brought as in paragraph III of Form III, A, 1.) 2 Abb. Forms 257.

G. Affidavit To Obtain Arrest, Money Received in Trust by Partners.

A. B., being duly sworn, says:

I. That he is the plaintiff in this action; and that the above named defendants were, during the times hereafter mentioned, co-partners, doing business at _____, under the name of Y. & Z.

II. That heretofore, and about the _____ day of _____, 18—, the deponent placed in the hands of the defendants, as agents of the plaintiff, and they received from him as such agents, the sum of _____, belonging to the plaintiff, to be forwarded by them, and paid to the plaintiff in England; which they the said defendants promised and agreed so to forward, and pay over to the plaintiff.

III. That the said defendants have wholly neglected and refused to pay to the plaintiff said sum so intrusted to the defendants, or to forward the same to the plaintiff, or any part thereof, although the same has been demanded by the plaintiff from the defendants; and that the said defendants have applied and converted the same to their own use.

IV. (Allege action brought as in paragraph III of Form III, A, 1.) 2 Abb. Forms 258.

H. *Affidavit To Obtain Arrest, Money Received by Collecting Agent.*

(Commencement as in III, A, 1, 2, B, C, D.)

That a sufficient cause of action for the recovery of money exists in his favor against the defendant Y. Z., above named, arising out of the following facts, namely:

I. That this plaintiff is engaged in business in the city of New York; that in the spring of 18—, there being a large number of persons in various parts of this state indebted to this plaintiff in divers sums of money for goods theretofore sold and delivered to them by this plaintiff, this plaintiff employed the defendant to collect the same in the name and for the benefit of this plaintiff, and upon the agreement that he should pay the same over to this plaintiff upon collection.

II. That the defendant entered upon such employment, and proceeded to the collection of said sums of money, and has in fact collected a considerable portion thereof, as deponent is informed by several of said creditors, and by receipts therefor in the handwriting of said defendant, and in the possession of such creditors.

III. That, in particular, he has collected ——— dollars from M. N., who was indebted to this plaintiff in that amount, and has given to him a receipt therefor in the name of this plaintiff, as more fully appears by the annexed affidavit of the said M. N. And also, in like manner, the following sums of money from the following persons, who were, at the time of such collection, creditors of this plaintiff in such amounts, viz., from O. P. ——— dollars (etc., specifying amounts and individuals as far as possible). That this plaintiff believes that he has collected other moneys from other creditors of this plaintiff; but exactly what amounts, and from whom, he is not able definitely to state.

IV. That this plaintiff, on the ——— day of ———, 18—, demanded of the defendant that he account to him for the money so collected, and pay the same over to him; but hitherto the defendant has wholly neglected so to do.

(Allege action brought as in paragraph III of III, A, 1.) 2 Abb. Forms 258.

I. *Affidavit To Obtain Arrest in Action To Recover Possession of Personal Property.*

A. B., being duly sworn, says:

I. That he is plaintiff above named; that a sufficient cause of action exists in his favor against the defendant above named, arising out of the following facts: (Here state facts constituting the cause of action, or annex complaint and proceed as follows: as more clearly appears by the complaint hereto annexed, all the allegations of which are true to the personal knowledge of deponent, except, etc.).

II. That the above entitled action has been commenced, and is now actually pending in this court for the recovery of said personal property (or the personal property mentioned in said complaint).

III. That on the ——— day of ———, the annexed summons was issued herein to the sheriff of the county of ———, for service, and the annexed affidavit, together with the requisition thereon indorsed, was on the same day delivered to him with the requisite undertaking, for the purpose of obtaining an immediate delivery of such property, pursuant to the provisions of the code of procedure; that since the commencement of said action, said property has been removed (or concealed, or disposed of) by said defendant, so that it cannot be found or taken by said sheriff, as more clearly appears by his return hereto annexed; and that, as deponent believes, it has been so removed with the intent that it should not be so found or taken by said sheriff, which belief is founded upon the following facts, namely: (State in detail the facts showing a removal of the property with an intent that it should not be found or taken, or with an intent to deprive the plaintiff of the benefit thereof.) 2 Abb. Forms 260.

Sheriff's Return, Property Concealed, Etc.

I hereby return, that the within mentioned property has been concealed (or removed, or disposed of), so that it cannot be found or taken by me.

(Date.) M. N.,

Sheriff of ——— county.
2 Abb. Forms 261.

J. Affidavit To Obtain Arrest for Injury, etc., to Property.

(Commencement as in III, A, 1, 2, B, C, D.)

I. That said Y. Z., on or about the _____ day of _____, 18—, wrongfully and wilfully (and by force) took from the possession of the plaintiff the following goods (designating them), of the value of _____ dollars; and that he has converted the same to his own use; and although the deponent, on the _____ day of _____, requested him to return them, he refused so to do, and still detains them, and the deponent is advised and believes that he is entitled to recover from the said defendant _____ dollars, his damages thereby sustained.

(Insert paragraph III from III, A, 1.)
2 Abb. Forms 261.

K. Affidavit To Obtain Arrest for an Assault.

(Commencement as in III, A, 1, 2, B, C, D.)

That on (or about) the _____ day of _____, 18—, Y. Z., the above named defendant, seized and laid hold of said plaintiff, and with much force and violence struck said plaintiff, and knocked him down, and kicked him (describe the assault fully), so that said plaintiff has from thence hitherto been in a serious state of illness; and that the damage said plaintiff has sustained thereby amounts to _____ dollars at the least; and said plaintiff verily believes that he is entitled to recover, and will recover in this action, that amount of damages. Said plaintiff has been informed, and verily believes, that the said Y. Z. is a person in good circumstances, and well able to make said plaintiff satisfaction for the said illtreatment. (It would be well to have the damage corroborated by the affidavit of a physician.)

(Insert paragraph III from III, A, 1.)
2 Abb. Forms 262.

L. Affidavit To Obtain Arrest Where There Are Several Causes of Action.

(If the plaintiff has two or more causes of action for which he intends arresting the defendant, they may be joined in the affidavit, thus): In the sum of _____ dollars for goods sold and delivered by said plaintiff to the said defendant; and for work done by said plaintiff for the said defendant, at his request; and for money by said

plaintiff lent to, and paid out, laid out and expended for the said defendant, and at his request; and for money received by him the said defendant, to and for the use of said plaintiff; and for money found to be due from the said defendant to the said plaintiff, on an account stated between them (or the affidavit may specify how much is due for goods, how much for work, and how much for money lent, etc.). 2 Abb. Forms 262.

M. Affidavit To Procure Arrest in an Action To Recover a Debt Fraudulently Contracted.

A. B., plaintiff above named, being duly sworn, says:

I. That a sufficient cause of action exists in his favor against the defendant above named, arising out of the following facts, namely: (Here state facts constituting the cause of action; see III, A, 1; or annex complaint and proceed as follows: as more clearly appears by the complaint hereto annexed, all the allegations of which are true, to the personal knowledge of deponent, except, etc.)

II. That the defendant was guilty of fraud in contracting the debt for which this action is brought.

III. That in the month of _____, 18—, he applied to this plaintiff to sell to him the goods above named (or mentioned in the complaint); that, well knowing himself to be wholly insolvent and unable to meet his debts, he falsely and fraudulently represented to this plaintiff that (here state representations).

IV. That this plaintiff sold said goods to said defendant upon the faith of said representations, and believing the same to be true, and relying thereon. 2 Abb. Forms 276.

N. Affidavit To Obtain Arrest, Allegation of Intended Departure.

That the above named Y. Z. is about to remove from this state (here state facts substantiating it, e. g.): that he has sold his house in _____, and has taken a passage on board the _____ for _____, with family and his household goods (as the deponent is informed by M. Z., the brother of defendant, and verily believes). 2 Abb. Forms 276.

O. Affidavit To Obtain Arrest, Disposal of Property With Intent To Defraud Creditors.

I. That said work and materials

were done and furnished in the month of ———, and upon the defendant's promise to pay for the same as soon as completed.

II. That at the time the same were completed, and theretofore, the defendant was carrying on business at No. ——— street, in ———, as a grocer; and on the ——— day of ———, after said debt became payable, the defendant promised the plaintiff that he would pay the same on the ——— day of ———, 18—, on which day the plaintiff called on him at his store for payment; but he put the plaintiff off, telling him to call again in three days, viz., on the ——— day of ———, and get his money.

III. That on said last mentioned day plaintiff called again as requested, and found one M. N. in possession of said store, who then stated to this deponent that on the preceding day the defendant had sold the store and all the goods therein to said M. N., for which M. N. had paid him ——— dollars; and said M. N. exhibited to deponent the bill of sale thereof, executed by the defendant.

IV. That defendant was not then present at said store, but kept away therefrom, and, as this deponent is informed by said M. N., has not been there since said sale.

V. That deponent has made diligent search for defendant at his recent abode at ———, and elsewhere, but is unable to find him, and believes that with intent to defraud his creditors he has disposed of his property, and has departed, or is about to depart, or conceals himself.

VI. That all the above allegations are true to deponent's own knowledge, except such as are expressed on information or belief, and those he verily believes to be true. 2 Abb. Forms 278, 280.

P. Writ of Arrest on Breach of Promise.

The State of Rhode Island and Providence Plantations, Providence, sc. to the sheriffs of the several counties or to their deputies, greeting:

We command you to arrest the body of Patrick Ryan, of the town of Lincoln, county of Providence, state of Rhode Island, if he may be found within your precinct, and in safe custody keep to answer the complaint of Mary Malone, of the town of Cumberland,

said county and state, at the next supreme court to be holden at Providence, within and for the county of Providence, on the first Monday of October next ensuing the date hereof, in an action of trespass on the case for breach of promise of marriage, as by declaration to be filed in court will be fully set forth; to the damage of the plaintiff five thousand dollars. Hereof fail not, and make true return of this writ with your doings thereon.

Witness Hon. Thomas Durfee, Chief Justice of our Supreme Court at Providence, this 11th day of May in the year 1884.

Charles Blake, clerk.

Malone v. Ryon, 14 R. I. 614.

Note.—For statement of causes of action, see "Attachment," II, A, L, in this volume.

IV. Undertaking.

A. Undertaking on Arrest.

Whereas the above named plaintiff has applied (or is about to apply) for an order of arrest in this action against the above named Y. Z., defendant, in one of the cases provided by law:

Now, therefore, we, A. B., of the village of ———, county of ——— (or of No. ——— street, in the city of ———, county of ———), merchant, and C. D., of the village of ———, county of ———, physician, and E. F., of the village of ———, county of ———, merchant, undertake, pursuant to the statute, that if the defendant recover judgment herein, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest in this action, not exceeding ——— hundred dollars.

(Signatures.)

Signed and delivered in the presence of (witness). 2 Abb. Forms 280.

B. Affidavit of Sufficiency.

A. B., C. D. and E. F., above named, being severally duly sworn, say, each for himself, that he is a resident of the state of New York, as mentioned in the above undertaking,* and a householder (or freeholder) therein,* and worth double the sum specified in the said undertaking over all his debts and liabilities, and exclusive of property exempt from execution. (Or, where necessary, omit words between the ** above, and add here: and said A. B. says that he is a householder

in said state, and said C. D. says that he is a freeholder in said state.) 2 Abb. Forms 281.

C. Affidavit of Sufficiency, Separate Affidavits.

A. B., one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and house (or free) holder within this state, and is worth the sum of (double the sum specified in undertaking) _____ hundred dollars, over and above all his debts and liabilities, and exclusive of property by law exempt from execution.

C. D., one of the subscribers (etc., continuing as above). 2 Abb. Forms 282.

D. Acknowledgment.

I certify that on this _____ day of _____, 18—, A. B., C. D. and E. F., above named, to me known to be the persons described in and who executed the above, personally appeared before me, and severally acknowledged that they executed the above undertaking as their own free act, for the uses and purposes therein mentioned. 2 Abb. Forms 282.

E. Acknowledgment, Proof by Witnesses.

On this _____ day of _____, 18—, before me came G. H., of said city, the subscribing witness to the within undertaking, with whom I am personally acquainted, who, being by me duly sworn, did depose and say, that he resides at No. _____ street, in said city; that he knew A. B., C. D. and E. F., the persons described in and who executed the above undertaking; that they severally acknowledged they executed the same; and that he the said G. H. thereupon subscribed his name as a witness thereto. 2 Abb. Forms 282.

F. Indorsement of Judge's Approval.

I approve the within undertaking, and the sufficiency of the sureties therein named. 2 Abb. Forms 282.

V. Order of Arrest (Warrant or Writ).

The people of the state of New York, to M. N., sheriff of _____ county:

You are hereby required forthwith to arrest Y. Z., the defendant in the above entitled action, if he can be found within your county, and hold him to bail in the sum of _____ dollars. (Where he is to be arrested under the code, add: by a written undertaking to the effect provided by the code of

procedure), and to return this order to E. F., the plaintiff's attorney, at his office, No. _____ street, in _____, on the _____ day of _____, 18—.

(Judge's signature.)

(Date.)

(Signature of plaintiff's attorney.)
2 Abb. Forms 283.

VI. Returns.

A. To Capias.

1. Return to Capias, Out on Bail.

I have taken the within named defendant, whose body I have ready, as within I am commanded. Burr. App. 436, §838.

2. Return to Capias, in Custody.

I have taken the within named C. D., who remains imprisoned in the common jail of (Kings) county, in my custody, for want of bail.

(Short form.)

Defendant imprisoned for want of bail (or taken and in custody). Burr App. 436, §839.

3. Return to Capias, Non Est Inventus.

The within named defendant is not found in my bailiwick (or county). Burr. App. 437, §841.

4. Return to Capias, Capi Corpus as to One, Non Est Inventus as to Other.

I have taken the within named C. D., whose body I have ready, as within I am commanded; but the within named I. J. is not found in my bailiwick. Burr. App. 437, §842.

5. Return to Capias, Discharge on Supersedeas.

By virtue of the within writ to me directed, I took the within named defendant, and safely kept him in my custody in the prison (or jail) of the (city and county of _____) until afterwards, to-wit, on the _____ day of _____, by virtue of a certain other writ of the people of the state of New York, to me directed and delivered, and to this writ annexed, I caused the said defendant to be delivered out of the said prison. Wherefore I cannot have the body of the said defendant before the justices of the supreme court of judicature of the people of the state of New York, at the day and place within contained, as within I am commanded.

S. T., sheriff.

Burr. App. 438, §844.

B. To Order of Arrest.**1. Return to Order of Arrest, Defendant Arrested.**

I have taken and arrested the within named Y. Z., as required by the within order. 2 Abb. Forms 284.

2. Return to Order of Arrest, Not Found.

The within named Y. Z. is not found in my county. 2 Abb. Forms 284.

3. Return, Arrest and Imprisonment for Want of Bail.

I have taken and arrested the within named Y. Z., as required by the within order, who remains imprisoned in the common jail of _____ county, in my custody, for want of bail. 2 Abb. Forms 284.

4. Return, One Arrested, the Other Not Found.

I have taken and arrested the within named Y. Z., as required by the within order, but the within named W. X. is not found in my county. 2 Abb. Forms 285.

5. Return, That Defendant Has Made Deposit in Lieu of Bail.

I have taken and arrested the within named Y. Z., as required by the within order, and he has deposited with me _____ dollars, in lieu and instead of bail in the above entitled action. 2 Abb. Forms 285.

6. Return, Arrest and Rescue.

I have taken and arrested the within named Y. Z., as required by the within order, and safely kept him in my custody until divers persons, to me unknown, on the _____ day of _____, 18—, at _____, with force and arms assaulted me, and out of my custody rescued said Y. Z., who then and there rescued himself and escaped out of my custody, and afterwards the said Y. Z. is not found in said county. 2 Abb. Forms 285.

C. Certificates.**1. Clerk's Certificate That Deposit Has Been Paid Into Court.**

I, M. N., clerk of the county of _____, hereby certify that the sheriff of said county has deposited in this court the sum of _____ dollars, as having been paid him by Y. Z., the defendant, in lieu of an undertaking of bail in this action. 2 Abb. Forms 285.

2. Sheriff's Certificate That Bail Has Been Given Instead of Deposit.

I, M. N., sheriff of the county of _____, hereby certify that the defendant Y. Z. has deposited with me an undertaking, of which the within is a copy, in lieu and instead of the money heretofore deposited with me. 2 Abb. Forms 286.

VII. Discharging.**A. Notice of Motion To Vacate Order of Arrest.**

Please take notice that on an affidavit of which the within is a copy (or of which a copy is annexed), and on all the papers filed and served in this action, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard (or will move before Mr. Justice _____, at his office in the city of _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon), to vacate the order of arrest in this action (if for irregularity, state it, e. g., thus: upon the ground, among others, of irregularity, in that said order was never served on defendant, although judgment in this action was docketed _____ days after the said order was granted); and for such other or further order as may be just, and for the costs of this motion. 2 Abb. Forms 286.

B. Notice of Motion To Discharge Defendant From Arrest.

Please take notice that on an affidavit of which the within is a copy (or of which a copy is annexed), and on all the papers filed and served in this action, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard (or will move before Mr. Justice _____, at his office in the city of _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon), that the defendant Y. Z. be discharged from arrest in this action. 2 Abb. Forms 287.

Note.—Under some statutes an affidavit on motion to vacate an order of arrest is unnecessary, when the motion is based on insufficiency of plaintiff's

papers, the application thereon being predicated on "all the papers filed and served," special reference being made to language of the statute authorizing the application.

See notice of motion to vacate; *capias ad respondendum*. Phillips v. Kerr, 26 Ill. 214.

C. Order Vacating Arrest.

(If made at a special term, say: at a special term, etc.)

On reading and filing notice of motion (and affidavits of A. B. and C. D.), and on the pleadings and proceedings in this action, on motion of M. N., counsel for defendant, after hearing O. P., counsel for plaintiff (or and on proof of due service of notice of motion, and no one appearing in opposition):*

Ordered, that the order of arrest granted by ———, on the ——— day of ———, 18—, against the defendant (naming him, if there are several defendants, and an order has not issued against all) be vacated (and, if bail has been given, add: and that the bail heretofore given for the defendant be exonerated from liability). 2 Abb. Forms 287.

D. Order Vacating Arrest on Condition That Defendant Shall Not Sue.

(As in last form to the *, concluding):

Ordered, that on the defendant's stipulating, within ——— days, to bring no action for false imprisonment, said motion be granted, and the order of arrest heretofore granted in this action be vacated (or that the defendant be discharged from said arrest), with ——— dollars costs to the defendant; otherwise that said motion be denied, without costs. 2 Abb. Forms 287.

E. Order To Show Cause Why a Supersedeas Should Not Issue To Discharge Defendant Out of Custody.

Let the plaintiff show cause before me, at my chambers in ———, on the ——— day of ——— next, why a supersedeas should not issue in this cause, to discharge the defendant out of custody. Dated, etc. Burr. App. 232, §492.

VIII. Bail.

A. Bail Bond (Bail Below).

Know all men by these presents, that we, C. D. (or, if the defendant

be sued by a wrong name, say: "C. D., arrested by the name of E. D."), of ———, I. N., of ———, and I. S., of ———, are held and firmly bound unto J. A., esquire, sheriff of the county (or city and county) of ———, in the sum of ——— dollars (the sum endorsed on the writ), lawful money of the United States of America, to be paid to the said sheriff or his certain attorney, executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the ——— day of ———, in the year of our Lord 1846.

Whereas A. B. has sued and prosecuted out of the supreme court of judicature of the people of the state of New York, a certain writ of *capias ad respondendum*, against the above bounden C. D., in a plea of trespass (or as the plea is in the writ), returnable on the ——— day of ——— next, before the justices of the supreme court of judicature aforesaid, at the ——— in the city of ———, by virtue of which said writ the above bounden C. D. has been arrested by the above named sheriff: Now therefore the condition of this obligation is such that if the above bounden C. D. shall appear in the action commenced by the said writ, by putting in special bail within twenty days after the return day specified in the said writ, and by perfecting such bail if required, according to the rules and practices of the said court, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered

in the presence of

R. B.

T. V.

C. D. (L. S.)

I. N. (L. S.)

I. S. (L. S.)

Burr. App. 39, §76.

B. Undertaking of Bail.

Whereas the above named Y. Z. has been arrested in this action:

Now, therefore, we, M. N., of No. ——— street, in the city of ———, tailor, and O. P., of the village of ———, grocer, undertake, pursuant to the statute, in the sum of (amount of bail required) dollars, that said Y. Z. shall, at all times, render himself amenable to the process of the

court during the pendency of this action, and to such as may be issued to enforce the judgment therein. 2 Abb. Forms 288.

C. *Notice of Motion To Reduce Bail.* (As in VII, A, to the *): that the amount of bail required by the order of arrest in this action be reduced. 2 Abb. Forms 288.

D. *Order To Reduce Amount of Bail.* (As in VII, C, to the *):
Ordered, that the bail taken (or to be taken) by the sheriff, on the order of arrest of Y. Z. in this action, be reduced to _____ dollars. 2 Abb. Forms 288.

E. *Notice of Exception To Bail or Undertaking.*

Please take notice that the plaintiff does not accept the bail offered by the defendant Y. Z., in this action (and where there is objection to the undertaking itself, it may be well to add: and further, that he excepts to the form and sufficiency of the undertaking). (Address to the sheriff.) 2 Abb. Forms 289.

F. *Notice of Justification of Bail.*
Please take notice that the bail in this action will justify before M. N., a justice of this court (or the county judge of _____ county, or a justice of the peace of the town of _____), at _____, on the _____ day of _____ next, at _____ o'clock in the _____ noon.

(Address to plaintiff's attorney.) 2 Abb. Forms 290.

G. *Notice of Other or Additional Bail.*

Please take notice that G. H., hatter, of No. _____ street, in _____, and J. J., merchant, of the village of _____, are proposed as bail in addition to (or in place of A. B. and C. D., the bail already put in, and that they will justify before M. N., a justice of this court (or the county judge of _____ county, or a justice of the peace of the town of _____), at _____, on the _____ day of _____ next, at _____ o'clock in the _____ noon. 2 Abb. Forms 290.

H. *Affidavit To Obtain Further Time To Justify (or Add New Bail and Justify), Stating Absence of Bail.*

C. C., of _____, clerk of the attorney for the above named defendant, being duly sworn, says:

I. That B. B., one of the bail in this action for the said defendant, and whose name is mentioned in the notice of justification hereunto annexed, was put in as such bail with the privy and consent of the said B. B. (or if not already put in, say: "promised to become bail in this action for the said defendant, and that the said B. B.'s name was put into the said notice of justification with his privy and consent"), and promised to attend this morning and justify as such bail; and deponent verily believes that the said B. B. was and is able to justify as good and sufficient bail in this action.

II. That deponent fully expected that the said B. B. would have attended this morning to justify accordingly,* but he has not yet appeared for that purpose, as deponent verily believes, and he is not aware of the cause or reason of the absence of the said B. B., and is at present unable to state or account for the same; but deponent fully expects and believes he shall be able on oath to state the cause in the afternoon of this day. (When at the time the application for further time to justify, or add and justify bail, an affidavit of a defense on the merits can be made, or an affidavit stating the names, additions, descriptions, residences and expected sufficiency of other bail proposed to be added can be made, then let the same be made and produced accordingly, or thus:

III. Deponent is advised, and verily believes, that the defendant has a good defense to this action on the merits.)

IV. State the names, residence, occupation and sufficiency, etc., of proposed added bail.) 2 Abb. Forms 290.

I. *Affidavit To Obtain Further Time To Justify, Illness of the Bail.*

(As in the last form to the *, and continue): And deponent this morning called at the house of the said B. B., in order to accompany him to this court to justify as bail for the said defendant, according to his said promise, when deponent found the said B. B. very dangerously ill and in bed, with which illness he had been suddenly attacked yesterday morning, as deponent was informed and verily believes (state the nature of the illness, and whether dangerous or not, and how recent, according to the facts); and deponent verily believes that the said B. B. is quite unable to come to or attend this court this morning for the purpose of justify-

ing as bail for the said defendant in this action, in consequence of the said illness, and that he will continue so unable for ——— days or more.

111. Deponent was (and, as he verily believes, the said defendant also was) wholly ignorant of the said illness of the said B. B., or of his inability to attend to justify as bail until this morning (etc., conclude, if you can, as in the preceding form). 2 Abb. Forms 291.

J. Examination of Bail.

On this ——— day of ———, 18—, before the undersigned M. N., a justice of this court (or county judge of the county of ———, or a justice of the peace in and for the town of ———), personally appeared A. B. and C. D., the bail of the defendant Y. Z. in this action, to justify pursuant to notice; and the said A. B., being duly sworn, says (here state testimony, inserting, if desired, the questions and answers in form).

And said C. D., being duly sworn, says (etc., as above).

(Signature of bail.)

Taken and sworn before me, the day first above written. (Judge's signature and official addition.) 2 Abb. Forms 292.

K. Allowance of Bail.

This day appeared before me the within named A. B. and C. D., bail for the defendant Y. Z. in this action, and justified as such, and I find said bail to be sufficient, and allow the same. 2 Abb. Forms 292.

L. Allowance of Bail as to One Bail, and for Time for Other To Justify.

This day appeared before me the within named A. B., bail for the defendant Y. Z. in this action, and justified as such, and I find said bail to be sufficient, and allow the same. And upon reading and filing the annexed affidavit of C. C., it is further ordered that the defendant have ——— days further time (or until ———) to justify C. D., his other bail in this cause; the defendant hereby consenting that the plaintiff shall be in the same situation by the course of this court, as if they had both justified this day 2 Abb. Forms 292.

M. Direction That Money be Refunded on Allowance of Bail.

And further ordered, that the sum of ——— dollars, deposited in the

hands of the sheriff of the county of ———, by the defendant on his arrest in this cause, instead of bail, and since brought into court by the sheriff pursuant to the statute, be paid out of court to the defendant or his attorney by the clerk. 2 Abb. Forms 292.

N. Allowance of Added Bail.

Upon reading and filing the affidavit of M. N. (or where the bail in question is added by a new undertaking and notice of justification, say: the within undertaking of C. D. as bail, and the annexed notice of bail and justification and proof of service thereof), and the said C. D. having appeared before me and justified as such, I find said bail to be sufficient, and allow the same, together with A. B., who justified himself on the ——— day of ——— last. 2 Abb. Forms 293.

IX. Sheriff's Assignment.

A. Sheriff's Assignment of Undertaking.

Know all men by these presents, that I, M. N., sheriff of the county of ———, do hereby assign the within undertaking (or if not indorsed, refer to the undertaking by name of obligors, and date, and title of cause) to the plaintiff A. B., at his request, to be sued for by him, according to the statute. Witness my hand and seal this ——— day of ———, 18—. 2 Abb. Forms 293.

B. Assignment of Bail-Bond by Sheriff.

Know all men by these presents, that I, J. A., sheriff of the county (or city and county) of ———, do hereby assign the within written bail-bond to the within named A. B., at his request, to be sued for by him, according to the force, form and effect of the statute in such case made and provided. In testimony whereof I have hereunto set my hand and seal this ——— day of ———, in the year of our Lord 1846.

J. A., sheriff (L. S.)

Sealed and delivered in the presence of R. B., I. V. Burr. App. 39, §76; 2 R. S. 271, §13; 349, §12.

X. Surrender.

A. Authority From Bail To Arrest Principal.

Know all men by these presents, that I, M. N., the within named bail, depute, authorize and empower, in my place and stead, and in my behalf, O. P., of

——— (and, if an officer, add official addition, e. g., marshal of the district of Connecticut), to take, arrest, seize and surrender to the sheriff of the county of ———, Y. Z., the within named defendant, in exoneration and discharge of my undertaking as bail for the said Y. Z. in said cause; and to employ such persons and assistants as may be necessary to effect such purpose. 2 Abb. Forms 294.

B. Certificate of Surrender of Principal by Bail.

I, M. N., sheriff of the county of ———, hereby certify that Y. Z., the principal mentioned in the (within) undertaking (or, if not indorsed, refer to the undertaking so as to identify it) was surrendered to me by A. B. and C. D., his sureties, this ——— day of ———, 18—, and remains in custody. 2 Abb. Forms 294.

C. Notice of Motion for Enlargement of Time To Surrender.

(As in XI, B, substituting for the words between the **): that the undersigned bail of the defendant Y. Z. in this action have ——— days further time to surrender him to the sheriff in their exoneration. 2 Abb. Forms 295.

D. Affidavit in Support of Motion To Enlarge Time To Surrender.

I, M. N., being duly sworn, says that he is one of the bail of the defendant Y. Z. in this action; that said Y. Z. was arrested about the ——— day of ———, 18—, by virtue of an order of arrest, on the ground that (here: state ground of arrest, so as to show that it was not under subdivision 3); and that on the ——— day of ———, 18—, the deponent (and O. P.) became bail for said defendant by giving an undertaking, of which a copy is hereto annexed.

II. (Here state excuse for not having surrendered in season, e. g., sickness of bail, mistake as to time, or collusion of the creditor with the debtor, and specify what means, if any, the bail took at any time to ascertain where the principal was, and to effect his surrender.)

III. (State, if practicable, facts showing that a surrender is possible.)

IV. That no action has been commenced against the bail, as deponent is informed and believes. 2 Abb. Forms 295.

XI. Exoneration.

A. Affidavit To Move for Exoneration of Bail.

I, M. N., one of the bail (or M. N. and O. P., the bail) for the defendant Y. Z. in this action, being sworn, do (severally) depose and say that judgment was obtained and docketed in this action against said Y. Z. on or about the ——— day of ———, 18—, and that an execution in due form was duly issued thereupon on the ——— day of ———, 18—.

II. That (after the issuing, and before the return of the said execution, and) on or about the ——— day of ———, 18—, the said defendant died at ——— (or, if imprisoned, allege it). 2 Abb. Forms 295.

B. Notice of Motion To Exonerate Bail.

Please take notice that on the certificate (or affidavit), of which a copy is herewith served, the undersigned will move, before the Hon. ——— (one of the justices of this court, or county judge of the county of ———), on the ——— day of ——— next, at ——— o'clock in the ——— noon, at ———, in ———,* to exonerate M. N. and O. P., the bail of the defendant in this action, from all further liability upon the undertaking of bail heretofore entered into by them;* and for such other relief as may be just. 2 Abb. Forms 294.

C. Order Exonerating Bail.

On reading and filing the annexed certificate of the sheriff of the county of ——— (or affidavit of M. N.), and a copy of the undertaking of bail given by the said M. N. (and O. P.) in this action, and on motion of Q. R. on behalf of the following named bail, and after hearing S. T. for plaintiff (or and on proof of due service of this notice of motion, and no one appearing for plaintiff):

Ordered, that M. N. and O. P., the bail in this action, be exonerated from all liability. 2 Abb. Forms 295.

ARREST IN CRIMINAL CASES.—See FALSE IMPRISONMENT; HABEAS CORPUS; MALICIOUS PROSECUTION; PRELIMINARY EXAMINATION; PROCESS.

ARREST OF JUDGMENT.

I. Notice of Motion, 108

II. Order in Arrest, 108

For other forms, see 2 STANDARD PROC. 1031.

CROSS-REFERENCE:

JUDGMENT RECORDS:

Judgment Record on Arrest of Judgment.

I. Notice of Motion in Arrest of Judgment.

(Title of the cause.)

Sir: Please to take notice that, upon the affidavits (and case), with copies whereof you are herewith served, this honorable court will be moved, at the next term of the said court, to be held at the (Academy in the city of Utica), on the (first Monday of July) next, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an order directing an arrest of judgment to be entered in this cause, and which motion will be founded on the record and proceedings on file in this cause. Dated, etc. Burr. App. 214, §430; Yates' Forms 733.

II. Order in Arrest of Judgment.

This cause having been brought to argument, and after hearing Mr. L., of counsel for the defendant, and Mr. P., of counsel for the plaintiff, ordered that the judgment in this cause be, and the same is hereby arrested. Burr. App. 466, §945.

ARSON.

I. Indictment at Common Law, 108

II. Indictments Under Statutes, 108

A. *Burning in Nighttime*, 108

B. *Setting Fire to Haystack*, 108

C. *Setting Fire to Own House*, 108

III. Attempts, 109

A. *To Burn Court House*, 109

B. *To Burn Barn*, 109

For other forms, see 3 STANDARD PROC. 6, 20.

I. Indictment for Arson at Common Law.

That J. M., late of, etc., not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil on, etc., with force and arms, at, etc., aforesaid, a certain house of one W. C. there situate, feloniously, wilfully and maliciously did set fire to, and the same house then and there by such firing as aforesaid, feloniously, wilfully, and maliciously did burn and consume against the peace, etc. 3 Chit. Cr. L. 1127.

Note.—It is not necessary to say "dwelling house." 3 Chit. Cr. L. 1128, n. (q.)

II. Indictments Under Statutes.

A. *Indictment for Arson, Burning in Night-time.*

That W. G., late of, etc., not having, etc., but being moved and seduced, etc., after the first day of June in the year of our Lord one thousand seven hundred and twenty-three, to-wit, on, etc., about the hour of two in the night of the same day, with force and arms, at, etc., aforesaid, a certain house of one G. S. there situate, feloniously, voluntarily, and maliciously did set fire to, and the same house then and there by such firing as aforesaid, feloniously, voluntarily, and maliciously did burn and consume, against the form of the statute, etc., and against the peace, etc.

Note.—"Feloniously, voluntarily and maliciously" must be inserted, although the statute does not contain them. 3 Chit. Cr. L. 1128, n. (t).

B. *Indictment, Setting Fire to Haystack.*

That A. B., late of, etc., on, etc., at, etc., aforesaid, a certain stack of hay of and belonging to one J. P., feloniously, unlawfully, wilfully and maliciously did set fire to, against the form of the statute, etc., and against the peace, etc. 3 Chit. Cr. L. 1128.

C. *Indictment for Setting Fire to Own House.*

That A. B., late of, etc., unlawfully and maliciously, devising and intending to set on fire and burn a certain house belonging to him the said A. B., situate in the parish aforesaid, in the county aforesaid, on, etc., with force and arms, at, etc., aforesaid, unlawfully, wickedly and maliciously did set fire to a certain part of the wooden floor of and belonging to the said house, which said wooden floor was then and there placed on the ground floor of the said house, which said house was then and there contiguous and near to certain dwelling houses of and belonging to divers of the liege subjects of our said lord the king, situate in the parish aforesaid, in the county aforesaid, with a wicked intention, by means of such setting fire to the said part of the said wooden floor of and belonging to the said house of the said A. B., then and there unlawfully, wilfully, and maliciously to set on fire and burn the said house of the said A. B., to the great damage, danger, terror and affrightment of the liege subjects of our said lord the king, near

the house of the said A. B., then and there inhabiting and dwelling, in contempt of our said lord the king and his laws, to the evil example, etc., and against the peace, etc. (Second count for an attempt to burn generally, as third count of the next precedent.) 3 Chit. Cr. L. 1129.

III. Attempts.

A. *Indictment for Attempt To Burn Court House.*

"That Bazil Ledgerwood and Samuel Harbin, on the 7th day of October, 1891, and in the county of Daviess, in the state of Indiana, did then and there unlawfully, wilfully, maliciously and feloniously set on fire and attempt to burn down the county court house, situate in the city of Washington, in Daviess county, in the state of Indiana, which county court house was then and there the property of Daviess county, and then and there of the value of fifty thousand dollars." *Ledgerwood v. State*, 15 Crim. L. Mag. 523, 524.

B. *Indictment for Attempt to Burn Barn.*

State of New York, Monroe county, ss.

That James McDermott, on the first day of February, 1859, at the town of Greece, in the said county, did attempt, unlawfully and feloniously to set fire to, and burn a certain barn of Samuel Davison, there situate, with intent to injure the said Samuel Davison, against the form of the statute, in such case made and provided, and against the peace of the people of the state of New York, and their dignity. *McDermott v. People*, 5 Park. Cr. (N. Y.) 102.

ASSAULT AND BATTERY.

I. Declarations, 109

- A. *Common Assault on Person*, 109
- B. *Trespass for Assault and Battery*, 110
- C. *By Master, Battery of Servant*, 110
- D. *By Husband, Battery of Wife*, 110

II. Pleas, 110

- A. *Son Assault and Demesne*, 110
- B. *Molliter Manus Imposuit*, 111

III. Replications, 111

- A. *New Assignment, Different Assault*, 111
- B. *To Son Assault Demesne*, 112

IV. Complaints, 112

- A. *Assault and Battery*, 112
- B. *Assault and Battery*, 112

C. *Assault and Battery and False Imprisonment*, 112

V. Answers, 112

- A. *To Preserve Peace*, 112
- B. *To Preserve Peace by Captain of Vessel*, 112
- C. *Plaintiff Aggressor*, 113
- D. *Plaintiff Aggressor (Short Form)*, 113
- E. *Defense of Possession of Dwelling*, 113
- F. *Defense of Possession of Inn*, 113
- G. *Resistance of Entry of Dwelling*, 113
- H. *Removal From Railroad Car, Non-payment of Fare*, 113
- I. *General Denial*, 114
- J. *Denial of Battery*, 114

VI. Indictments, 114

- A. *For Assault and Battery*, 114
- B. *For Two Assaults*, 114
- C. *For Assault and Battery (Tearing Hair)*, 114
- D. *For Assault and Battery (Encouraging Dog To Bite)*, 115
- E. *For Riding Over Person*, 115
- F. *For Aggravated Assault and Battery*, 115

For other forms, see 3 STANDARD PROC. 37, 42, 44.

CROSS-REFERENCES:

ADMIRALTY:

Libel In Personam; Seaman Against Master and Mate for Assault and Battery.

ARREST IN CIVIL CASES:

Capias, Assault and Battery.

I. Declarations.

A. *Declaration, Common Assault on Person.*

For that the said defendant heretofore, to-wit, on the (first day of April, in the year one thousand eight hundred and ———), with force and arms, etc., made an assault on (or "assaulted") the said plaintiff, to-wit, at (New York, to-wit, at the city and in the county of New York), aforesaid (the venue), and then and there beat (bruised, wounded), and ill-treated him (so that his life was greatly despaired of), and other wrongs to the said plaintiff, then and there did against the peace of the people of the state of New York, and to the damage of the said plaintiff of one (thousand) dollars (any sum sufficient to cover the amount of the damages which it may be probable the jury will give), and therefore he brings his suit, etc. *Burr. App.* 298, §563.

B. Declaration in Trespass for Assault and Battery.

For that the said defendant, heretofore, to-wit, on the (second day of April, in the year one thousand eight hundred and forty-six), at (New York, to-wit, at the city and in the county of New York), aforesaid, with force and arms, to-wit, with swords, staves, ropes, hands and feet, made an assault upon the said plaintiff, and did then and there beat, wound and ill-treat him, so that his life was greatly despaired of, and other injuries to the said plaintiff then and there did, against the peace of the people of this state, and to the great damage of the said plaintiff. And also for that the said defendant, on the same day and year, and at the place aforesaid, with force and arms, to-wit, with swords, staves, ropes, hands and feet, made another assault upon the said plaintiff, and did then and there beat, wound and ill-treat him, so that his life was greatly despaired of, and other injuries to the said plaintiff, then and there did, against the peace of the people of this state, and to the damage of the said plaintiff, of (five thousand dollars), and thereof he brings suit, etc. Burr. App. 298, 564.

C. Declaration by Master for Battery of Servant.

For that the said defendant on, etc., with force and arms, etc., made an assault on H. B., then and still being the (daughter and) servant of the said plaintiff, to-wit, at etc., and then and there beat, bruised, wounded and ill-treated the said H. B., insomuch, and that by means thereof, the said H. B. then and there became, and was sick, sore, lame and disordered, and so remained and continued for a long space of time, to-wit, from thence hitherto; during all which time he, the said plaintiff, lost and was deprived of the service of his said (daughter and) servant, and of all the benefit and advantage which might and would otherwise have arisen and accrued to him from such service, to-wit, at, etc., aforesaid. Burr. App. 300, §568.

D. Declaration by Husband for Battery of Wife.

For that the said defendant on, etc., with force and arms, etc., made an assault on E. B., then and still being the wife of the said plaintiff, to-wit, at, etc., and then and there violently beat,

kicked, bruised and ill-treated the said E. B. so then and there being the wife of the said plaintiff as aforesaid, insomuch that she, the said E. B., by means of the premises, then and there became and was sick, sore, lame and disordered, and so remained and continued for a long space of time, to-wit, hitherto, whereby he, the said plaintiff, during all that time lost and was deprived of all the comfort, benefit and assistance of the said E. B., his said wife, in his domestic affairs, which he might and otherwise would have had; and thereby also he the said plaintiff was then and there forced and obliged to pay, lay out and expend, and hath necessarily paid, laid out and expended divers sums of money, in the whole amounting to a large sum of money, to-wit, the sum of _____ dollars, in and about the endeavoring to heal and cure the said E. B., his said wife, of the sickness, soreness, lameness and disorder aforesaid, occasioned as aforesaid, to-wit, at, etc., aforesaid; and other wrongs to the said plaintiff, then and there did, against the peace of the people of the state of New York, and to the damage of the said plaintiff of _____ dollars, and therefore he brings his suit, etc. Burr. App. 299, §565; 2 Chit. Pl. 854.

II. Pleas.

A. Special Plea, Son Assault and Demesne.

And for a further plea in this behalf (as to the said assaulting, beating, bruising, wounding [or otherwise, according to the declaration], and ill-treating the said plaintiff, as in the first count of the said declaration mentioned), the said defendant, by leave of the court, here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the said plaintiff, just before the said time, when, etc. (in the said first count mentioned), to-wit, on the day and the year in that count mentioned, at, etc. (the venue), aforesaid, with force and arms, etc., made an assault (state the assault or battery, according to the facts), upon him, the said defendant, and would then and there have beat, bruised and ill-treated him, the said defendant, if he had not immediately defended him-

self against the said plaintiff; wherefore he, the said defendant, did then and there defend himself against the said plaintiff, as he lawfully might, for the cause aforesaid; and in so doing did necessarily and unavoidably, a little beat, bruise, wound and ill-treat the said plaintiff, doing no unnecessary damage to the said plaintiff on the occasion aforesaid: And so the said defendant saith, that if any hurt or damage then and there happened to the said plaintiff, the same was occasioned by the said assault so made by the said plaintiff, on him, the said defendant, and in the necessary defense of himself, the said defendant against the said plaintiff; which are the same supposed trespasses in the introductory part of this plea mentioned, and whereof the said plaintiff hath above thereof complained against him, the said defendant. And this he, the said defendant, is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 362, §658; 3 Chit. Pl. 1068.

B. Special Plea, Molliter Manus Imposuit To Keep the Peace.

And for a further plea in this behalf, as to the said assaulting, beating and ill-treating the said plaintiff as in the said (first) count mentioned (or otherwise, according to the statements in the declaration), the said defendant (by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided), says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him because he says that the said plaintiff, and one R. N., at the said time when, etc., at, etc. (the venue), aforesaid, were fighting together, and striving with force and arms to beat and wound each other, against the peace of the people of the state of New York; whereupon the said defendant, being then and there present, for the preservation of the peace of the said people, and that the said plaintiff, and the said R. N. might do no hurt to each other, and in order to separate and part them, then and there gently laid his hands upon the said plaintiff, as he lawfully might, for the cause aforesaid; which are the said assaulting, beating and ill-treating in the said (first) count of the said declaration mentioned (or "which are the said supposed tres-

passes in the introductory part of this plea, and in the said declaration mentioned"), and whereof he, the said plaintiff, hath above thereof complained against him, the said defendant. And this he is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 362, §659; 3 Chit. Pl. 1071.

III. Replications.

A. Replication, New Assignment, Different Assault.

And the said plaintiff, as to the said plea of the said defendant, by him (secondly) above pleaded as to the said several trespasses in the introductory part of that plea mentioned, and therein attempted to be justified, says that he, the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said defendant, because he says that he, the said plaintiff, exhibited his said bill against the said defendant, and brought his suit thereupon, not for the trespasses in the introductory part of the said (second) plea mentioned, but for that the said defendant, on the said ——— day of ———, in the year of our Lord one thousand eight hundred and ———, with force and arms, etc., at, etc. (the venue), aforesaid, upon another and different occasion, and for another and different purpose than in the said plea mentioned, made another and different assault upon the said plaintiff than the assault in the said (second) plea mentioned, and then and there beat, bruised, wounded and illtreated the said plaintiff (this must correspond with the averments in the declaration), in manner and form as the said plaintiff hath above thereof complained against the said defendant; and which said trespasses above newly assigned are other and different trespasses than the said trespasses in the said (second) plea mentioned. And this the said plaintiff is ready to verify. Wherefore, inasmuch as the said defendant hath not answered the said trespasses above newly assigned, the said plaintiff prays judgment and his damages by him sustained, on occasion of the committing thereof, to be adjudged to him, etc.

E. F., plaintiff's attorney.

Burr. App. 387, §713; 3 Chit. Pl. 1213; Till. Forms 555.

B. *Replication to Plea of Son Assault Defendant.*

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, as to the said several trespasses in the introductory part of that plea mentioned, and therein attempted to be justified, says that the said plaintiff by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that the said defendant at the said time, when, etc., of his own wrong, and without the cause by him in his said (second) plea alleged, committed the said several trespasses in the introductory part of that plea mentioned, in manner and form as the said plaintiff hath above, in (the said first count of) his said declaration, complained against the said defendant. And this the said plaintiff prays may be inquired of by the country, etc.

E. F., plaintiff's attorney.

Burr. App. 379, §692; 3 Chit. Pl. 1201.

IV. Complaints.

A. *Complaint for Assault and Battery (a).*

I. That on the _____ day of _____, 18—, at _____, the defendant violently assaulted the plaintiff, and struck him in the face and breast several violent blows, and aimed at him a gun and threatened to shoot him, whereby he put the plaintiff in fear for his life; and maliciously caused a dog to bite the plaintiff; and also tore the clothes from plaintiff's person (or otherwise describe the violence used, and its consequences; special damages, if any, being stated thus: and the plaintiff was thereby made ill and lame, and disabled from attending to his business for _____ thereafter, and was compelled to pay _____ dollars for medical attendance, and has been ever since, and for a long time will be lame), to his damage _____ dollars. 1 Abb. Forms 483.

Note.—Consult also form in Clayton v. Keeler, 18 Misc. 488, 42 N. Y. Supp. 1051.

B. *Complaint for Assault and Battery (b.) (Short Form).*

That on the _____ day of _____, 18—, at _____, the defendant assaulted and beat the plaintiff, to his

damage _____ dollars. 1 Abb. Forms 484.

C. *Complaint for Assault and Battery and False Imprisonment.*

That on the _____ day of _____, 18—, at _____, the defendant assaulted and beat the plaintiff, and falsely and maliciously imprisoned him, without reasonable cause and without right (and detained him for _____ hours, preventing him from attending to his business), to his damage _____ dollars. 1 Abb. Forms 484.

V. Answers.

A. *Answer To Preserve the Peace (Molliter Manus Imposuit).*

I. (Deny the allegations of the complaint as to beating and wounding.)

II. The defendant further says that at the time mentioned in the complaint the plaintiff had made an assault on one M., and was then and there beating him (or the plaintiff and one M., in breach of the peace, were fighting together).

III. That thereupon the defendant, in order to preserve the peace and prevent the plaintiff from further so doing (or in order to preserve the peace and to separate them), gently laid his hands upon the plaintiff, as he lawfully might.

IV. That thereupon the plaintiff (here may allege assault upon this defendant, and his self-defense).

V. That the acts above mentioned are the same of which the plaintiff complains. 2 Abb. Forms 129.

B. *Answer To Preserve the Peace by Captain of Vessel.*

I. That as to the alleged assaulting, beating and illtreating the plaintiff, the defendant was, at the time thereof, captain of the ship (or vessel, or steamboat) called the _____.

II. That the plaintiff was then on board of said ship (or vessel, etc.), making a great noise and disturbance, and fighting with a certain other person, whom he was striving to beat and wound.

III. Wherefore the defendant, for the preservation of the peace, and to preserve due order on said ship (or vessel, etc.), and to separate the said plaintiff and other person so fighting together, and to prevent the said plaintiff from beating, wounding and illtreating such other person, as he would otherwise have done, then, as such cap-

tain, gently laid his hands upon the plaintiff, as he lawfully might, for the cause aforesaid; which are the acts of which the plaintiff complains. 2 Abb. Forms 130.

Note.—*Noden v. Johnson*, 2 Eng. L. & Eq. 201, 20 L. J. (N. S.) Q. B. 95.

C. Answer, Plaintiff Aggressor (Son Assault Demesne) (a).

I. That at the time mentioned in the complaint, and just before the time of the commission of the alleged grievances therein stated, the plaintiff made an assault (state it as if in a complaint against him) upon this defendant, and would have beaten and greatly bruised (or otherwise injured) him, if he had not immediately defended himself; wherefore he did defend himself, as he lawfully might, and in so doing did necessarily and unavoidably a little beat and bruise (or otherwise injure) the plaintiff; and that if the plaintiff sustained any damage, it was occasioned by his first assaulting the defendant.

II. That the acts above mentioned are the same of which the plaintiff complains.

III. That the defendant denies each and every allegation of the complaint, except such as are hereinbefore admitted. 2 Abb. Forms 130.

D. Answer, Plaintiff the Aggressor (b) (Short Form).

That the plaintiff first assaulted the defendant, who thereupon necessarily committed the acts complained of in self-defense. 2 Abb. Forms 131.

E. Answer, Defense of Possession of Dwelling.

I. (Deny beating and wounding.)

II. The defendant further says that at the time mentioned in the complaint the defendant was lawfully possessed of (here designate the dwelling).

III. That the defendant being so possessed thereof, the plaintiff was unlawfully therein, and making great noise and disturbance therein, against the will of the defendant, and disturbing him and his family in the enjoyment of their dwelling; and refused to cease such noise and disturbance, and to go away, although requested by the defendant.

IV. That thereupon the defendant, in defense of the possession of his dwelling, gently laid his hands upon the plaintiff in order to remove him, as he lawfully might.

V. That the acts above mentioned are the same of which the plaintiff complains. 2 Abb. Forms 131.

Note.—It would be well to add in II that the plaintiff was occupying the same as his dwelling.

F. Answer, Defense of Possession of Inn.

I. (Deny beating and wounding.)

II. That at the time mentioned in the complaint the defendant was lawfully possessed of a certain public house (designate it).

III. That the plaintiff came into the said house, and then and there made a great noise and disturbance therein, to the disquiet of other persons lawfully there, and of the defendant and his family, in their enjoyment therein.

IV. (Continue as in preceding form.) 2 Abb. Forms 131.

G. Answer, Resistance of Entry of Dwelling.

I and II. (As in preceding forms.)

III. That the plaintiff then and there, with force and violence, attempted to break into the said dwelling (or other possession), without the leave and against the will of the defendant.

IV. That the defendant thereupon, in order to preserve the peaceable possession thereof, resisted the plaintiff's entrance, and in doing so necessarily assaulted and beat the plaintiff, as he lawfully might; and if the plaintiff sustained any damage, it was occasioned by his own wrong.

V. That the acts above mentioned are the same of which the plaintiff complains. 2 Abb. Forms 132.

H. Answer, Removing From Railroad Car for Non-Payment of Fare.

I. That the defendant was, before and at the time when the said grievances were committed, the conductor, and had charge of, a passenger train on the railroad of the _____ railroad company, running from _____ to _____.

II. That one of the regulations of said _____ railroad company was that no person should be permitted to be, and remain, on such train without having a ticket therefor, duly obtained of their authorized agents.

III. That at the time mentioned in the complaint the plaintiff was on the said train, without having a ticket therefor as aforesaid.

IV. That the defendant then and

there requested the said plaintiff to leave the said train, which the plaintiff refused to do; whereupon the defendant then and there gently laid his hands upon the said plaintiff, and removed him from the train, doing no unnecessary violence, as he lawfully might do; which is the act complained of by the plaintiff. 2 Abb. Forms 132.

Note.—In general there should also be alleged a demand of fare and refusal or neglect to pay.

I. Answer, General Denial.

That the defendant is not guilty of the grievances alleged. 2 Abb. Forms 129.

J. Answer, Denial of Battery.

That the defendant did not strike or wound the plaintiff. 2 Abb. Forms 129.

VI. Indictments.

A. Indictment for Common Assault and Battery.

Middlesex. The jurors for our lord the king upon their oath present that A. B., late of the parish of _____, in the county of Middlesex, yeoman, on the _____ day of _____, in the _____ year of the reign of our sovereign lord, George the Third, by the grace of God of the United Kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one J. H., in the peace of God and our said lord the king then and there being, did make an assault, * and him the said J. H. then and there did beat, bruise, wound, and illtreat (so that his life was greatly despaired of), and other wrongs to the said J. H. then and there did, to the great damage of the said J. H., and against the peace of our said lord the king, his crown and dignity. 3 Chit. Cr. L. 821.

Note.—"It is usual to insert all of the words in parenthesis though the evidence will only prove a less aggravated assault. 1 Saund. 14, n. 3; 3 Stark. Rep. 62. But it would be preferable when only a slight assault can be proved, to frame the indictment according to the facts and omit the latter words." 3 Chit. Cr. L. 821, n. (a).

B. Indictment for Two Assaults.

City and county of New York, ss. The jurors of the people of the state of New York, in and for the city and county of New York, upon their oath

present, that John Moore, late of the first ward of the city of New York, in the county of New York aforesaid, laborer, John Miller, late of the same place, laborer, John Lowry, late of the same place, laborer, and Henry Bush, late of the same place, laborer, on the 12th day of July, in the year of our lord, one thousand eight hundred and twenty-four, at the eighth ward of the city of New York, in the county of New York, aforesaid, in and upon the body of James Murney in the peace of God, and of the said people, then and there being, with force and arms, did make an assault, and him the said James, did then and there, beat, wound and illtreat, and other wrongs and injuries to the said James, then and there did, to the great damage of the said James, to the evil example of all others in like case offending, and against the peace of the people of the state of New York, and their dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John, John, John, and Henry, afterwards, to-wit, on the same day and year aforesaid, in and upon the body of the said James, in the peace of God, and of the said people, then and there being, with force and arms, did make another assault, and him the said James did then and there beat, wound, and illtreat, and other wrongs and injuries to the said James then and there did to the great damage of the said James, to the evil example of all others, in like case offending, and against the peace of the people of the state of New York, and their dignity.

Maxwell, district attorney.

People v. Moore, 3 Wheeler's Cr. Cas. (N. Y.) 82.

C. Indictment for Assault and Battery (Tearing Hair).

And also that she the said J. B. did then and there, unlawfully and injuriously seize and lay hold of the said M., by the hair of her head, and did then and there with great force, wrath and violence, pull and drag the said M. by the same, by means whereof she the said J. B. did then and there unlawfully, cruelly and injuriously pull and tear the hair of the head of her the said M. off by the roots, and the head of her the said M. was thereby grievously wounded and hurt, and also by means of the premises, the said M. was put to great pain and torture

and other wrongs to the said M. then and there violently and maliciously did, to the great damage of the said J. W. and M., his wife, etc. 3 Chit. Cr. L. 822.

D. Indictment for Assault and Battery (Encouraging Dog to Bite).

That J. B., late of, etc., on, etc., with force and arms, at, etc., aforesaid, did unlawfully incite, provoke and encourage a certain dog, of and belonging to the said J. B., to bite him the said J. S., by means whereof the same dog did then and there grievously bite the said J. S. in and upon the right leg of him the said J. S., and the said leg of him the said J. S. was thereby then and there grievously hurt and wounded, to the great damage of the said J. S. and against the peace, etc. 3 Chit. Cr. L. 823.

E. Indictment for Riding Over Person With Horse.

(As in VI, A, to the asterisk.) And then and there unlawfully and maliciously, and with great force and violence, rode and drove a certain horse against, upon, and over the said J. S., and thereby then and there greatly bruised, wounded, and illtreated him, insomuch that his life was then and there greatly despaired of, and other wrongs, etc. (second count for a common assault). 3 Chit. Cr. L. 823.

F. Indictment for Aggravated Assault and Battery.

Middlesex. The jurors for our lord the king upon their oath present, that A. B., late of the parish of _____, in the county of Middlesex, yeoman, on the _____ day of _____, in the _____ year of the reign of our sovereign Lord George the Third by the grace of God of the United Kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one A. W., in the peace of God and our said lord the king then and there being, did make an assault, and him the said A. W. then and there did * beat, bruise, wound, and illtreat, so that his life was greatly despaired of; and that the said J. W., with both his hands, then and there violently cast, flung, and throw the said A. W. to, upon, and against a certain brick floor there, and him the said A. W. in and upon his head, neck, breast, back, sides, and other parts of

his body, with both the feet of him the said J. W. then and there violently and grievously did kick, strike, and beat, giving to the said A. W. then and there, as well by such flinging, casting, and throwing of him the said A. W., as also by such kicking, striking and beating of the said A. W., as aforesaid, in and upon the head, neck, breast, sides, back and other parts of the body of him the said A. W. divers bruises, hurts and wounds, and other wrongs, etc. 3 Chit. Cr. L. 821; Arch. Cr. Pl. 445.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

Answer, Averment of Fraudulent Assignment in Action Against Sheriff.

I. That the plaintiffs were possessed of said goods under and by virtue of a pretended assignment thereof by said (debtor) to them for the benefit of his creditors, dated on or about the _____ day of _____.

II. That the same was executed by said (debtor) with intent to defraud his creditors, and on account of such fraud was void as against said (creditors), and as against said judgments and executions, and as against the other creditors of said (debtor). 2 Abb. Forms 115.

Note.—An assignment for benefit of creditors is of itself an act of bankruptcy under the law of 1898. If no proceedings are taken in time under such act, the assignment is valid if made in good faith.

ASSIGNMENT OF ERROR.—See ERROR, ASSIGNMENTS OF.

ASSIGNMENTS.

I. Complaints, 116

- A. *Allegation of Assignment, 116*
- B. *Allegation by Trustee, 116*
- C. *Assignee for Price of Stock, 116*
- D. *Contract Fulfilled by Assignee, 117*

II. Answers, 117

- A. *Denial, 117*
- B. *Assignment by Plaintiff, 117*

CROSS-REFERENCES:

CREDITORS' SUITS:

- Complaint by an Assignee of a Judgment, Etc.;
- Complaint To Set Aside an Assignment Void on Its Face;
- Complaint Against Debtors Who Transferred Assets to Third Person

for His Note, and Assigned Note for Benefit of Creditors, To Set Aside Transaction as Fraudulent, and for Receiver;

Complaint Against Judgment Debtor, Assignee, and Pretended Creditor Named in Assignment, for Extrinsic Fraud;

Commencement of Complaint, Where Plaintiff Sues in Behalf of Other Creditors;

Complaint Against Debtor To Reach Demand Due Him From Third Person;

Complaint Against Judgment Debtor and One To Whom He Fraudulently Confessed Judgment.

DECLARATION AND COMPLAINT:

Complaint by Assignee of Bill Payable Out of Particular Fund.

INSURANCE:

Complaint on Fire Policy by Assignee, Purchaser of Property;

Complaint on Life Policy by Assignee in Trust for Wife;

Complaint by Assignee on Agreement To Insure, Policy Not Delivered.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Complaint on Judgment by Assignee.

LANDLORD AND TENANT:

Complaint, Assignee of Devisee of Reversion and Rent Against Assignee of Part of Premises;

Complaint, Assignee of Rent Against Lessee;

Answer, That Landlord Accepted an Assignee as His Tenant;

Answer, Assignee's Assignment to Third Person;

Denial by Assignee of Occupation;

Plea by Assignee of Tenant of Assignment of Lease;

Plea of Assignment by Assignee Before Rent Became Due;

Plea of Assignment and Acceptance of Assignee;

Plea, Traverse of Assignment.

MORTGAGES:

Complaint by Assignee Against Mortgagee, Mortgagee Who Guaranteed Payment, Grantee of Equity of Redemption Who Assumed Mortgage, and Junior Incumbrancers.

RECEIVERS:

General Assignment to Receiver.

REVIVOR:

Petition by Receiver or Assignee of Plaintiff's Title To Revive Action in His Own Name.

TROVER AND CONVERSION:

Complaint for Conversion of a Bond by Assignee After Conversion;

Complaint for Conversion by Assignee After Conversion.

Answer, Denial of Assignment of Cause of Action;

WARRANTY:

Complaint on Warranty of Amount Due on Judgment Assigned.

I. Complaints.

A. *Complaint, Allegation of Assignment to Plaintiff.*

I. (State cause of action accruing to the assignor.)

II. That on the _____ day of _____, 18— (or thereafter, and before this action), the said A. B. duly assigned the said claim (or instrument) to the plaintiff. 1 Abb. Forms 130.

Note.—3 STANDARD PROC. 121.

B. *Complaint, Allegation Where Plaintiff is Trustee.*

The plaintiff complaining as assignee for the benefit of the creditors of A. B., alleges:

I. (State cause of action accruing to the assignor.)

II. That on the _____ day of _____, 18— (or thereafter, and before this action), the said A. B. duly assigned all his property, including the said claim, to the plaintiff, in trust, for the purpose of paying all his debts. 1 Abb. Forms 131.

Note.—Particular statutory requirements may be necessary to be alleged. This is now an act of bankruptcy.

The complaint is demurrable unless transfer be alleged. *Saunders v. Chamberlain*, 13 Hun (N. Y.) 568.

C. *Complaint by Assignee for Price of Stock and Fixtures of Store and Good-Will Agreed To Be Paid in Instalments.*

I. That on the _____ day of _____, 18—, one M. N. sold and delivered to the defendant the stock and fixtures of the (drug store, No. _____, in _____ street, in _____), the property of said M. N., and bargained, sold and relinquished to the defendant the good-will of the business theretofore carried on by said M. N. there; for which the defendant agreed to pay said M. N. the sum of _____ dollars in equal quarterly payments on the _____ days of the months of _____ thereafter.

II. That he has not paid the same

or any part thereof (except the sum of, etc.).

III. That thereafter and before this action said M. N. duly assigned to this plaintiff the indebtedness of the defendant therefor, of which the defendant had due notice. 1 Abb. Forms 193.

Note.—Specify instalments if all not due.

D. *Complaint on Special Contract, Where Fulfilled by Assignee.*

I. That on the _____ day of _____, at _____, defendants in consideration of _____, executed in writing under their hands and seals, and delivered a contract with one M. N., of which the following is a copy (or of which a copy is hereto annexed, and marked Exhibit A).

II. That thereafter and before the _____ day of _____, said M. N. duly assigned the same, and all his rights under it to the plaintiff.

III. That up to the time of the assignment the assignor had duly performed all the conditions of the contract on his part, and that since said assignment the plaintiff duly performed all the conditions thereof on his part.

(Allege demand and failure to pay.)
1 Abb. Forms 208.

II. Answers.

A. *Answer, Denial of Assignment of Instrument.*

Denies (that he has any knowledge or information sufficient to form a belief) that the said (alleged assignor) ever assigned said bond and mortgage) to the plaintiff. 2 Abb. Forms 36.

B. *Answer in Abatement, Assignment of Cause of Action by Plaintiff to Third Person.*

That after the sale and delivery (or accruing of other cause of action) in the complaint alleged, and before this action, the plaintiff duly assigned his cause of action against this defendant arising therefrom (or said judgment, etc., or other thing in action) to one M. N., who then became, and still is, the lawful owner and holder thereof. 2 Abb. Forms 31.

Note.—In *Hays v. Hathorn*, 74 N. Y. 486, it is suggested that an additional paragraph be added, denying that plaintiff is the real party in interest and that the owner and holder of the said note or claim should be the plaintiff.

ASSISTANCE, WRITS OF.

For other forms, see 3 STANDARD PROC. 153, 155.

Writ of Assistance.

The people of the state of New York, to the sheriff of the county of Saratoga, greeting:

Whereas by a certain decree (or decretal order) of our court of chancery, in a certain cause there depending between A. B., complainant, and C. D., defendant, made at a court of chancery held for the state of New York, at the town of Saratoga Springs, on the _____ day of _____, in the year one thousand eight hundred and forty-three, before the chancellor (or before the vice chancellor of the 4th circuit), it was, among other things therein contained, ordered, adjudged and decreed by the said court, that the said complainant should be forthwith put into possession of a certain farm or lot of land situate in the town of Day in said county, known as lot No. 160 in the Kayaderosseras patent; and whereas the said complainant has not been let into, nor taken possession of the said farm or lot of land, or any part thereof, according to the tenor of the said decree; and whereas the said farm or lot of land is in the tenure and occupation of the said defendant; and whereas, by an order of our said court of chancery made in the said cause, on the _____ day of _____, it was ordered that our writ of assistance should issue to you the said sheriff, to put the complainant in possession of the said farm or lot of land, and him in such possession thereof from time to time to maintain and defend. Therefore we command you, that immediately after receiving this writ you go to and enter upon the said farm or lot of land, and that you eject and move therefrom all and every person or persons holding and detaining the same, or any part thereof, against the said complainant; and that you put and place the said complainant, or his assigns, in the full, peaceable and quiet possession of the said farm or lot of land without delay; and him the said complainant in such possession thereof from time to time maintain, keep and defend, or cause to be kept, maintained and defended, according to the tenor and true intent of the said decree and order of our said court. Witness, Reuben H. Walworth, chancellor of our

said state, at the town of Saratoga Springs, the _____ day of _____, in the year one thousand eight hundred and forty-three.

J. M. D., Register.

J. E., solicitor.

2 Barb. Ch. Pr. 475.

ASSOCIATIONS.

I. Complaint by Officer, 118

II. Complaint by Treasurer on Note, 118

III. Allegation by Association, 118

CROSS-REFERENCES:

BANKS AND BANKING:

Complaint, Banking Association Suing or Sued in Its Associate Name;
Complaint, Banking Association Suing or Sued in Name of Its President.

DECLARATION AND COMPLAINT:

Commencement of Declaration, Where Banking Association Is Defendant;

Declaration, Where Banking Association Is Plaintiff.

I. Complaint by Officer of Joint Stock Company.

(Name of court, etc.).

A. B., president (or treasurer), of the _____ company, plaintiff, against C. D. and E. F., defendants.

The plaintiff complaining as president (or treasurer) of the _____ company, alleges:

I. That said company is a joint stock company (or association) in the town of _____ and county of _____, in this state, consisting of seven or more shareholders.

II. That the plaintiff is the president (or treasurer) of said company (or association). 1 Abb. Forms 132.

II. Complaint by Treasurer of Unincorporated Company, on Note Payable to Former Treasurer.

I. That the Forrestville Division, No. 411, Sons of Temperance, is an association consisting of seven persons and upwards, in the town of Hanover, in this state.

II. That at the time hereinafter mentioned one C. B. was the treasurer thereof.

III. That on the _____ day of _____, 18—, the defendants made their promissory note in writing, of which the following is a copy: (copy of note), and thereupon delivered the same to said B., as the treasurer of the

association, who was duly authorized to receive it on their behalf.

IV. That said note was given for the benefit of the association, and that it is the property of the members thereof, and owned by them in common.

V. That this plaintiff is now the treasurer of said association and, as such, is the lawful holder of said note on and for their behalf.

VI. That there is now due to the plaintiff, as such treasurer, thereon, from the defendants, the sum of _____ dollars, with interest from, etc. 1 Abb. Forms 239.

III. Complaint, Allegation by Association of Joint Tenants in Common.

I. That the property hereinafter mentioned is owned jointly (or in common) by the _____ company (or association), an association consisting of not less than seven persons.

II. (As in I.) 1 Abb. Forms 133.

Note.—In many states an unincorporated association cannot sue or be sued in the name of an officer, and the United States courts follow the state rule; therefore reference to the state statutes in this class of cases is necessary.

ASSUMPSIT.

I. Declarations, 120

A. *For Goods Sold and Delivered*, 120

B. *Common Counts, Goods Sold, Work and Labor, With Money Counts*, 120

C. *Money Counts Condensed*, 122

D. *Against Bailee Without Reward*, 122

E. *On Chattel Note*, 123

F. *On Contingent Note*, 123

G. *Against Watchmaker, Losing Watch*, 123

II. Plea of Non-Assumpsit, 124

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Declaration in Assumpsit for Not Rendering Just Account of Sale of Goods;

Special Plea in Assumpsit, Account Stated, etc.

ANIMALS:

Declaration on Promise To Pay on Exchange of Horses;

Declaration in Assumpsit for Agistment.

ATTORNEYS:

Declaration by an Attorney for Costs and Fees.

BILLS AND NOTES:

Declaration on Bill of Exchange,
Payee Against Acceptor;
Declaration on Bill of Exchange,
First Endorsee Against Acceptor;
Declaration on Promissory Note,
Payee Against Maker;
Declaration on Promissory Note, In-
dorsee Against Indorser;
Declaration on Promissory Note, In-
dorsee Against Maker.

BREACH OF PROMISE:

Declaration on Promise of Marriage.

EXECUTORS AND ADMINISTRATORS:

Declaration Against an Executor in
Assumpsit;
Declaration by Executor in Assump-
sit for Work Done by Testator.

GENERAL ISSUE AND GENERAL DENIAL:

Plea of Non-Assumpsit;
Plea of Non-Assumpsit by Executor
or Administrator.

INDEMNITY:

Declaration for Not Indemnifying.

INFANTS:

Verdict for Plaintiff, Plea of Infancy
in Assumpsit;
Verdict for Defendant on Several Is-
sues, Infancy, Not Necessities, No
Ratification.

JUDGMENT RECORDS:

Judgment Record on Cognovit in As-
sumpsit;
Judgment Record on Cognovit in As-
sumpsit as to Part of Cause of
Action;
Judgment Record on Cognovit in As-
sumpsit With Stipulations;
Judgment Record on Verdict for
Plaintiff in Assumpsit;
Judgment Record on Default for Not
Pleading in Assumpsit.

JUDGMENTS:

Judgment on Verdict for Plaintiff in
Assumpsit.

**JUDGMENTS AND DECREES, ENFORCEMENT
OF:**

Fieri Facias for Plaintiff in Assump-
sit;
Capias Ad Satisfaciendum, Testatum
in Assumpsit;
Capias Ad Satisfaciendum in As-
sumpsit;
Fieri Facias for Residue in Assump-
sit.

LIMITATION OF ACTIONS:

Verdict for Defendant on Plea of
Actio Non Accrevit in Assumpsit.

PAYMENT:

Plea in Assumpsit of Payment.

PLEAS:

Relicta in Assumpsit.

PRINCIPAL AND AGENT:

Declaration Against Shopman for
Selling on Credit Contrary to Ex-
press Orders.

RELEASE:

Plea in Assumpsit of Release.

RES JUDICATA:

Plea of Judgment Recovered in As-
sumpsit.

SALES:

Declaration in Assumpsit, Goods
Sold, With Money Counts.

SCIRE FACIAS:

Scire Facias To Revive a Judgment
in Assumpsit.

SHERIFFS AND CONSTABLES:

Declaration for Money Collected by
Sheriff.

TENDER:

Verdict for Defendant on Plea of
Tender, Non-Assumpsit in Part;
Plea of Tender Before Suit Brought
(in Assumpsit).

USE AND OCCUPATION:

Declaration, Common Counts for
Necessities Provided for Defend-
ant;
Declaration, Common Counts for
Board and Lodging;
Declaration, Common Count for Hire
of Horses and Carriages, Etc.;
Declaration, Common Counts for Use
and Occupation of Dwelling;
Declaration, Common Counts for Use
and Occupation of Lodging.

USURY:

Plea in Assumpsit of Usury.

VENDOR AND PURCHASER:

Declaration, Common Count for
Leasehold Estate Sold and As-
signed;
Declaration, Common Count for Free-
hold Estate Sold and Conveyed.

VERDICT:

Postea on Verdict for Plaintiff on
Plea of Non Assumpsit;
Postea for Defendant on Plea of
Non-assumpsit;
Postea, One Issue for Plaintiff and
One for Defendant in Assumpsit;
Postea for Defendant on a Plea of
Non-assumpsit, Default by One
Defendant.

WARRANTY:

Declaration on Warranty of Horse.

WORK AND LABOR:

Declaration for Wages as Hired
Servant;
Declaration for Work With Horses
and Carriages;
Declaration for Work, Journeys and
Attendance;

Declaration for Board and Wages
as Hired Servant;
Declaration by Nurse for Services;
Declaration for Carriage of Goods by
Land;
Declaration by Undertaker;
Declaration, Common Counts for
Work, Labor and Materials, With
Money Counts.

I. Declarations.

A. Declaration in Assumpsit for Goods Sold and Delivered.

In the King's Bench. The _____
day of _____, in the year of our
Lord _____.

_____ to-wit, A. B. (the plaintiff
in this suit), by E. F., his attorney
(or in his own proper person), com-
plains of C. D. (the defendant in this
suit), who has been summoned to an-
swer the said plaintiff (or, who has
been arrested at the suit of the said
plaintiff), in an action on promises:
For that whereas the defendant, on the
_____ day of _____, in the year
of our Lord _____, was indebted to
the plaintiff in _____ pounds, for the
price and value of goods then sold and
delivered by the plaintiff to the de-
fendant at his request; and whereas
the defendant afterwards, in considera-
tion of the premises, then promised to
pay the said sum of money to the
plaintiff on request; yet he hath dis-
regarded his promises, and hath not
paid the said money, or any part there-
of, to the plaintiff's damage of _____
pounds; and thereupon he brings suit,
etc. Steph. Pl. 40.

B. Declaration, Common Counts for Goods Sold, Work, Labor and Materials, With Money Counts (by *capias*).

Supreme Court. Of (January) term,
in the year one thousand eight hun-
dred (and forty-six.) (City and)
county (of New York) ss.:

A. B., plaintiff in this suit, by E. F.,
his attorney, complains of C. D., de-
fendant in this suit, being in custody,
etc., of a plea of trespass on the case
upon promises: (*Indebitatus assump-
sit*.) For that whereas the said defend-
ant, heretofore, to-wit, on the thirty-
first day of December) in the year of
our Lord one thousand eight hundred
and (forty-five), at (New York), to-
wit, at the (city and in the) county
of (New York), aforesaid, was indebted
to the said plaintiff in the sum of (one
thousand) dollars, lawful money of the

United States of America, for divers
goods, wares and merchandise, by the
said plaintiff, before that time, sold
and delivered to the said defendant,
and at the special instance and request
of the said defendant: And being so
indebted, he, the said defendant, in
consideration thereof, afterwards, to-
wit, on the same day and year last
aforesaid, at the place aforesaid,
undertook, and then and there faith-
fully promised the said plaintiff
well and truly, to pay unto the said
plaintiff the said sum of (one thousand)
dollars, when he, the said defendant,
should be thereunto afterwards re-
quested.

(*Quantum valebant* for the same.) And
whereas also, afterwards, to-wit, on the
same day and year (last aforesaid), and
at the place aforesaid, in consideration
that the said plaintiff, at the like spe-
cial instance and request of the said
defendant, had before that time, sold
and delivered to the said defendant,
divers other goods, wares, and merchan-
dise of him, the said plaintiff, the said
defendant undertook, and then and
there faithfully promised the said
plaintiff to pay him so much money as
the last mentioned goods, wares and
merchandise, at the time of the said
sale and delivery thereof, were reason-
ably worth, when the said defendant
should be thereunto afterwards re-
quested. And the said plaintiff avers,
that the said last mentioned goods,
wares and merchandise, at the time of
the sale and delivery thereof, were rea-
sonably worth the further sum of (one
thousand) dollars, of like lawful money
as aforesaid, to-wit, at the place afore-
said, whereof the said defendant after-
wards, to-wit, on the same day and year
last aforesaid, and at the place afore-
said, had notice.

(*Indebitatus assumpsit*, for work and
labor.) And whereas also the said de-
fendant, afterwards, to-wit, on the same
day and year (last aforesaid), and at
the place aforesaid, was indebted to
the said plaintiff in the further sum
of (one thousand) dollars, of like law-
ful money as aforesaid, for the work
and labor, care and diligence of the
said plaintiff, by the said plaintiff, be-
fore that time done, performed, and
bestowed in and about the business of
the said defendant, and for the said
defendant, and at his special instance
and request. (Same count for mate-
rials.) And also for divers mate-

rials, and other necessary things, by the said plaintiff, before that time, found and provided, and used and applied in and about that work and labor, for the said defendant, and at his like special instance and request. And being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last aforesaid), and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly, to pay unto the said plaintiff, the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

(*Quantum meruit* for the same.) And whereas also afterwards, to-wit, on the same day and year (last aforesaid), and at the place aforesaid, in consideration that the said plaintiff had, before that time, at the like special instance and request of the said defendant, done, performed and bestowed divers other work and labor, care and diligence, in and about the business of the said defendant, and for the said defendant, and had, before that time, found, provided, used and applied divers other materials, and other necessary things, in and about that business, the said defendant undertook, and then and there faithfully promised the said plaintiff, that he, the said defendant, would well and truly pay to the said plaintiff so much money as the said plaintiff reasonably deserved, to have of the said defendant for the same, when he, the said defendant, should be thereunto afterwards requested. And the said plaintiff avers, that he reasonably deserved to have of the said defendant for the same, the further sum of (one thousand) dollars, of like lawful money, as aforesaid, to-wit, at the place aforesaid: Whereof the said defendant afterwards, to-wit, on the same day and year (last aforesaid), and at the place aforesaid, had notice.

(Money Counts.)

(*Indebitatus assumpsit* for money lent and advanced.) And whereas also, the said defendant, afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiff in the sum of (one thousand) dollars, like lawful money, as aforesaid, for so much money, before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request

of the said defendant. And being so indebted, the said defendant in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

(The like for money paid, etc.) And whereas also, the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiff, in the further sum of (one thousand) dollars, of like lawful money as aforesaid, for so much money before that time, paid, laid out, and expended by the said plaintiff, to and for the use of the said defendant, and at the like special instance and request of the said defendant. And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff, the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

(The like for money had and received.) And whereas also, the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiff in the further sum of (one thousand) dollars, of like lawful money, as aforesaid, for so much money, before that time, had and received, by the said defendant, to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff, the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

(*Insimul computassent*.) And whereas also the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money, before that time due and

owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid: And upon such accounting, the said defendant then and there was found to be in arrear, and indebted to the said plaintiff in the further sum of (one thousand) dollars, of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless the said defendant (although often afterwards requested so to do), hath not as yet paid the said several sums of money above mentioned, or any, or either of them, or any part thereof, to the said plaintiff; but to pay the same, or any part thereof to the said plaintiff, the said defendant hath hitherto altogether refused, and still doth refuse. To the damage of the said plaintiff of (one thousand) dollars, and therefore the said plaintiff brings suit, etc.

E. F., attorney for plaintiff.

Burr. App. 244, §505. (See 2 Chit. Pl. 37-115.)

C. Money Counts Condensed.

(After the special counts, proceed thus): And whereas also, the said defendant, afterwards, to-wit, on the _____ day of _____ in the year of our Lord one thousand eight hundred and (forty-six) at the place aforesaid, was indebted to the said plaintiff in the sum of (one thousand) dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant. And for other money by the said plaintiff, before that time, paid, laid out, and expended for the said defendant, and at the like request of the said defendant. And for other money by the said defendant, before that time had and received to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid,

undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested. And whereas also, the said defendant, afterwards, to-wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff, etc. Burr. App. 249, §507.

D. Declaration Against Bailee Without Reward, for Want of Care.

For that whereas heretofore, to-wit, on, etc., at, etc., in consideration that the said plaintiff, at the special, etc., had caused to be delivered to him, the said defendant, certain goods and chattels, to-wit, etc., of great value, to-wit, of the value of _____ dollars, to be taken care of, and safely and securely kept by the said defendant for the said plaintiff; he, the said defendant, undertook, etc., to take due and proper care of, and safely and securely keep the said goods and chattels for the said plaintiff, and to redeliver the same to him, the said plaintiff, when he, the said defendant, should be thereunto afterwards requested; and although the said defendant then and there had and received the said goods and chattels of and from the said plaintiff for the purpose aforesaid; and although the said defendant, was afterwards, to-wit, on, etc., at, etc., aforesaid, requested by the said plaintiff to redeliver the said goods and chattels to him, the said plaintiff. Yet the said defendant, not regarding his said promise and undertaking, did not nor would take due and proper care of, and safely or securely keep the said goods and chattels, or any part thereof, for the said plaintiff, nor did nor would at the said time when he was so requested as aforesaid, or at any time afterwards, redeliver the same to the said plaintiff, but on the contrary thereof, he, the said defendant, so negligently and carelessly conducted himself, with respect to the said goods and chattels, and took so little care thereof, that by and through the mere carelessness, negligence, and improper conduct of the said defendant and his servants in that behalf, the said goods and chattels being of the value aforesaid, became and were wholly lost to the said plaintiff, to-wit, at, etc., aforesaid. (Add a count on defendant's implied undertaking to redeliver on re-

quest, omitting the statement of the want of care. If the defendant have been guilty of a conversion, or if it be doubtful whether others also may be liable, it may be advisable to declare in case, adding a count in trover.) Burr. App. 267, §531; 2 Chit. Pl. 334; 3 East 62, 70.

E. Declaration on Chattel Note.

For that whereas the said defendant, on, etc., at, etc., made his certain chattel note in writing, bearing date the day and year last aforesaid, and then and there delivered the said note to the said (plaintiff), and thereby then and there, by the (first day of June), then next, he, the said defendant, promised to pay the said plaintiff the sum of (sixty-five) dollars, in (good merchantable hemlock saw logs), to be delivered at (A. W.'s mill), in the town of H., with interest, value received, at (thirty dollars per hundred). By reason whereof, he, the said defendant, became liable to pay to the said plaintiff the said sum of (sixty-five) dollars, in the said note mentioned, and the interest thereof, according to the tenor and effect of the said note. And being so liable, etc. (conclude with usual averment of promise to pay, and refusal). Burr. App. 260, §522.

F. Declaration on Contingent Note.

For that whereas the said defendant, heretofore, to-wit, on, etc., at, etc., made his certain promissory note in writing, bearing date the same day and year aforesaid, and thereby then and there promised to pay the said plaintiff (three days after the arrival of the ship B., at her moorings in the river T.), the sum of _____ dollars, being for a sum of money due from the said ship B. And the said defendant then and there delivered the said promissory note to the said plaintiff. And the said plaintiff avers that (the said ship B., afterwards, to-wit, on, etc., arrived at her moorings in the river T. aforesaid), to-wit, at, etc., aforesaid, of all which said several premises the said defendant, afterwards, to-wit, on, etc., last aforesaid, at, etc., aforesaid, had notice. By means whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so

liable he, the said defendant, in consideration thereof, afterwards, to-wit, on, etc., aforesaid, at, etc., aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified, according to the tenor and effect thereof. (Add the money counts, and conclude in the usual form.) Burr. App. 260, §523; 2 Chit. Pl. 123.

G. Declaration Against Watchmaker for Losing Watch.

For that whereas the said defendant before and at the time of the making of his promise and undertaking, hereinafter next mentioned, was a watchmaker, and the trade and business of a watchmaker then followed and carried on, to-wit, at, etc. And thereupon heretofore, to-wit, on, etc., at, etc., aforesaid, in consideration that the said plaintiff, at the special, etc., of the said defendant, had then and there delivered to him, the said defendant, a certain watch of him, the said plaintiff, of great value, to-wit, of the value of _____ dollars, of lawful, etc., to be repaired by him, the said defendant, in the way of his said trade or business of a watchmaker, for reasonable reward, to be therefore paid by the said plaintiff to the said defendant, he, the said defendant, undertook, etc., to repair the said watch, and to take due and proper care thereof, until the same should be returned by the said defendant to the said plaintiff. Yet the said defendant not regarding, etc., did not, nor would take due and proper care of the said watch, until the same was returned by him, the said defendant, to the said plaintiff, but on the contrary thereof, he, the said defendant, after the making of his said promise and undertaking, to-wit, on, etc., aforesaid, at, etc., aforesaid, so carelessly and negligently behaved and conducted himself with respect to the said watch, that by and through the mere carelessness, negligence, and improper conduct of the said defendant in that behalf, the said watch being of the value aforesaid, became, and was, and still is wholly lost to the said plaintiff, to-wit, at, etc., aforesaid. (Second count for not redelivering the watch.) And whereas also, afterwards, to-wit, on, etc., aforesaid, at, etc., aforesaid, in consideration that the said plaintiff, at the like special, etc., of the said defendant, had then and there de-

livered to the said defendant a certain other watch of great value, to-wit, etc., to be rectified by him, the said defendant, for reward, to be therefore paid to him, he, the said defendant, undertook, etc., to endeavor to rectify the said last mentioned watch within a reasonable time, then next following, and to deliver the same to the said plaintiff, whenever after such reasonable time had elapsed, he, the said defendant should be thereunto requested. And although the said defendant, then and there had and received the said last-mentioned watch for the purpose last aforesaid; yet, he, not regarding his said last mentioned promise and undertaking, hath not, although a reasonable time for rectifying the said last mentioned watch hath long since elapsed, and the said defendant was, after such reasonable time had elapsed, to-wit, on, etc., aforesaid, at, etc., aforesaid, requested by the said plaintiff so to do, as yet delivered to him, the said plaintiff, the said last mentioned watch, but hath hitherto wholly neglected and refused so to do, to-wit, at, etc., aforesaid. (Add count for money had and received. If there be reason to apprehend that the defendant have been guilty of a conversion, it may be advisable to declare in case with a count in trover. 3 East 62, 70.) Burr. App. 268, §532; 2 Chit. Pl. 340.

II. Plea of Non-Assumpsit.

And the said defendant, by ———, his attorney, says, that he did not undertake or promise in manner and form as the said plaintiff hath above complained. And of this the said defendant puts himself upon the country. Steph. Pl. 157.

Note.—For different pleas and their effect, see 3 STANDARD PROC., p. 187.

ATTACHMENT.

I. Affidavits for Attachment, 125

- A. *General Form*, 125
- B. *Referring to Complaint*, 126
- C. *Defendant, Foreign Corporation*, 126
- D. *Defendant, Non-resident*, 126
- E. *Departed From State*, 127
- F. *About To Depart*, 127
- G. *Threat To Assign*, 128
- H. *Concealment To Avoid Process*, 128

II. Statements of Cause of Action in Affidavits, 128

- A. *Money Lent, Paid, Had and Received*, 128
 1. *Money Lent*, 128
 2. *Money Paid*, 128
 3. *Money Received*, 128
 4. *Interest*, 129
 5. *Account Stated*, 129
- B. *Respecting Real Property*, 129
 1. *Price of Land*, 129
 2. *Leasehold Premises Assigned*, 129
 3. *Use and Occupation of House, Farm or Land, Not Reserved by Deed*, 129
 4. *Rent of Unfurnished Apartments*, 129
 5. *Rent of Furnished Apartments*, 129
 6. *Use of Furnished Rooms, Etc.*, 129
 7. *Use of Pasture Land*, 129
 8. *Crops Sold*, 129
 9. *Wharfage and Warehouse Room*, 129
- C. *Goods Sold or Let to Hire*, 129
 1. *Goods Sold and Delivered*, 129
 2. *Fixtures*, 129
 3. *Stocks Sold and Transferred*, 129
 4. *Good-Will of Business*, 129
 5. *Money on Exchange of Horses*, 129
 6. *Board and Lodging*, 130
 7. *Board and Lodging for Third Person*, 130
 8. *Board and Education*, 130
 9. *Horse-Keep, Stabling, Etc.*, 130
 10. *Carriage of Goods by Land*, 130
 11. *Passage Money*, 130
 12. *Freight, Primage, or Average*, 130
 13. *Lighterage of Goods*, 130
 14. *Demurrage*, 130
- D. *Services, With Money Paid or Materials Furnished*, 130
 1. *Work and Materials*, 130
 2. *Work and Materials, and Journeys*, 130
 3. *Work With Horses, Etc.*, 130
 4. *As Domestic or Other Servant*, 130
 5. *As Clerk*, 130
 6. *Agent Generally*, 130
 7. *Factor and Agent*, 130
 8. *Insurance Broker*, 130
 9. *Premiums of Insurance*, 131
 10. *As Seaman*, 131
 11. *Master of Vessel*, 131
 12. *Attorney and Solicitor*, 131
 13. *As Surveyor*, 131
 14. *Auctioneer and Appraiser*, 131
 15. *Physician and Surgeon*, 131
 16. *As an Undertaker of Funerals*, 131

- E. *On Promissory Notes*, 131
 - 1. *Payee Against Maker*, 131
 - 2. *Second Indorsee Against Maker*, 131
 - 3. *First Indorsee Against Payee*, 131
 - 4. *Indorsee Against Indorser*, 132
- F. *On Bills of Exchange*, 132
 - 1. *Drawer Against Acceptor*, 132
 - 2. *Payee Against Acceptor*, 132
 - 3. *Indorsee Against Acceptor*, 132
 - 4. *Bearer Against Acceptor*, 132
 - 5. *Payee Against Drawer, on Non-acceptance*, 132
 - 6. *Payee Against Drawer, on Non-Payment*, 132
 - 7. *Indorsee Against Drawer, on Non-Acceptance*, 132
 - 8. *Indorsee Against Drawer, on Non-payment*, 132
- G. *On Checks*, 132
 - 1. *Statement, Payee Against Maker*, 132
 - 2. *Bearer Against Maker*, 132
- H. *On Award*, 133
- I. *On Deeds*, 133
 - 1. *Generally*, 133
 - 2. *Rent on Lease*, 133
 - 3. *Mortgage Money and Interest*, 133
- J. *On Bonds*, 133
 - 1. *Bond by Obligee*, 133
 - 2. *Arbitration Bond*, 133
- K. *On Judgments*, 133
 - 1. *Of Superior Court*, 133
 - 2. *By Executor*, 133
- L. *Money Won at Play*, 133
- III. *Security on Attachment*, 134
 - A. *Undertaking*, 134
 - B. *Bond*, 134
- IV. *Warrant, Writ of Order*, 135
 - A. *Warrant*, 135
 - B. *Writ of Attachment*, 135
 - C. *Return, Property of Great Bulk*, 135
 - D. *Return to Attachment*, 136
 - E. *Return to Attachment, No Property Found*, 136
- V. *Inventory of Property Attached*, 136
- VI. *Order For Sale of Perishable Property*, 136
- VII. *Order To Examine*, 136
 - A. *Person Holding Property*, 136
 - B. *Officer of Corporation*, 137
- VIII. *Setting Aside or Discharging Attachment*, 137
 - A. *Notice of Motion*, 137
 - B. *Notice of Motion on Giving Security*, 137
 - C. *Bond To Discharge*, 137

- D. *Undertaking on Discharge*, 138
- E. *Order Vacating Attachment*, 138
- F. *Order Discharging on Security*, 138

IX. *Claims by Third Persons*, 138

- A. *Affidavit of Claim*, 138
- B. *Notice of Claim*, 138
- C. *Claim Bond*, 138

For other forms, see 3 STANDARD PROC. 404, 406, 729.

CROSS-REFERENCES:

ADMIRALTY:

Warrant for Arrest and for Attachment Against Goods and Chattels, and Its Effects, and Summons to Garnishee.

BONDS:

Complaint on Bond To Discharge Attachment Against Vessel.

DECLARATION AND COMPLAINT:

Complaint on Undertaking To Discharge Attachment.

LIS PENDENS:

Notice of Pendency of Action in Which an Attachment Affecting Real Property Has Been Issued.

REVIVOR:

Affidavit on Attachment and Death of Defendant Before Publication Completed;

Order on Attachment, and Death of Defendant Before Publication Completed.

SERVICE OF PROCESS AND PAPERS:

Notice for Publication of Attachment Against Absconding Debtor;

Notice for Publication of Attachment Against Non-Resident Debtor;

Order for Publication of Notice of Attachment Against an Absconding Debtor;

Order for Publication of Notice of Attachment Against Non-resident Debtor.

TRESPASS:

Answer, Goods Were Attached, and Plaintiff Fraudulent Grantee.

I. *Affidavits for Attachment*.

A. *Affidavit To Obtain Attachment, General Form*.

A. B., the plaintiff above named, being duly sworn, says:

I. That Y. Z., the above named defendant, is justly and truly indebted to the deponent in ——— dollars, for (here state cause of action; see II, A, to L); and deponent believes that he is justly entitled to recover said sum.

(Or, where the action is for a tort:

I. That on or about the ——— day

of ———, 18—, Y. Z., the above named defendant (here state commission of the tort), and deponent believes that he has sustained damages to that amount, and that he is justly entitled to recover said sum.)

II. (Here state facts which bring the case within one of the classes in which the statute allows an attachment.)

III. That the said plaintiff has commenced an action in this court, by issuing the summons hereto annexed, against said Y. Z. upon the cause of action above stated. 2 Abb. Forms 315.

Note.—Special attention must be given to the provisions of state statutes in the preparation of the affidavit. Many states require an allegation that the plaintiff is entitled to recover the amount stated "over and above all counterclaims and offsets known to him." (*O'Connor v. Roark*, 108 Cal. 173, 41 Pac. 465.) It is also held to be necessary to allege that the attachment was not obtained for the purpose of vexing and harassing the defendant. (*Hall v. Brazelton*, 40 Ala. 406, 46 Ala. 359.) That plaintiff has begun or is about to begin an action against the defendant upon the cause of action alleged in the affidavit is also a usual requirement. That no previous or other application for a warrant of attachment in the action must also be averred under some statutes. For other forms, and as to the affidavit generally, see also 3 STANDARD PROC. 405, et seq.

B. Affidavit To Obtain Attachment, Referring To Complaint Annexed.

A. B., the plaintiff above named, being duly sworn, says:

I. That a sufficient cause of action exists in his favor against the defendant Y. Z., the grounds of which appear in the sworn complaint in this action hereto annexed, all the statements contained in which are true to the knowledge of this deponent (if deponent has not personal knowledge of all the facts, add: except the allegation that, etc., as to which, here state sources of belief and information, and indicate reason why informant's affidavit is not given).

II. (Here state facts which bring the case within one of the classes in which the statute allows an attachment.)

III. (As in preceding form.) 2 Abb. Forms 315.

C. Affidavit Where Defendant is a Foreign Corporation.

(As in I, A, inserting the following in the place of paragraph II): II. That the defendants are a foreign corporation, created under the laws of the state of ———, having their place of business in ———, in that state.

III. That the defendants have property within this state at ———, consisting of (describe property).

IV. That the plaintiff is a resident of this state, to-wit, of the town of ———, in the county of ———.

(Or IV. That the subject of the action is situated within this state, as appears by the foregoing statements [or by the annexed complaint].) 2 Abb. Forms 316.

D. Affidavit Where Defendant is a Non-Resident.

(As in I, A, inserting the following in the place of paragraph II): II. That the defendant Y. Z. is not a resident of this state; but resides in the city of ———, in the state of ——— (as deponent is informed by O. P., the agent and business correspondent in this city of said defendant, whose affidavit is hereto annexed).

III. That the said Y. Z. has property within this state, to-wit, a farm in the county of ———, and personal property in the hands of M. N., his agent at ———, and which the said M. N. represents to be the property of the said defendant. 2 Abb. Forms 316.

Affidavit for Attachment, Defendant Non-resident (b).

In the Superior Court of the County of San Diego, State of California. Andrew J. O'Connor, receiver of the Consolidated National Bank of San Diego, plaintiff, v. Ellen Roark, defendant. State of California, County of San Diego, ss.

Andrew J. O'Connor, being duly sworn, says that he is the plaintiff in the above entitled action; that the defendant, Ellen Roark, in the said action, is indebted to him in the sum of seven thousand seven hundred and fifty dollars, over and above all legal setoffs and counterclaims, upon an express contract for the direct payment of money, to-wit: An assessment and requisition of \$100.00 per share upon the shareholders of the Consolidated

National Bank of San Diego, levied and made October 25, 1893, by James H. Eckels, comptroller of the currency, under and by virtue of the laws of the United States of America, and against the defendant, Ellen Roark, as one of the stockholders in said bank, and who was, on June 21, 1893, and ever since has been, and now is, the owner and holder of seventy-seven and one-half (77½) of the capital stock of said Consolidated National Bank of San Diego, and that the said defendant is a non-resident of this state.

That the said attachment is not sought, and the said action is not prosecuted, to hinder, delay, or defraud any creditor or creditors of the said defendant.

Andrew J. O'Connor.

O'Connor v. Roark, 108 Cal. 173, 41 Pac. 465.

Note.—In many states it is necessary when the allegation of non-residence is on information and belief, to attach an affidavit by the person from whom the information is obtained.

E. Affidavit Where Defendant Has Departed From the State, To Defraud Creditors, or To Avoid Service (a).

(Insert I, A.) II. That the defendant (is a resident of this state, to-wit, of ———; but) cannot, after due diligence, be found within this state. That, as this deponent believes, the defendant has departed from this state to ———, in the state of ——— (or keeps himself concealed within this state), with intent to defraud his creditors, and the grounds of his belief are as follows (here set out in detail the facts and circumstances which show that the defendant has done so, e. g., thus: that the said defendant has lately been engaged in converting his property into money, and has sold the goods in his store (or his stock and farming utensils) for a less price than their real value, and has sold off his household furniture, and has been busily engaged in collecting in all debts and money owing to him; and that he left his family on Friday last, stating to deponent and others that he was going to the city of New York to purchase goods; that since that time he has not returned to his said residence; that deponent has inquired of his wife where said defendant had gone, and when he would return, and was told that he had gone to New York city, and would be

back in a day or two; that deponent has been informed by J. K., of ——— that he saw the said defendant on Monday last at Buffalo; and that said defendant informed said J. K. that he was then going to the state of Wisconsin, and intended to purchase a tract of land in that state, and after he was located he should send for his family (annex and refer to affidavit of informant). 2 Abb. Forms 316.

Affidavit Where Defendant Has Departed From the State, To Defraud Creditors, or To Avoid Service (b).

I. (State the cause of action, e. g., thus): On the ——— day of ———, 18—, at ———, deponent sold and delivered to Y. Z., of ———, sundry parcels of dry goods, of the value of ——— dollars, for which he has not paid.

II. Deponent is about to commence an action in this court against the said Y. Z., and has issued a summons therein.

III. The said Y. Z. has left this state, and gone to ———.

IV. Deponent is informed by A. B., and believes that the said Y. Z. stated to him, on the ——— day of ———, 18—, that "he meant to get out of the way for a while, and let the storm blow over;" meaning that he wished to avoid his creditors.

V. The said A. B., being the clerk of the said Y. Z., refuses to make his affidavit. 2 Abb. Forms 317.

F. Affidavit Where Defendant is About To Depart.

A. B., of ———, being duly sworn, says:

I. That on or about the ——— day of ———, 18—, he sold and delivered to the defendant, at the city of New York, a large quantity of general household furniture, amounting to nine thousand dollars and upwards, which said furniture said defendant used to furnish the "New Irving House" in this city, a hotel kept and occupied since that time by said defendant. That said defendant gave this deponent his notes for various amounts for said furniture. That the plaintiffs are now the lawful owners and holders of one of said notes, now past due and wholly unpaid, for the sum of ——— dollars, with interest. That said note was received by said plaintiffs in the regular course of business.

ness, before maturity, and for a valuable consideration.

II. That, as deponent is informed and believes, said defendant is about to leave this state in a very short time, and take with him his family, and that he is going to Europe, and that the sources of deponent's information are (specifying them, and indicating why informant's affidavit is not procured).

III. That, as deponent is informed and believes, said defendant has packed up a large amount of silverware, and other valuables, which said defendant is about to take away with him out of this state, and which are the property of said defendant (stating sources, etc., as above).

IV. That, as deponent is informed and believes, said defendant is making arrangements to convert other portions of his property into cash, with the intention, as deponent verily believes, of removing the same from this state, and in particular (etc., and stating sources, etc., as above).

V. That the said defendant has repeatedly said to this deponent that he did not intend to pay one cent for the notes so given by him to this deponent, for the furniture sold as aforesaid; and deponent verily believes that said defendant's intention, in removing and disposing of his property as aforesaid, is to defraud his creditors. 2 Abb. Forms 318.

G. Affidavit With Allegation of Threat To Assign To Hinder Creditors.

This deponent says that, as he verily believes, the said defendant is about to dispose of his property, with intent to defraud his creditors. Deponent further says that he has, within the past three or four weeks, several times applied to the defendant to pay or secure said debt; and the defendant, on the _____ day of _____, last, promised the plaintiffs that he would take an account of his stock, and show them a statement of his affairs, and give them security on his stock the next day. He did not call the next day; and deponent, on the _____ day of _____, went to said defendant, and he told deponent he was not going to take an account of stock or give any security; deponent then told him the plaintiffs would sue him, and he replied that if they did, he would make an assignment, and they could

not get anything, and he would do business under somebody else's name. 2 Abb. Forms 319.

H. Affidavit for Attachment, Concealment to Avoid Process.

The State of Texas, County of Travis. McKean, Eilers & Co. (No. 1,153) v. J. A. Forbes, Theodore Loose, and G. W. Barnett. Before the undersigned authority on this day came and personally appeared A. T. McKean, who, being by me duly sworn, deposes and says that he is a member of the firm of McKean, Eilers & Co., plaintiffs in the above entitled and numbered cause, and that said firm is composed of affiant and A. J. Eilers; that the defendants in said above entitled and numbered cause, J. A. Forbes, Theodore Loose, and G. W. Barnett, are justly indebted to plaintiffs, the said McKean, Eilers & Company, in the sum of six hundred and thirty-five and 31/100 dollars (\$635.31/100) for goods, wares, and merchandise sold and delivered to them by plaintiffs at the special instance and request of defendants while said defendants were merchants doing business under the firm name and style of J. A. Forbes & Co.; that said defendants, J. A. Forbes, Theodore Loose, and G. W. Barnett, secrete themselves so that the ordinary process of the law cannot be served upon them; that the attachment now applied for is not sued out for the purpose of injuring or harassing the defendants, or either of them; and that plaintiffs will probably lose their debt unless such attachment is issued. (Signed) A. T. McKean. Sworn to and subscribed before me this 20th day of September, A. D. 1893. (Signed) A. W. Wilkerson, Notary Public, Travis County, Texas. Eilers v. Forbes (Tex. Civ. App.), 32 S. W. 709.

II. Statements of Cause of Action in Affidavits.

A. For Money Lent, Paid, Had, and Received, Etc.

1. Statement, Money Lent.

For money lent by said plaintiff to the said defendant, at his request. 2 Abb. Forms 263.

2. Statement, Money Paid.

For money paid by said plaintiff for the use of the said defendant, at his request. 2 Abb. Forms 263.

3. Statement, Money Received.

For money received by the said defendant for the use of said plaintiff. 2 Abb. Forms 263.

4. *Statement, Interest.*

For interest upon, and for the forbearance at interest to the said defendant by said plaintiff, at the said defendant's request, for divers spaces of time, of moneys due and owing to said plaintiff from the said defendant; and which interest the said defendant contracted and agreed with said plaintiff to pay said plaintiff. 2 Abb. Forms 263.

5. *Statement, Account Stated.*

For money found to be due from the said defendant to said plaintiff on an account stated between them. 2 Abb. Forms 263.

B. *Respecting Real Property.*

1. *Statement, for Price of Land.*

For a dwelling house (or land) and premises, with the appurtenances, sold and conveyed by said plaintiff to the said defendant. 2 Abb. Forms 263.

2. *Statement, for Leasehold Premises Assigned.*

For a dwelling house (or land) and premises, with the appurtenances, sold and assigned by said plaintiff to the said defendant for the remainder of a term of years unexpired. 2 Abb. Forms 263.

3. *Statement, for Use and Occupation of a House, Farm, or Land, etc., Not Reserved by Deed.*

For the said defendant's use, by permission of said plaintiff, of a dwelling house (or farm, or land) and premises, with the appurtenances, of said plaintiff. 2 Abb. Forms 263.

4. *Statement, for Rent of Unfurnished Apartments.*

For the said defendant's use, by permission of said plaintiff, of rooms and apartments of said plaintiff. 2 Abb. Forms 263.

5. *Statement, for Rent of Furnished Apartments.*

For the said defendant's use, by permission of said plaintiff, of rooms and apartments of said plaintiff, together with furniture, linen, chattels, and other necessities of said plaintiff therein. 2 Abb. Forms 264.

6. *Statement, for Use of Furnished Rooms, etc., Firing, Etc.*

For the said defendant's use, by permission of said plaintiff, of rooms, apartments, and furniture of said plaintiff; and for meat, drink, firing, candles, attendance, chattels, and other necessities provided by said plaintiff

for the said defendant, at his request. 2 Abb. Forms 264.

7. *Statement, for Use of Pasture Land and Eatage of Grass.*

For the said defendant's use of pasture land of said plaintiff, and the eatage of grass and herbage thereon growing, let by said plaintiff to the said defendant, at his request, and by him had and used for depasturing (horses, cattle and sheep). 2 Abb. Forms 264.

8. *Statement, for Crops Sold.*

For a crop of grass (or turnips, or potatoes, as the case may be) sold by said plaintiff to the said defendant, and by the said defendant had and taken to his own use. 2 Abb. Forms 264.

9. *Statement, for Wharfage and Warehouse Room.*

For the stowage and warehouse room of goods and chattels deposited, stowed and kept by said plaintiff in and upon a wharf, warehouse and premises of said plaintiff, for the said defendant, at his request. 2 Abb. Forms 264.

C. *Goods Sold or Let to Hire.*

1. *Statement, for Goods, etc., Sold and Delivered.*

For goods (or horses, or cattle, or sheep, etc., according to the fact) sold and delivered by said plaintiff to the said defendant. 2 Abb. Forms 265.

2. *Statement, for Fixtures.*

For fixtures and effects bargained and sold by said plaintiff to the said defendant. 2 Abb. Forms 265.

3. *Statement, Stocks Sold and Transferred.*

For ——— dollars United States six per cent. registered bonds of 1881 (according to the fact), sold and transferred by said plaintiff to the said defendant. 2 Abb. Forms 265.

4. *Statement, for Good-Will of Business.*

For the good-will of a business of said plaintiff, sold and given up by said plaintiff to the said defendant. 2 Abb. Forms 265.

5. *Statement, for Money on Exchange of Horses.*

For money which the said defendant agreed to pay to said plaintiff, together with a horse of the said defendant, in exchange for a horse of said plaintiff, delivered by said plaintiff to the said defendant at his request. 2 Abb. Forms 265.

6. *Statement, for Board and Lodging.*

For meat, drink, washing, lodging, and other necessities, provided by said plaintiff for the said defendant, and at his request. 2 Abb. Forms 265.

7. *Statement, for Board and Lodging for Third Persons.*

For meat, drink, washing, lodging, and other necessities, provided by said plaintiff for divers persons, and for the said defendant, at his request. 2 Abb. Forms 265.

8. *Statement, for Board and Education.*

For board, maintenance, and education of a child (or children), and for clothes and other necessities for the same, provided by said plaintiff for the said defendant, at his request. 2 Abb. Forms 265.

9. *Statement, for Horse-Keep, Stabling, Etc.*

For horse-keep, stabling, care, and attendance, provided and bestowed by said plaintiff in feeding and keeping of horses, for the said defendant, at his request. 2 Abb. Forms 265.

10. *Statement, for the Carriage of Goods by Land.*

For the carriage and conveyance of goods and chattels by said plaintiff for the said defendant, at his request. 2 Abb. Forms 266.

11. *Statement, for Passage Money.*

For the passage of the said defendant and other persons, in and on board of a ship or vessel of said plaintiff (or whereof said plaintiff was master and commander), from ——— to ———, at the said defendant's request. 2 Abb. Forms 266.

12. *Statement, for Freight, Primage, or Average.*

For freight, primage and average, payable by the said defendant to said plaintiff for the conveyance by said plaintiff of goods in a ship, for the said defendant, at his request. 2 Abb. Forms 266.

13. *Statement, for Lighterage of Goods.*

For lighterage of goods conveyed by said plaintiff in lighters and other vessels, and shipped and landed out of the same, for the said defendant, at his request. 2 Abb. Forms 266.

14. *Statement, for Demurrage.*

For the demurrage of a ship of said plaintiff, kept on demurrage by the said defendant. 2 Abb. Forms 266.

D. *Services, With Money Paid or Materials Furnished.*

1. *Statement, for Work and Materials.*

For work done, and materials for the same provided by said plaintiff for the said defendant, at his request. 2 Abb. Forms 266.

2. *Statement, for Work and Materials, and for Journeys.*

For work done, and materials for the same, and for journeys made in and about that work, by said plaintiff for the said defendant, at his request. 2 Abb. Forms 266.

3. *Statement, for Work With Horses, Carts, Etc.*

For work done by said plaintiff and his servants, and with said plaintiff's horses, carts, and wagons, for the said defendant, at his request. 2 Abb. Forms 266.

4. *Statement, as a Domestic or Other Servant.*

For wages payable from the said defendant to said plaintiff for his services done for the said defendant, as the hired servant of the said defendant, and on his retainer. 2 Abb. Forms 266.

5. *Statement, as a Clerk.*

For salary due and payable from the said defendant to said plaintiff for his services done for the said defendant as his clerk, and on his retainer. 2 Abb. Forms 267.

6. *Statement, as an Agent Generally.*

For work done by said plaintiff as the agent of, and for the said defendant, and on his retainer, and for commission and reward due, and of right payable from him to said plaintiff in respect thereof. 2 Abb. Forms 267.

7. *Statement, as a Factor and Agent.*

For work done by said plaintiff as the factor and agent of the said defendant, in and about the selling and disposing of goods and chattels, and in and about other business of the said defendant, and for him, and at his request. 2 Abb. Forms 267.

8. *Statement, as an Insurance Broker.*

For work done by said plaintiff as an insurance broker, in and about the writing, drawing, and making out of divers policies of insurance of divers ships and vessels, goods, wares, and merchandises; and in and about the

causing and procuring of divers persons to insure divers sums of money on the said ships and vessels, goods, wares, and merchandises for the aid defendants, at their request. 2 Abb. Forms 267.

9. *Statement, for Premiums of Insurance.*

For premiums payable by the said defendant to said plaintiffs for insuring ships and vessels (or goods, or moneys upon ships and vessels, or freight upon goods) by said plaintiffs for the said defendant, at his request. 2 Abb. Forms 267.

10. *Statement, as a Seaman.*

For wages payable from the said defendant to said plaintiff, for his services done by said plaintiff as a mariner on board of a ship called the _____, for the said defendant, and on his retainer. 2 Abb. Forms 267.

11. *Statement, as a Master of Vessel.*

For said plaintiff's wages, for his services done by said plaintiff as master and commander of a ship called the _____, for the said defendant, and on his retainer. 2 Abb. Forms 267.

12. *Statement, as an Attorney and Solicitor.*

For work done as an attorney (and counsel), and materials for the same provided, by said plaintiff for the said defendant upon his retainer, and for fees due and payable to said plaintiff in respect thereof, and for money paid by said plaintiff for the use of the said defendant, at his request. 2 Abb. Forms 267.

13. *Statement as a Surveyor.*

For work done by said plaintiff as a surveyor for the said defendant, and at his request, and for journeys and attendances made and performed by said plaintiff in and about the business of the said defendant, and at his request, and for materials therein provided by said plaintiff for the said defendant, at his request. 2 Abb. Forms 268.

14. *Statement, as an Auctioneer and Appraiser.*

For work done by said plaintiff as an auctioneer and appraiser for the said defendant, at his request, and for journeys performed by said plaintiff for the said defendant, at his request, and for material provided therein by said plaintiff for the said defendant, at his request. 2 Abb. Forms 268.

15. *Statement, as a Physician and Surgeon.*

For work and attendance done by said plaintiff as a physician and surgeon, in and about the healing and curing of the said defendant (and others) of diseases, disorders, and maladies, at the request of the said defendant; and also for medicines, chattels, and other things administered, applied, and delivered, found and provided by said plaintiff, to and for the said defendant (and others), at his like request. 2 Abb. Forms 268.

16. *Statement, as an Undertaker of Funerals.*

For work done by said plaintiff as an undertaker of funerals, in and about the funeral of one _____, deceased, for and at the request of the said defendant, and for hearses, coaches, horses, materials, chattels, and other necessary things by said plaintiff used and applied in and about the furnishing and conducting of the said funeral for the said defendant, at his request. 2 Abb. Forms 269.

E. *On Promissory Notes.*

1. *Statement, Payee Against Maker.*

In _____ dollars, principal money (and interest), due on a promissory note for _____ dollars, made by said Y. Z. (defendant), payable to said plaintiff at a day now past (or dated on the _____ day of _____, and payable to said plaintiff _____ days after said date, which period has now past (or payable to said plaintiff on demand). 2 Abb. Forms 269.

2. *Statement, Second Indorsee Against Maker.*

In _____ dollars for principal money (and interest), due to said plaintiff as indorsee of a promissory note, made by the said Y. Z. for the payment of _____ dollars to the order of W. X., at a day now past, and by the said W. X. indorsed to M. N., and by the said M. N. indorsed to said plaintiff. 2 Abb. Forms 269.

3. *Statement, First Indorsee Against Payee.*

In _____ dollars for principal money (and interest), due to said plaintiff as indorsee of a promissory note, made by W. X. for the payment of _____ dollars to the order of the said Y. Z. at a day now past, and by the said Y. Z. indorsed to said plaintiff, and which said note has been refused payment by the said W. X., of

which due notice was given to said Y. Z. 2 Abb. Forms 269.

4. *Statement, Indorsee Against Indorser.*

In _____ dollars for principal money (and interest), due to said plaintiff as indorsee of a promissory note made by W. X. for the payment of _____ dollars, to the order of M. N., at a day now past, and by the said M. N. indorsed to the said Y. Z., who indorsed the same to said plaintiff, and which said note has been refused payment by the said W. X., of which due notice was given to said Y. Z. 2 Abb. Forms 269.

F. *On Bills of Exchange.*

1. *Statement, Drawer Against Acceptor.*

In _____ dollars for principal money (and interest), due on a bill of exchange drawn by said plaintiff upon, and accepted by, the said Y. Z. for the payment of _____ dollars to said plaintiff at a day now past. 2 Abb. Forms 270.

2. *Statement, Payee Against Acceptor.*

In _____ dollars for principal money (and interest), due on a bill of exchange drawn by one M. N. (drawer) upon, and accepted by, the said Y. Z. for the payment of _____ dollars to said plaintiff at a day now past. 2 Abb. Forms 270.

3. *Statement, Indorsee Against Acceptor.*

In _____ dollars for principal money (and interest), due to said plaintiff as indorsee of a bill of exchange drawn by M. N. (drawer) upon, and accepted by, the said Y. Z. for the payment of _____ dollars, to the order of the said M. N. (drawer), at a day now past, and by him indorsed to said plaintiff. 2 Abb. Forms 270.

4. *Statement, Bearer Against Acceptor.*

In _____ dollars for principal money (and interest), due to said plaintiff as the bearer of a bill of exchange drawn by M. N. (drawer) upon, and accepted by, the said Y. Z. for the payment of _____ dollars to the said M. N. (drawer), or bearer, at a day now past, and by him transferred and delivered to said plaintiff. 2 Abb. Forms 270.

5. *Statement, Payee Against Drawer, on Non-Acceptance.*

In _____ dollars for principal

money (and interest), due on a bill of exchange drawn by the said Y. Z. upon M. N. (drawee) for the payment of _____ dollars to said plaintiff; and which said bill has been refused acceptance by the said M. N., and due notice thereof given to said Y. Z. 2 Abb. Forms 270.

6. *Statement, Payee Against Drawer, on Non-Payment.*

In _____ dollars for principal money (and interest), due on a bill of exchange drawn by the said Y. Z. upon M. N. (drawee) for the payment of _____ dollars to said plaintiff at a day now past; and which said bill has been refused payment by the said M. N., and due notice thereof given to said Y. Z. 2 Abb. Forms 270.

7. *Statement, Indorsee Against Drawer, on Non-Acceptance.*

In _____ dollars for principal money (and interest), due to said plaintiff as indorsee of a bill of exchange drawn by the said Y. Z. on M. N. (drawee) for the payment of _____ dollars to the order of the said Y. Z., and by him indorsed (to W. X., who indorsed the same) to said plaintiff; and which said bill has been refused acceptance, and due notice thereof given to said Y. Z. 2 Abb. Forms 271.

8. *Statement, Indorsee Against Drawer, on Non-Payment.*

In _____ dollars for principal money (and interest), due to said plaintiff as indorsee of a bill of exchange drawn by the said Y. Z. on W. X. (drawee) for the payment of _____ dollars to the order of the said Y. Z. at a day now past, and by the said Y. Z. indorsed (to M. N., who indorsed the same) to said plaintiff; and which said bill has been refused payment, and due notice thereof given to said Y. Z. 2 Abb. Forms 271.

G. *On Checks.*

1. *Statement, Payee Against Maker.*

In _____ dollars for principal money (and interest), due to said plaintiff as the payee of a check drawn by the said Y. Z. on the _____ bank for the payment of _____ dollars to said plaintiff, or bearer, on demand; and which said check has been refused payment by the said bank. 2 Abb. Forms 271.

2. *Statement, Bearer Against Maker.*

In _____ dollars for principal money (and interest), due to said plain-

tiff as the bearer of a bank check drawn by the said Y. Z. on the _____ bank for the payment of _____ dollars to M. N., or bearer, on demand, and by the said M. N. transferred and delivered to said plaintiff; and which said check has been refused payment by the said bank. 2 Abb. Forms 272.

H. *Statement on an Award.*

Upon and by virtue of an award made by M. N. on the _____ day of _____, 18—, upon and by virtue of a submission made by said plaintiff and the said Y. Z. on the _____ day of _____, 18—, to the award of the said M. N. of and concerning certain (or all) matters in difference then depending between said plaintiff and the said Y. Z., and upon and by virtue of which said reference the said M. N. by the said award awarded that the said Y. Z. should pay said plaintiff _____ dollars on the _____ day of _____, 18—. 2 Abb. Forms 272.

I. *On Deeds.*

1. *Statement on a Deed Generally.*

Upon and by virtue of an indenture (or deed, or articles of agreement), dated the _____ day of _____, 18—, whereby the said Y. Z. covenanted to pay to said plaintiff the (said) sum of _____ dollars on the _____ day of _____, 18—. 2 Abb. Forms 273.

2. *Statement, for Rent on a Lease.*

For the arrears of a yearly rent of _____ dollars, payable quarterly by the said Y. Z. to said plaintiff, upon and by virtue of an indenture of lease, dated on the _____ day of _____, 18—, and reserved thereby, and of which said rent _____ quarters are in arrear. 2 Abb. Forms 274.

3. *Statement, for Mortgage Money and Interest.*

For principal and interest due and owing from the said Y. Z. to said plaintiff, upon and by virtue of an indenture of mortgage, dated _____, whereby the said Y. Z. covenanted with said plaintiff to pay the sum of _____ dollars, and interest, to said plaintiff on the _____ day of _____, 18—. 2 Abb. Forms 274.

J. *On Bonds.*

1. *Statement on a Bond by the Oblige.*

For principal and interest due on a bond, dated the _____ day of _____, 18—, and made by the said Y. Z. to said plaintiff, in the penal sum

of _____ dollars, conditioned for the payment of _____ dollars, with lawful interest for the same at a day now past. 2 Abb. Forms 274.

2. *Statement on an Arbitration Bond.*

Upon and by virtue of a bond, dated the _____ day of _____, 18—, and made by the said Y. Z. to said plaintiff, in the penal sum of _____ dollars, conditioned for the performance of an award to be made, as in the condition of the said bond is mentioned; and by which said award, since made in pursuance of the said condition, dated on the _____ day of _____, 18—, the said Y. Z. was awarded to pay to said plaintiff the said sum of _____ dollars upon a day now past. 2 Abb. Forms 275.

K. *On Judgments.*

1. *Statement on Judgment of a Superior Court.*

Upon and by virtue of a judgment of the _____ court of _____, whereby said plaintiff, on the _____ day of _____, 18—, recovered against the said Y. Z. the sum of _____ dollars, exclusive of, and over and above plaintiff's costs of suit in that behalf. 2 Abb. Forms 275.

2. *Statement on a Judgment by Executor.*

Upon and by virtue of a judgment of the _____ court of _____, recovered on the _____ day of _____, 18—, by the said (decedent) in his lifetime against the said Y. Z., exclusive of and over and above the said (decedent's) costs of suit in that behalf, which said judgment is still in force and unsatisfied, as plaintiff verily believes. 2 Abb. Forms 276.

L. *Statement, for Money Won at Play.*

For so much money lost by said plaintiff to the said Y. Z., within three months now last past, by playing with the said Y. Z., at an unlawful game called _____. Said plaintiff lost not less than the sum of _____ dollars at each of the times or sittings, at which the said sum of _____ dollars was so lost by said plaintiff to him the said Y. Z., at the said game as aforesaid; and that the said sum of _____ dollars so lost by said plaintiff as aforesaid, has been paid and delivered by said plaintiff to the said Y. Z. 2 Abb. Forms 276.

III. Security on Attachment.

A. Undertaking on Attachment.

Whereas the above named plaintiff has applied (or is about to apply) for a warrant of attachment in this action, against the property of the above named defendant Y. Z., in one of the cases provided by law:

Now, therefore, we, A. B., of the village of _____, county of _____ (or of No. _____ street, in the city of _____, county of _____), merchant, and C. D., of the village of _____, county of _____, physician, and E. F., of the village of _____, county of _____, merchant, undertake, pursuant to the statute, that if the above defendant recover judgment, or the attachment be set aside by the order of the court, the plaintiff will pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum of (at least two hundred and fifty) dollars.

(Signatures.)

In the presence of (witness).

2 Abb. Forms 319.

Undertaking for Release of Attachment.

"Whereas, the above named plaintiff has commenced an action in the aforesaid court against the above named defendant for the recovery of six thousand four hundred dollars, and whereas an attachment was duly issued and served, as will more fully appear by the sheriff's return on the process in said case.

"Now, therefore, we the undersigned residents of the city and county of San Francisco, in consideration of the premises, and in consideration of the release from attachment of the property attached as above mentioned, do hereby jointly and severally undertake in the sum of twelve thousand and eight hundred dollars, and promise to the effect that if the plaintiff shall recover judgment in such action, we will pay to the plaintiff, upon demand, the amount of said judgment, together with the costs, not exceeding in all the said sum of twelve thousand eight hundred dollars.

Dated at San Francisco this eighth day of December, 1857.

(Signed) Wm. A. Dana,
Ira P. Rankin."

McMillan v. Dana, 18 Cal. 339, 346.

B. Bond on Attachment (a).

Know all men by these presents, that

we, A. B., of _____, I. S., of _____, and I. N., of _____, are held and firmly bound unto _____ in the sum of two hundred and fifty dollars, to be paid to the said (name as before), _____ successors or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the _____ day of _____, in the year, etc.

Whereas a suit has been commenced by the said A. B., in the _____ court of _____ of the state of _____ (and an attachment issued against the property of, or) by attachment against the said _____. Now the condition of this obligation is such that (if the defendant recover judgment or the attachment be set aside by order of the court), if the said A. B. shall pay on demand all costs that may be awarded against him in the said suit (and all damage which said _____ may sustain by reason of the attachment), then this obligation to be void, otherwise to remain in full force and virtue.

Sealed, etc.

(Signatures and seals.)

Approved this _____ day of _____, 18—.

J. W. E., circuit judge.

Burr. App. 510, §1027.

Note.—The matter in the condition in parentheses was not in original.

Bond on Attachment (b).

"Georgia, Fulton county.

"We, the Continental National Bank, of New York, principal, and _____ security, acknowledge ourselves bound unto L. B. Folsom in the sum of fifteen hundred dollars, subject to the following conditions:

"That the said Continental National Bank, of New York, principal, is seeking an attachment against the said L. B. Folsom, which is now about to be sued out, returnable to the June term, 1881, city court of the city of Atlanta, district and county aforesaid.

"Now if the said bank, principal, shall pay all damages that the said L. B. Folsom may sustain, and also all costs that may be incurred by him in consequence of suing out such attachment, in the event that the said plaintiff shall fail to recover in said case, then this bond to be void.

"Executed in presence of C. D. Woodson, notary public, Fulton county,

See "How To Use This Volume," Introduction, page v.

Georgia, this 15th day of December, 1879.

Continental National Bank (L. S.) of New York, by G. A. Howell, its attorney-at-law. Campbell Wallace (L. S.),

Continental Nat. Bank *v.* Folsom, 78 Ga. 449.

Bond on Attachment (c).

"The State of Texas, County of Travis. No. 1,153. We, the undersigned, McKean, Eilers & Co., as principal, and A. P. Woodridge and M. C. Miller as sureties, acknowledge ourselves bound to pay to J. A. Forbes, Theodore Loose, and G. W. Barnett the sum of thirteen hundred dollars, conditioned that the above bound McKean, Eilers and Company, plaintiffs in attachment against the said J. A. Forbes, Theodore Loose, and G. W. Barnett, defendants, will prosecute their said suits to effect, and that they will pay all such damages and costs as shall be adjudged against them for wrongfully suing out such attachment. Witness our hands this 20th day of September, A. D. 1893. (Signed) McKean, Eilers & Co. A. P. Woodridge. M. C. Miller." *Eilers v. Forbes* (Tex. Civ. App.), 32 S. W. 709.

IV. Warrant, Writ or Order.

A. Warrant.

The people of the state of New York, to the sheriff of the county of _____:

Whereas an application has been made to the undersigned by A. B., plaintiff, for a warrant of attachment against the property of Y. Z., defendant in this action, in one of the cases provided by law; and it appearing by affidavit that a cause of action exists against the said Y. Z. for the sum of _____ dollars (with interest from the _____ day of _____, 18—, stating the demand in conformity with the complaint), and that the said Y. Z. is a non-resident (or other clause of the statute relied on), and the applicant having given the undertaking required by law:

Now, you are hereby required forthwith to attach and safely keep all the property of the said Y. Z. within your county, or so much thereof as may be sufficient to satisfy the said demand, together with all costs and expenses.

(Date.)

(Judge's signature.)

(Signature of plaintiff's attorney.)

2 Abb. Forms 320.

Note.—That the warrant must be subscribed by the judge and plaintiff's attorneys and briefly recite the grounds of attachment is mandatory under some statutes, the omission of which is fatal and cannot be cured by amendment. *Macdonald v. Kieferdorf*, 22 Civ. Proc. 105, 18 N. Y. Supp. 763.

B. Writ of Attachment.

"First Judicial Circuit Court of Florida—Circuit Court of Jackson County. In the name of the State of Florida: To Andrew Scott, sheriff of Jackson County, greeting:

"You are hereby commanded to attach and take into your custody, so much of the lands, tenements, goods and chattels of Joseph W. Woolfolk as will be sufficient to satisfy Theophilus West in the sum of four hundred and twelve dollars and costs of this suit, and that you have the same before the judge of our circuit court for the county of Jackson on the 7th day of January, A. D. 1884, the same being the first Monday of said month and a rule day of this court. Herein fail not and have then and there this writ.

"Given under my hand and seal of office, at Marianna, this 21st day of December, A. D. 1883

(Seal.)

"Frank Phillips,

"Clerk Circuit Court.

"By H. C. Neal, D. C."

West v. Woolfolk, 21 Fla. 189.

C. Return of Writ of Attachment, Property of Great Bulk.

"Hampden, ss. October 3, 1871.

"By virtue of this writ I this day attached five lots of tobacco as the property of the within named defendant, said tobacco situate one lot in barn of estate of Walter Cooley, one lot in barn of Aaron Day, one lot in barn of Edwin Parsons, one lot in barn of Henry Sibley, and the other lot in barn of Mrs. Day and William White, and afterwards on the same day I summoned the within named trustee to appear and answer at court as within directed, by leaving at his last and usual place of abode a true and attested copy of this writ. And the said tobacco could not be moved without damage thereto, and in consideration of its great bulk, I on the 6th day of October deposited in the office of the clerk of the said town of West Springfield an attested copy of this writ, with so much of my return thereon as relates to said attachment of said tobacco, and afterwards on the same day

summoned the within named defendant to appear and answer at court as within directed, by leaving at his last and usual place of abode a true and attested copy of this writ." *Bemis v. Leonard*, 118 Mass. 502.

D. Return To Attachment.

I, M. N., sheriff of the county of _____, hereby certify and return, that by virtue of the within attachment, I have seized and taken into my possession the property of the defendant within named, specified in the inventory hereto annexed, and appraised the property therein specified at the sums mentioned in the annexed inventory. 2 Abb. Forms 321.

E. Return of Writ of Attachment, No Property Found.

"By virtue of the within attachment I, Cushan Burr, constable, on the thirty-first day of January, 1885, after diligent search, could not find any goods and chattels of the defendant mentioned on which to make a levy; and, after diligent search, the defendant could not be found in the county of Berrien; and, after diligent search, no last place of residence of the defendant could be found in Berrien county; and on the same day I left a copy of the within writ with James Bailey and Samuel A. Bailey, who were summoned as garnishees in the above cause. Cushan Burr, constable."

"Dated January 31, 1885.

"Fees \$1.10.

Kidd v. Dougherty, 59 Mich. 240, 26 N. W. 510.

V. Inventory of Property Attached.

I, M. N., sheriff of the county of _____, and O. P. and Q. R., two disinterested freeholders of said county, hereby certify that the following is a true inventory of all the property seized by me, the said sheriff, on a warrant of attachment, issued in the above entitled action by G. H., a justice of the _____ court (or county judge of the county of _____), together with a statement of the books, vouchers, and papers taken into the custody of said sheriff on said warrant, and the value of each article of personal property, and also a true statement of such articles thereof as are perishable, as the same has been appraised by us (list of items of real and personal property, setting value opposite each).

(And we further certify that the

said _____ is perishable property.)

(Date.)

(Signatures.)

2 Abb. Forms 321.

Schedule of Property Attached.

"A schedule of the goods and chattels, lands and tenements of Ignatius Boarman, seized and taken at the suit of Fielder Israel and Henry Patterson, executors of Henry Peters, by virtue of a writ of attachment issued out of Baltimore county court, to the sheriff thereof directed, and appraised by us, the subscribers, who first being duly summoned and sworn for that purpose. Given under our hands and seals, this 20th day of January, 1841.

"1 lot of ground fronting on the south side of Little Hughes," etc., etc. *Boarman v. Patterson*, 1 Gill (Md.) 372.

VI. Order for Sale of Perishable Property.

It appearing to me, by the inventory returned to the warrant of attachment issued by me in this action, that a portion of the property seized by the sheriff of the county of _____, under said warrant, to-wit (ten barrels of apples), is perishable:

Ordered that the portion of the property so specified in the inventory as perishable be sold by said sheriff by public auction, after _____ days (such time as may be reasonable under the circumstances), previous notice of the time and place of such sale being given by him in writing, posted in three or more public places in _____, and by advertising the same _____ days in the _____ newspaper printed at _____. 2 Abb. Forms 322.

VII. Order To Examine.

A. Order To Examine Person Holding Property of Debtor in Attachment.

It appearing to me, by the affidavit of M. N. (or by the certificate of M. N., sheriff of the county of _____), that the sheriff of the county of _____ (or said sheriff), with a warrant of attachment against the property of Y. Z., the defendant in this action, has applied to * O. P. for the purpose of attaching property of said defendant, held by said O. P. (or a debt owing to the defendant by said O. P.), and that said O. P. refuses to furnish said sheriff with a certificate designating the amount and description of the property held by said O. P. for

the benefit of the defendant (or the amount of the debt owing by said O. P. to the defendant); I hereby order and require the said O. P. to attend before me, at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____noon, and be examined on oath concerning the same. 2 Abb. Forms 322.

B. Order To Examine an Officer of a Corporation Holding Property of Debtor.

(As above to the *, continuing as follows): O. P., president of the _____ bank, situate at _____, for the purpose of attaching the rights or shares which such defendant may have in the stock of said bank, together with the interest and profits thereon; and that the said O. P., president of the said bank, refuses to furnish said sheriff with a certificate designating the number of shares of the defendant in the stock of said bank, with any dividend or incumbrance thereon (or the amount and description of any deposit or other property held by said bank for the benefit of said defendant); I hereby order and require the said O. P. to attend before me at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____noon, and be examined on oath concerning the same. 2 Abb. Forms 323.

VIII. Setting Aside or Discharging Attachment.

A. Notice of Motion To Set Aside or Discharge Attachment.

Please take notice that on an affidavit, of which the within is a copy (or of which a copy is annexed), and on all the papers filed and served in this action, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____noon, or as soon thereafter as counsel can be heard (or will move before Mr. Justice _____, at his office in the city of _____, on the _____ day of _____, 18—, at _____ o'clock in the _____noon), to set aside (or discharge) the attachment in this action (if for irregularity, add: upon the grounds, among others, that the defendant is not a non-resident, or otherwise specifying the irregularity), and for such other or further order as may be just, and for

the costs of this motion. 2 Abb. Forms 323.

Note.—Under many statutes an application to vacate the attachment may be based on the insufficiency of the papers granting the attachment alone without affidavits.

B. Notice of Motion To Discharge Attachment on Giving Security

Please take notice that the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____noon, or as soon thereafter as counsel can be heard (or will move before Mr. Justice _____, at his office in the city of _____, on the _____ day of _____, 18—, at _____ o'clock in the _____noon) to discharge the attachment in this action, on giving due security. 2 Abb. Forms 324.

C. Bond To Discharge Attachment.

Know all men by these presents, that we, C. D., of, etc. (names and residences of obligors), are held and firmly bound unto A. B., etc. (the creditors prosecuting the attachment), in the sum of (double the amount of the debts sworn to by such creditors), to be paid, etc. (penal part in the usual form). Whereas a warrant of attachment has been issued on the application of the said (the attaching creditors), against the said C. D., as an absconding or concealed (or non-resident) debtor (the warrant may be recited as in last form).

Now, the condition of this obligation is such that if the above bounden C. D., etc. (the obligors), shall well and truly pay to the said (attaching creditors), and to each of them, the amounts justly due and owing by the said C. D., to the said (creditors) severally, at the times when they severally became attaching creditors, on account of any debt claimed and sworn to by them severally, with interest thereon: And also in the event of its appearing that any sum of money was due to the said (creditors), if the said C. D. shall pay to them and each of them the costs and disbursements incurred in obtaining such attachment, and of the proceedings thereon; then this obligation to be void, otherwise, etc.

(Signatures and seals of obligors.)

Sealed and delivered in the presence of (witnesses).

Approved this _____ day of _____, 18—.

(Officer's signature.)

Burr. App. 513, §1031.

D. *Undertaking on Discharge of Attachment.*

Whereas the property of the above named Y. Z. has been attached in this action by the sheriff of the county of _____:

Now, therefore, we, M. N., of No. _____ street, in the city of _____, tailor, and O. P., of the village of _____, grocer, undertake that if the said attachment be discharged, we will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant Y. Z. in this action, not exceeding _____ dollars.

(Signatures.)

In the presence of (witness).

2 Abb. Forms 324.

E. *Order Vacating Warrant of Attachment.*

On the annexed notice of motion (and the affidavits of M. N. and Y. Z.), and on motion of Q. R. for defendant (after hearing S. T. for plaintiff):

Ordered, * that the attachment granted by me against the property of the above named Y. Z., on the _____ day of _____, 18—, be set aside, and the sureties given in said undertaking exonerated (or be discharged); and that any and all proceeds of sales and moneys by said sheriff collected, and all the property attached remaining in his hands, be delivered and paid by him to the defendant or his agent, and released from the attachment. 2 Abb. Forms 324.

F. *Order Discharging Attachment on Security.*

The defendant having appeared in this action, and having given sufficient security for the plaintiff's demand:

Ordered (continue as in preceding form from the *). 2 Abb. Forms 325.

IX. Claims by Third Persons.

A. *Affidavit of Claim by Third Person in Attachment.*

State of Florida, Hamilton county.

Before me personally came C. W. Smith, one of the firm of C. W. Smith & Co., who being duly sworn, says the following property, to-wit: the stock of goods in what is known as the Claridy House, in the town of Jasper, in said county, attached by Sam. Altman,

sheriff of said county, by virtue of _____ of attachment in favor of John P. Richardson against W. H. Simpson, belongs to them, said debtors. C. W. Smith.

Sworn to and subscribed before me this September 18, 1884.

D. B. Johnson, justice of peace.

Richardson v. Smith, 21 Fla. 336.

B. *Notice of Claim by Third Person.*

Now, therefore, in accordance with the statute in such case made and provided, you are hereby notified that the property attached by said Henry Whelpley on the writ aforesaid, is claimed by us, the owners of said vessel, by virtue of the pledge and lien aforesaid, and the amount due us thereon is as follows, to-wit: (items of claim).

And we hereby demand of you, that within forty-eight hours after you receive this written notice, you discharge our claims as aforesaid, by paying the true amount thereon, to-wit, said sum of five hundred and three dollars and seventy-nine cents, or restore said property.

Dated at Eastport this eighth day of April, eighteen hundred and ninety.

By W. L. Putnam,

Attorney for the owners of the schooner, George P. Trigg.

Holmes v. Balcom, 84 Me. 226, 24 Atl. 821.

C. *Claim Bond by Third Person in Attachment.*

The "claim bond," bearing date as above, after stating the above county and state, proceeds: "Know all, etc., . . . that we, C. W. Smith and N. M. Smith, doing business under the firm name of C. W. Smith & Co., E. C. Horne, J. H. Ancrum, are held and firmly bound unto John P. Richardson in the sum of \$310. . . . The condition is such that, whereas Sam Altman, sheriff in and for said county, has attached the following property," describing it as in the affidavit, "by virtue of attachment in favor of John P. Richardson against William H. Simpson, and the above bounden C. W. Smith & Co., having interposed a claim to said property," and concludes with the condition prescribed by the statute. The bond is signed "C. W. Smith & Co.," "E. C. Horne," "J. H. Ancrum," and there is a (seal) after each signature. Richardson v. Smith, 21 Fla. 336.

ATTORNEYS.

I. Action by Attorneys, 139

A. Declaration for Costs and Fees, 139

B. Complaint for Services and Disbursements, 140

II. Actions Against Attorneys, 140

A. Declaration Against Attorney for Negligence, 140

B. Complaints for Negligence, 141

1. In Prosecution, 141

2. In Defense, 142

3. In Examining Title, 142

III. Affidavit for Order To Produce Authority, 142

IV. Order To Produce Authority, 142

V. Affidavit of Authority, 142

VI. Order Where Charged With Malpractice, 142

CROSS-REFERENCES:

AFFIDAVIT OF MERITS AND DEFENSE:

Affidavit of Merits by Counsel.

BANKRUPTCY:

Proof of Debt by Agent or Attorney.

JUDGMENTS:

Warrant of Attorney To Confess Judgment After Suit Brought;

Warrant of Attorney To Confess Judgment (Without Suit).

SUBSTITUTION OF ATTORNEY:

Order of Substitution of Attorney;

Consent to Substitution of Another Attorney;

Notice of Substitution of Attorney.

VERIFICATION:

Verification by Attorney, When Party Is Not Within the County;

Verification by Agent or Attorney, Where Material Allegations Are Within His Personal Knowledge;

Verification by Agent or Attorney, Where Action or Defense Is Founded on Written Instrument for Payment of Money Only, Which Is in His Possession;

Verification by Attorney, Where Absent Defendant Is Corporation.

I. Action by Attorneys.

A. Declaration by Attorney for Costs and Fees.

I. Action by Attorneys.

A. Declaration by Attorney for Costs and Fees.

For that whereas the said defendant, heretofore, to-wit, on the ——— day of April, in the year of our Lord one thousand eight hundred and (forty-six), at (New York), to-wit, at the (city and in the) county of (New York) aforesaid, was indebted to the said plaintiff in the sum of (five hundred) dollars, lawful money of the United

States of America, for the work and labor, care, diligence and attendance of the said plaintiff, by him the said plaintiff before that time done, performed and bestowed, as the attorney (and solicitor) of and for the said defendant, and upon his retainer, in and about the prosecuting, defending and soliciting of divers causes, suits and business for the said defendant, and for certain fees due, and of right payable to the said plaintiff in respect thereof. (Also for other work and labor, care, diligence and attendance of the said plaintiff, by him the said plaintiff before that time done, performed and bestowed in and about the drawing, copying and engrossing of divers conveyances, deeds and writing for the said defendant, and in and about other the business of the said defendant, and for the said defendant, and at his special instance and request. And also for divers journeys, and other attendances by the said plaintiff before then made, performed and given in and about the said business and other the business of the said defendant, and at his like special instance and request). And being so indebted, he the said defendant in consideration thereof, afterwards, to-wit, on the day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money, when he the said defendant should be thereunto afterwards requested.

And whereas also, afterwards, to-wit, on the same day and year (last aforesaid), and at the place aforesaid, in consideration that the said plaintiff had, before that time, at the like special instance and request of the said defendant, done, performed, bestowed, and given other his work and labor, care, diligence and attendance, as the attorney (and solicitor) of and for the said defendant, and upon his retainer, in and about the prosecuting, defending and soliciting of divers other causes, suits and business for the said defendant (and had also, at the like special instance and request of the said defendant, before that time done, performed and bestowed, other his work and labor, care, diligence and attendance, in and about the drawing, copying and engrossing of divers other conveyances, deeds and writings, for the said defendant, and in and about other

the business of the said defendant, and for the said defendant; and had also, at the like special instance and request of the said defendant, before that time made, performed and given, divers other journeys and attendances in and about other the business of the said defendant, and for the said defendant); the said defendant undertook, and then and there faithfully promised the said plaintiff to pay to him so much money as he therefore reasonably deserved to have of the said defendant, when he the said defendant should be thereunto afterwards requested. And the said plaintiff avers that he therefore reasonably deserved to have of the said defendant the further sum of (five hundred) dollars, of like lawful money, to-wit, at the place aforesaid; whereof the said defendant, afterwards, to-wit, on the day, year last aforesaid, there had notice. (Add a count for work and labor generally, and all common counts.)

Nevertheless, etc. Burr. App. 246, §505a.

B. Complaint by Attorney for Services and Disbursements.

I. That the defendant is indebted to the plaintiff in the sum of _____, upon an account for the services of the plaintiff as the attorney for the defendant, rendered upon his retainer, between the _____ day of _____ and the _____ day of _____, in prosecuting and defending certain suits; and for like services, at his request, in drawing, copying, and engrossing various instruments in writing, and in counseling and advising him, the defendant, and for divers journeys and other attendances in and about the business of said defendant (according to the facts), at his request; and for money paid out and expended by this plaintiff for the defendant, at his request, in and about said suits and business, which sum became due and payable, from the defendant to the plaintiff, on the _____ day of _____, 18—.

II. That on said day (or on the _____ day of _____, 18—, at _____) payment of the same was duly demanded from the defendant by this plaintiff, but no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 204.

Note.—Complaint should allege that the plaintiff is a duly and regularly

licensed attorney practicing in the jurisdiction.

II. Actions Against Attorneys.

A. Declaration in Case Against Attorney for Negligence.

For that whereas, before and at the time of the committing of the grievances by the said defendant as herein-after next mentioned, the said plaintiff, at the special instance and request of the said defendant, had retained and employed the said defendant as an attorney of the supreme court of judicature of the people of the state of New York, to prosecute and conduct a certain action of (trover) in the same court, by and at the suit of the said plaintiff against one E. F., for (taking away and converting to his own use certain goods and chattels claimed by him, the said plaintiff, to be his own proper goods and chattels), for certain reasonable fees and reward, to be therefor paid by the said plaintiff to the said defendant; and the said defendant then and there accepted and entered upon such retainer and employment, to-wit, at, etc. (venue); and thereupon, it then and there became, and was, the duty of the said defendant to prosecute and conduct the said action in a proper, skilful and diligent manner. Yet the said defendant, not regarding such his duty, or his said retainer and employment, but contriving and intending to injure and aggrieve the said plaintiff in this behalf, did not nor would prosecute or conduct the said action in a proper, skilful or diligent manner, and on the contrary thereof, prosecuted and conducted the same action to trial in so improper, unskilful and negligent a manner (in not having a certain instrument before then prepared by the said defendant, and purporting to be a sale and assignment of the said goods and chattels by the said E. F. to the said plaintiff, so that the same might have been given in evidence on the said trial of the said action), that the said plaintiff, by the said neglect and default of the said defendant in that behalf, was (hindered and prevented from giving the same instrument in evidence upon the trial of the said cause), and by reason thereof was afterwards, to-wit, on, etc. (day of non-suit or about it), at, etc. (venue), compelled to suffer himself, the said plaintiff, to be nonsuited in the said action, whereby he the said plaintiff was not only hindered and prevented from re-

covering his said damages from the said E. F., by reason of (his taking away and converting the said goods and chattels) as aforesaid, but hath also been forced and obliged to pay, and hath paid to the said E. F. a large sum of money, to-wit, the sum of one hundred dollars for his costs and charges, in about his defense of the said action, and hath also paid to the said defendant another large sum of money, to-wit, the sum of one hundred dollars for his costs and charges for the prosecution and conduct of the said action, to-wit, at, etc. (venue). (Add the following general count):

And whereas also, before and at the time of the committing of the grievances by the said defendant herein-after mentioned, the said plaintiff, at the special instance and request of the said defendant, had retained and employed the said defendant as an attorney of the said court, to prosecute, conduct and manage a certain action in the said court, by and at the suit of the said plaintiff against one E. F., for the recovery of a certain sum of money, to-wit, the sum of one thousand dollars (state a sufficient sum), then alleged and claimed by the said plaintiff to be due and owing to him from the said E. F. (or if not for a debt but for damages, say: "for the recovery of certain damages amounting, to-wit, to the sum of one thousand dollars" [state enough] "then and there alleged and claimed by the said plaintiff to have been sustained by him, by reason of certain acts and wrongs, before then done and committed by the said E. F. to the said plaintiff's damage"), for fees and reward to be paid to the said defendant in that behalf; and the said defendant then accepted and entered upon such retainer and employment, to-wit, at, etc. (venue). And thereupon it then and there became, and was, the duty of the said defendant to prosecute, conduct and manage the said action with due and proper care, skill and diligence. Yet the said defendant, not regarding such his duty, or his said retainer and employment, but contriving and intending to injure and aggrieve the said plaintiff in this behalf, did not, nor would prosecute, conduct or manage the said action with due and proper care, skill and diligence, and on the contrary thereof, prosecuted, conducted, and managed the said action in such a careless, unskilful, un-

due and improper manner, and with such want of due and proper care, skill and diligence in that behalf, that the said action afterwards, to-wit, on, etc. (day of nonsuit or about it), to-wit, at, etc. (venue), became, and was, rendered wholly abortive and of no avail, and the said plaintiff then and there was forced and obliged to be, and he then and there was nonsuited (or if a verdict found against him or otherwise, state the fact shortly accordingly), whereby the said plaintiff was, and hath been hitherto, not only hindered and prevented from recovering his said debt (or damages), from the said E. F., but is likely to lose the same, and also hath been forced and obliged to incur and pay, and hath incurred and paid, to the said E. F. a large sum of money, to-wit, the sum of five hundred dollars (state enough), for his costs and charges, in and about his defense to the said action, and hath also incurred the loss of and paid to the said defendant another large sum of money, to-wit, the sum of one hundred dollars, for the said plaintiff's costs and charges, in and about the prosecuting and conducting of the said action, to-wit, at, etc. (venue). To the damage, etc. Burr. App. 316, §585; 2 Humph. Prec. 804.

B. *Complaints for Negligence.*

1. *Complaint Against Attorney for Negligence in Prosecution.*

I. That the defendant being an attorney of the supreme court of this state, the plaintiff in or about the month of ———, 18—, retained and employed him as such, for a compensation to be paid him therefor, to prosecute and conduct an action in the ——— court on behalf of this plaintiff against one M. N., for the recovery of a large sum of money due from him to this plaintiff, and the defendant undertook to prosecute said action in a proper, skilful and diligent manner, as the attorney of the plaintiff.

II. That the defendant might, in case he had prosecuted said action with due diligence and skill, have obtained final judgment therein for this plaintiff before the ——— day of ———, 18—, yet he did not do so, but so negligently and unskilfully conducted said action that by his negligence, delay, and want of skill he did not obtain judgment until the ——— day of ———, 18—, and that meanwhile said M. N. had become insolvent.

ent; whereby the plaintiff was hindered and deprived of the means of recovering said sum of money, to his damage ——— dollars. 1 Abb. Forms 359.

2. *Complaint Against Attorney for Negligent Defense.*

I. That the defendant being an attorney of the supreme court of this state, the plaintiff, in the month of ———, 18—, at ———, employed him as such, for a compensation to be paid him therefor, to defend on behalf of this plaintiff an action brought against him by M. N., then pending in the ——— court for the recovery of a large sum of money due from him to this plaintiff, and the defendant undertook to defend said action in a proper, skilful and diligent manner, as the attorney of the plaintiff.

II. That such proceedings were had in such action, that it became the duty of the defendant as the attorney of this plaintiff to interpose an answer on his behalf to the complaint therein, on or about the ——— day of ———, 18—, but he wholly neglected so to do, and by reason thereof, and through his neglect, judgment by default was obtained against the plaintiff in said action, and by reason thereof this plaintiff was compelled to pay to the said M. N. ——— dollars, the sum so recovered by him, and was put to costs and charges in his endeavor to defend such action, amounting to the sum of ——— dollars, and lost the means of recovering the same back from said M. N. 1 Abb. Forms 360.

Note.—It is advisable to state facts showing that the plaintiff had a meritorious defense.

3. *Complaint Against Attorney for Negligence in Examining Title.*

I. That at a time hereafter mentioned, the plaintiff made a contract with one M. N. for the purchase from him of certain real property (very briefly designate the premises) for the sum of ——— dollars, which property said M. N. assumed to have power to convey in fee, and clear of all incumbrances.

II. That the defendant being an attorney, the plaintiff at ———, in the month of ———, 18—, employed him as such to examine the title of M. N. to said property, and to ascertain if the title were good, and if any incumbrances existed thereon, and to cause and procure an estate therein

in fee simple and clear of all incumbrances, to be conveyed to the plaintiff; which the defendant for compensation to be paid to him undertook to do.

III. That the defendant did not so do, but negligently and unskilfully conducted in respect to such examination, and did not use endeavors to cause or procure a good and sufficient title in fee, clear of incumbrances to be conveyed to the plaintiff; but wrongfully advised and induced the plaintiff to pay said M. N. the sum of ——— dollars, being said purchase money of the premises, when in fact said M. N. had no title thereto (or when said property was subject to incumbrances to the sum of ——— dollars, as follows: [specifying them], and the plaintiff, in order to release the premises from said incumbrances, was compelled to pay the holders thereof the sum of ——— dollars); to the damage of the plaintiff ——— dollars. 1 Abb. Forms 360.

III. *Affidavit for Order Requiring Plaintiff's Attorney To Produce His Authority To Sue in Ejectment.*

C. D., the defendant in this suit, being duly sworn, deposes and says, that he has not been served with proof, in any way, of the authority of E. F., whose name appears in the declaration in this suit, as the attorney for the plaintiff therein, to use the name of the plaintiff named in the said declaration. And further deponent says not. Sworn, etc. Burr. App. 504, §1017.

IV. *Order That Plaintiff's Attorney in Ejectment Produce His Authority.*

Ordered, that E. F., esquire, acting as attorney for the plaintiff in this cause, produce before me, at my office (or "chambers") in the ———, on the ——— day of ——— instant (or "next"), his authority for commencing this action in the name of the plaintiff; and until such authority be produced, all proceedings on the part, or in the name of the said plaintiff, are hereby stayed. Dated, etc.

(Officer's signature.)

Burr. App. 545, §1076.

V. *Affidavit of Plaintiff's Attorney That He is Authorized.*

E. F., attorney for the plaintiff named in the declaration in this cause, being duly sworn, deposes and says,

that he has received (or "that he did, on the _____ day of _____, receive") from the said A. B., the said plaintiff, a written request of him the said plaintiff, desiring this deponent to commence this suit (or "a written recognition of this deponent's authority to commence this suit"), a copy whereof is hereto annexed. And further this deponent says not.

E. F.

Sworn, etc. Burr. App. 504, §1018.

VI. Order Against Attorney Charged With Malpractice.

E. F. having been charged with misconduct and malpractice, as one of the attorneys of this court, it is ordered that a copy of the charges against him, and of this rule, be delivered to the said E. F., and that he answer the same at the next special term of this court, on the first Tuesday of _____ next. Burr. App. 581, §1137a.

AUDITA QUERELA.

Writ of Audita Querela.

The people of the state of New York, to our justices of our supreme court of judicature, greeting:

We have received information from the grievous complaint of A. L., widow, administratrix of the goods and chattels which were of R. L., esquire, deceased, that whereas (here state the judgment or execution complained of, and the circumstances under which judgment was rendered, the party's death, etc. And he the said B. D., the plaintiff named in the said judgment, proposes and threatens to sue out (or "has wrongfully sued out") execution against her the said A., of the (debt and) damages aforesaid, although the said A. (here state the facts which ought to prevent or set aside such execution, etc.), and the said A. ought of right to be discharged thereof, to the grievous damage and hardship of her the said A., and against the law and custom of our said state: Whereupon the said A. hath besought of us a fitting remedy, to be provided for her by us in this behalf: We being unwilling that the said A. should be in any wise injured, and willing that what is just in this behalf should be done, do command you, that having heard the complaint of the said A., and having called before you the parties aforesaid, and others whom you shall see fit to be called in this behalf, and having

heard their reasons thereupon, you cause to be done to the parties aforesaid full and speedy justice, as of right, and according to the law and custom of our said state shall be meet to be done.

Witness, etc. (teste in usual form). E. F., attorney. Clerks.

Burr. App. 509, §1025; Yates' Forms 602. See 2 Saund. 137 l.

Note.—A common-law writ, in the nature of an equitable remedy, directed to a court of law, used where a judgment which had been obtained by fraud or which had been satisfied, was sought to be enforced. It was the beginning of a new action. Fitzh. Nat. Brev. 233.

BAIL.—See RECOGNIZANCE.

BANKRUPTCY PROCEEDINGS.

I. Petitions, 144

A. *Debtor's Petition and Schedules*, 144

B. *Partnership Petition*, 157

C. *Creditor's Petition*, 158

D. *Order To Show Cause on Debtor's Petition*, 158

II. Subpoena to Alleged Bankrupt, 159

III. Denial of Bankruptcy, 159

IV. Order for Jury Trial, 159

V. Special Warrant to Marshal, 159

VI. Bonds, 160

A. *Of Petitioning Creditor*, 160

B. *To Marshal*, 160

VII. Adjudication, 161

A. *Debtor Not Bankrupt*, 161

B. *Of Bankruptcy*, 161

VIII. Appraisers, 162

IX. Reference, 162

A. *Order*, 162

B. *Order in Judge's Absence*, 163

C. *Referee's Oath of Office*, 163

D. *Bond of Referee*, 163

X. Creditors' Meeting, 164

A. *Notice of First Meeting*, 164

B. *List of Debts Proved at First Meeting*, 164

C. *General Letter of Attorney in Fact*, 164

D. *Special Letter of Attorney in Fact*, 165

XI. Trustee, 165

A. *Appointment of Trustee by Creditors*, 165

B. *Appointment of Trustee by Referee*, 166

C. *Notice to Trustee of His Appointment*, 166

D. *Bond of Trustee*, 166

- E. *Order Approving Trustee's Bond*, 167
- F. *Order That No Trustee Be Appointed*, 167
- XII. Examinations**, 167
- A. *Order for Examination of Bankrupt*, 167
- B. *Examination of Bankrupt or Witness*, 167
- C. *Summons to Witness*, 168
- XIII. Proof of Debts**, 168
- A. *Of Unsecured Debt*, 168
- B. *Of Secured Debt*, 168
- C. *Of Debt Due Corporation*, 169
- D. *Of Debt Due Partnership*, 169
- E. *By Agent or Attorney*, 170
- F. *Of Secured Debt by Agent*, 170
- G. *Affidavit of Lost Bill or Note*, 171
- XIV. Orders on Claims**, 171
- A. *Reducing Claim*, 171
- B. *Expunging Claim*, 171
- XV. List of Claims by Referee**, 172
- XVI. Notice of Dividend**, 172
- XVII. Petition and Orders Concerning Property**, 173
- A. *For Sale by Auction of Real Estate*, 173
- B. *For Redemption of Property From Lien*, 173
- C. *For Sale Subject to Lien*, 174
- D. *For Private Sale*, 174
- E. *For Sale of Perishable Property*, 175
- XVIII. Trustee's Accounts**, 175
- A. *Report of Exempted Property*, 175
- B. *Return of No Assets*, 176
- C. *Oath to Final Account*, 176
- D. *Order Allowing Account*, 177
- XIX. Removal of Trustee**, 177
- A. *Petition*, 177
- B. *Notice of Petition*, 177
- C. *Order for Removal*, 177
- D. *Order for Choice of New Trustee*, 178
- XX. Certificate by Referee to Judge**, 178
- XXI. Discharge of Bankrupt**, 178
- A. *Petition*, 178
- B. *Specification of Grounds of Opposition*, 179
- C. *Discharge*, 179
- XXII. Composition**, 179
- A. *Petition for Meeting To Consider*, 179
- B. *Application for Confirmation*, 180
- C. *Order Confirming*, 180
- D. *Order of Distribution*, 181
- For other forms, see 3 STANDARD PROC. 923, 961, 986, 988.

SUPREME COURT RULES.

(FORM NO. 1.)

I. Petitions.**A. Debtor's Petition and Schedules.**

To the honorable _____, judge of the district court of the United States, for the _____ district of _____:

The petition of _____, of _____, in the county of _____, and district and state of _____, (state occupation), respectfully represents:

That he has had his principal place of business (or has resided, or has had his domicile) for the greater portion of six months next immediately preceding the filing of this petition at _____, within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the acts of congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts:

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts.

_____, attorney.
United States of America, district of _____, ss.:

I, _____, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

_____, petitioner.
Subscribed and sworn to before me this _____ day of _____, A. D. 18—.

_____, (official character).

SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A. (1)

Statement of All Creditors Who Are To Be Paid in Full, or To Whom Priority is Secured by Law.

Claims which have priority.	Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, that fact must be stated).	Where and when contracted.	Nature and consideration of the debt, and whether contracted as partner or joint contractor, and, if so, with whom.	Amount.	
						\$	c.
(1.) Taxes and debts due and owing to the United States.							
(2.) Taxes due and owing to the state of —, or to any county, district, or municipality thereof.							
(3.) Wages due workmen, clerks, or servants, to an amount not exceeding \$300 each, earned within three months before filing the petition.							
(4.) Other debts having priority by law.							
Total							

—, petitioner.

Creditors Whose Claims Are Unsecured.

(N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Reference to ledger or voucher.	Names of creditors.	Residence (if known, that must be stated).	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as part- ner or joint contractor with any other person; and, if so, with whom.	\$	c.	Amount.
					Total		

_____, petitioner.

SCHEDULE A. (5)

Accommodation Paper.

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.)

Reference to ledger or voucher.	Names of holders.	Residences (if un- known, that fact must be stated).	Names and resi- dence of persons accommodated.	Place where contracted.	Whether liability was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount.
						\$ c.
					Total	

OATH TO SCHEDULE A.

United States of America, district of _____, ss.:

On this _____ day of _____, A. D. 18____, before me personally came _____, the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of congress relating to bankruptcy.

Subscribed and sworn to before me this _____ day of _____, A. D. 18____.

_____ (official character).

SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

SCHEDULE B. (1)

Real Estate.

Location and description of all real estate owned by debtor, or held by him.	Incumbrances thereon, if any, Statement of particulars relating thereto.	Statement of particulars relating thereto.	Estimated value.
			s. c.
		Total	

—, petitioner.

SCHEDULE B. (2)

Personal Property.

	\$	c
a. Cash on hand		
b. Bills of exchange, promissory notes, or securities of any description (each to be set out separately)		
c. Stock in trade, in ——— business of ———, at ———, of the value of ———		
d. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz.		
e. Books, prints, and pictures, viz.		
f. Horses, cows, sheep, and other animals (with number of each), viz.		
g. Carriages and other vehicles, viz.		
h. Farming stock and implements of husbandry, viz.		
i. Shipping, and shares in vessels, viz.		
k. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated, viz.		
l. Patents, copyrights, and trade marks, viz.		
m. Goods or personal property of any other description, with the place where each is situated, viz.		
Total		

_____, petitioner.

SCHEDULE B. (3)

Chases in Action.

	dollars	cents
a. Debts due petitioner on open account		
b. Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds		
c. Policies of insurance		
d. Unliquidated claims of every nature, with their estimated value		
e. Deposits of money in banking institutions and elsewhere		
Total		

_____, petitioner.

SCHEDULE B. (4)

Property in Reversion, Remainder, or Expectancy, Including Property Held in Trust for the Debtor or Subject to Any Power or Right to Dispose of or to Charge.

(N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.)

General interest.	Particular description.	Supposed value of my interest.	
Interest in land		Dollars	Cents
Personal property			
Property in money, stock, shares, bonds, annuities, etc.			
Rights and powers, legacies and bequests... Property heretofore conveyed for benefit of creditors	Total		
What portion of debtor's property has been conveyed by deed of assignment or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known, to debtor		Amount realized from proceeds of property conveyed.	
		Dollars	Cents
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy	Total		
		_____, petitioner.	

SCHEDULE B. (5)

A Particular Statement of the Property Claimed as Exempted From the Operation of the Acts of Congress Relating to Bankruptcy. Giving Each Item of Property and Its Valuation; and if Any Portion of it is Real Estate, Its Location, Description, and Present Use.

	Valuation	
	\$	c.
Military uniform, arms, and equipments		
Property claimed to be exempted by state laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the state creating the exception		
Total		

_____, petitioner.

SCHEDULE B. (6)

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate.

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books.

Deeds.

Papers.

_____, petitioner.

OATH TO SCHEDULE B.

United States of America, district of _____, ss.:

On this _____ day of _____, A. D. 18—, before me personally came _____, the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of congress relating to bankruptcy.

_____,
(official character).

SUMMARY OF DEBTS AND ASSETS.

(From the statements of the bankrupt in Schedules A and B.)

Schedule A	1	(1)	Taxes and debts due United States				
"	1	(2)	Taxes due states, counties, districts, and municipalities				
"	1	(3)	Wages				
"	1	(4)	Other debts preferred by law				
Schedule A	2		Secured claims				
Schedule A	3		Unsecured claims				
Schedule A	4		Notes and bills which ought to be paid by other parties thereto				
Schedule A	5		Accommodation paper				
			Schedule A, total				
Schedule B	1		Real estate				
Schedule B	2-a		Cash on hand				
"	2-b		Bills, promissory notes, and securities				
"	2-c		Stock in trade				
"	2-d		Household goods, etc.				
"	2-e		Books, prints, and pictures				
"	2-f		Horses, cows, and other animals				
"	2-g		Carriages and other vehicles				
"	2-h		Farming stock and implements				
"	2-i		Shipping and shares in vessels				
"	2-k		Machinery, tools, etc.				
"	2-l		Patents, copyrights, and trade marks				
"	2-m		Other personal property				
Schedule B	3-a		Debts due on open accounts				
"	3-b		Stocks, negotiable bonds, etc.				
"	3-c		Policies of insurance				
"	3-d		Unliquidated claims				
"	3-e		Deposits of money in banks and elsewhere				
Schedule B	4		Property in reversion, remainder, trust				
Schedule B	5		Property claimed to be excepted				
Schedule B	6		Books, deeds, and papers				
			Schedule B, total				

(FORM No. 2.)

B. Partnership Petition.

To the honorable _____,
judge of the district court of the
United States for the _____ dis-
trict of _____:

The petition of _____
respectfully represents:

That your petitioners and _____
_____ have been partners under the
firm name of _____, hav-
ing their principal place of business at
_____, in the county of _____,
and district and state of _____, for
the greater portion of the six months
next immediately preceding the filing
of this petition; that the said partners
owe debts which they are unable to
pay in full; that your petitioners are
willing to surrender all their property
for the benefit of their creditors, ex-
cept such as is exempt by law, and de-
sire to obtain the benefit of the acts
of congress relating to bankruptcy.

That the schedule hereto annexed,
marked A, and verified by _____
oath, contains a full and true statement
of all the debts of said partners, and,
as far as possible, the names and places
of residence of their creditors, and
such further statements concerning
said debts as are required by the pro-
visions of said acts.

That the schedule hereto annexed,
marked B, verified by _____ oath,
contains an accurate inventory of all
the property, real and personal, of said
partners, and such further statements
concerning said property as are re-
quired by the provisions of said acts.

And said _____ further states
that the schedule hereto annexed,
marked C, verified by his oath, con-
tains a full and true statement of all
his individual debts, and, as far as
possible, the names and places of resi-
dence of his creditors, and such fur-
ther statements concerning said debts
as are required by the provisions of
said acts; and that the schedule hereto
annexed, marked D, verified by his
oath, contains an accurate inventory of
all his individual property, real and
personal, and such further statements
concerning said property as are re-
quired by the provisions of said acts.

And said _____ further
states that the schedule hereto an-
nexed, marked E, verified by his oath,
contains a full and true statement of

all his individual debts, and, as far as
possible, the names and places of resi-
dence of his creditors, and such further
statements concerning said debts as
are required by the provisions of said
acts; and that the schedule hereto an-
nexed, marked F, verified by his oath,
contains an accurate inventory of all
his individual property, real and per-
sonal, and such further statements con-
cerning said property as are required
by the provisions of said acts.

And said _____ further
states that the schedule hereto an-
nexed, marked G, verified by his oath,
contains a full and true statement of
all his individual debts, and, as far as
possible, the names and places of resi-
dence of his creditors, and such further
statements concerning said debts as
are required by the provisions of said
acts; and that the schedule hereto an-
nexed, marked H, verified by his oath,
contains an accurate inventory of all
his individual property, real and per-
sonal, and such further statements con-
cerning said property as are required
by the provisions of said acts.

And said _____ further
states that the schedule hereto an-
nexed, marked J, verified by his oath,
contains a full and true statement of
all his individual debts, and, as far as
possible, the names and places of resi-
dence of his creditors, and such further
statements concerning said debts as
are required by the provisions of said
acts, and that the schedule hereto an-
nexed, marked K, verified by his oath,
contains an accurate inventory of all
his individual property, real and per-
sonal, and such further statements con-
cerning said property as are required
by the provisions of said acts.

Wherefore your petitioners pray that
the said firm may be adjudged by a
decree of the court to be bankrupts
within the purview of said acts.

_____,
_____,
_____,
Petitioners.

_____, attorney.

_____, the petitioning
debtors mentioned and described in
the foregoing petition, do hereby make
solemn oath that the statements con-
tained therein are true according to

the best of their knowledge, information and belief.

_____,
_____,
_____,
Petitioners.

Subscribed and sworn to before me this _____ day of _____, A. D. 18—.

_____ (official character).

(Schedules to be annexed corresponding with schedules under Form No. 1.)

(FORM NO. 3.)

C. Creditors' Petition.

To the honorable _____, judge of the district court of the United States for the _____ district of _____:

The petition of _____, of _____, and _____, of _____, and _____, of _____, respectfully shows:

That _____, of _____, has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business (or resided, or had his domicile) at _____, in the county of _____ and state and district aforesaid, and owes debts to the amount of \$1,000.

That your petitioners are creditors of said _____, having provable claims amounting in the aggregate in excess of securities held by them, to the sum of \$500. That the nature and amount of your petitioners' claims are as follows:

And your petitioners further represent that said _____ is insolvent, and that within four months next preceding the date of this petition the said _____ committed an act of bankruptcy, in that he did heretofore, to-wit, on the _____ day of _____,

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon _____, as provided in the acts of

congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

_____,
_____,
_____,
Petitioners.

_____, attorney.

United States of America, district of _____, ss.:

_____, being three of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

Before me, _____, this _____ day of _____, 18—.

_____ (official character).
(Schedules to be annexed corresponding with schedules under Form No. 1.)

(FORM NO. 4.)

D. Order To Show Cause Upon Debtor's Petition.

In the district court of the United States for the _____ district of _____.

In the matter of _____	} In Bankruptcy.

Upon consideration of the petition of _____ that _____ be declared a bankrupt, it is ordered that the said _____ do appear at this court, as a court of bankruptcy, to be holden at _____, in the district aforesaid, on the _____ day of _____, at _____ o'clock in the _____ noon, and show cause, if any there be, why the prayer of said petition should not be granted; and

It is further ordered that a copy of said petition, together with a writ of subpoena, be served on said _____, by delivering the same to him personally or by leaving the same at his last usual place of abode in said district, at least five days before the day aforesaid.

Witness the honorable _____

_____, judge of the said court, and the seal thereof, at _____, in said district, on the _____ day of _____, A. D. 18____.

(Seal of the court.) _____, clerk.

(FORM No. 5.)

II. Subpoena to Alleged Bankrupt.

United States of America _____, district of _____, To _____, in said district, greeting:

For certain causes offered before the district court of the United States of America within and for the _____ district of _____, as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said district court to be holden at _____, in said district, on the _____ day of _____, A. D. 189____, to answer, to a petition filed by _____, in our said court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said district court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the honorable _____, judge of said court, and the seal thereof, at _____, this _____ day of _____, A. D. 189____.

(Seal of the court.) _____, clerk.

(FORM No. 6.)

III. Denial of Bankruptcy.

In the district court of the United States for the _____ district of _____.

In the matter of _____ }
_____ } In Bankruptcy.
_____ }

At _____, in said district, on the _____ day of _____, A. D. 18____.

And now the said _____ appears, and denies that he has committed the act of bankruptcy set forth in said petition, or that he is insolvent,

and avers that he should not be declared bankrupt for any cause in said petition alleged; and this he prays may be inquired of by the court (or, he demands that the same may be inquired of by a jury).

Subscribed and sworn to before me this _____ day of _____, A. D. 18____.

_____ (official character).

(FORM No. 7.)

IV. Order for Jury Trial.

In the district court of the United States for the _____ district of _____.

In the matter of _____ }
_____ } In Bankruptcy.
_____ }

At _____, in said district, on the _____ day of _____, 18____.

Upon the demand in writing filed by _____, alleged to be a bankrupt, that the fact of the commission by him of an act of bankruptcy, and the fact of his insolvency may be inquired of by a jury, it is ordered, that said issue be submitted to a jury.

(Seal of the court.) _____, clerk.

(FORM No. 8.)

V. Special Warrant to Marshal.

In the district court of the United States for the _____ district of _____.

In the matter of _____ }
_____ } In Bankruptcy.
_____ }

To the marshal of said district or to either of his deputies, greeting:

Whereas a petition for adjudication of bankruptcy was, on the _____ day of _____, A. D. 18____, filed against _____, of the county of _____ and state of _____, in said district, and said petition is still pending; and whereas it satisfac-

torily appears that said _____ has committed an act of bankruptcy (or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value), you are therefore authorized and required to seize and take possession of all the estate, real and personal, of said _____, and of all his deeds, books of account, and papers, and to hold and keep the same safely subject to the further order of the court.

Witness the honorable _____, judge of the said court, and the seal thereof, at _____, in said district, on the _____ of _____, A. D. 189—.

(Seal of court.)

_____, clerk.

RETURN BY MARSHAL THEREON.

By virtue of the within warrant, I have taken possession of the estate of the within-named _____, and of all his deeds, books of account, and papers which have come to my knowledge.

_____, marshal (or deputy marshal).

Fees and Expenses.

- | | |
|--|--|
| 1. Service of warrant | |
| 2. Necessary travel, at the rate of six cents a mile each way | |
| 3. Actual expenses in custody of property and other services as follows..... | |

(Here state the particulars.)

_____, marshal (or deputy marshal).

District of _____, A. D. 18—.

Personally appeared before me the said _____, and made oath that the above expenses returned by him have been actually incurred and paid by him, and are just and reasonable.

_____, referee in bankruptcy.

(FORM No. 9.)

VI. Bonds.

A. Bond of Petitioning Creditor.

Know all men by these presents: That we, _____, as principal, and _____, as sureties, are held and firmly bound unto _____, in the full and just sum of _____ dollars, to be paid to the said _____, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, A. D. 189—.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the _____ district of _____ against the said _____, and the said _____ has applied to that court for a warrant to the marshal of said district directing him to seize and hold the property of said _____, subject to the further orders of said district court.

Now, therefore, if such a warrant shall issue for the seizure of said property, and if the said _____ shall indemnify the said _____ for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained, then the above obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in presence of

_____ (Seal).

_____ (Seal).

_____ (Seal).

Approved this _____ day of _____, A. D. 189—.

_____, district judge.

(FORM No. 10.)

B. Bond to Marshal.

Know all men by these presents: That we, _____, as principal, and _____, as sureties, are held and firmly bound unto _____, marshal of the United States for the _____ district of _____, in the full and just sum of _____ dollars, to be paid to the said _____, his executors, administrators,

or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, A. D. 189—.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the _____ district of _____, against the said _____, and the said court has issued a warrant to the marshal of the United States for said district, directing him to seize and hold property of the said _____, subject to the further order of the court, and the said property has been seized by said marshal as directed, and the said district court upon a petition of said _____ has ordered the said property to be released to him.

Now, therefore, if the said property shall be released accordingly to the said _____, and the said _____, being adjudged a bankrupt, shall turn over said property or pay the value thereof in money to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Signed and delivered in the presence of:

_____.

_____ (Seal).

_____ (Seal).

_____ (Seal).

Approved this _____ day of _____, A. D. 189—.

_____, district judge.

(FORM NO. 11.)

VII. Adjudication.

A. Adjudication That Debtor Is Not Bankrupt.

In the district court of the United States for the _____ district of _____.

In the matter of

In Bankruptcy.

At _____, in said district, on _____ day of _____, A. D. 18—, before the honorable _____, judge of the _____ district of _____.

This cause came on to be heard at _____, in said court, upon the petition of _____ that _____ be adjudged a bankrupt within the true intent and meaning of the acts of congress relating to bankruptcy, and (here state the proceedings, whether there was no opposition, or, if opposed, state what proceedings were had).

And thereupon, and upon consideration of the proofs in said cause (and the arguments of counsel thereon, if any), it was found that the facts set forth in said petition were not proved; and it is therefore adjudged that said _____ was not a bankrupt, and that said petition be dismissed, with costs.

Witness the honorable _____, judge of said court, and the seal thereof, at _____, in said district, on the _____ day of _____, A. D. 18—.

(Seal of court.)

_____, clerk.

(FORM NO. 12.)

B. Adjudication of Bankruptcy.

In the district court of the United States for the _____ district of _____.

In the matter of

Bankrupt.

In Bankruptcy.

At _____, in said district, on the _____ day of _____, A. D. 18—, before the honorable _____, judge of said court in bankruptcy, the petition of _____ that _____

be adjudged a bankrupt, within the true intent and meaning of the acts of congress relating to bankruptcy, having been heard and duly considered, the said _____ is hereby declared and adjudged bankrupt accordingly.

Witness the honorable _____

_____, clerk.

Bankrupt.

See "How To Use This Volume," Introduction, page v.

_____, judge of the said court, and the seal thereof, at _____, in said district, on the _____ day of _____, A. D. 18____.

(Seal of court.)

_____, clerk.

(FORM No. 15.)

B. Order of Reference in Judge's Absence.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Whereas on the _____ day of _____, A. D. 18____, a petition was filed to have _____, of _____, in the county of _____, and district aforesaid, adjudged a bankrupt according to the provisions of the acts of congress relating to bankruptcy; and whereas the judge of said court was absent from said district at the time of filing said petition (or, in case of involuntary bankruptcy, on the next day after the last day on which pleadings might have been filed, and none have been filed by the bankrupt or any of his creditors), it is thereupon ordered that the said matter be referred to _____, one of the referees in bankruptcy of this court, to consider said petition and take such proceedings therein as are required by said acts; and that the said _____ shall attend before said referee on the _____ day of _____, A. D. 189____, at _____.

Witness my hand and the seal of the said court, at _____, in said district, on the _____ day of _____, A. D. 189____.

(Seal of the court.)

_____, clerk.

(FORM No. 16.)

C. Referee's Oath of Office.

I, _____, do solemnly swear that I will administer justice without respect to persons, and do

equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as referee in bankruptcy, according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God.

Subscribed and sworn to before me this _____ day of _____, A. D. 18____.

_____, district judge.

(FORM No. 17.)

D. Bond of Referee.

Know all men by these presents: That we _____, of _____, as principal, and _____, of _____, and _____, of _____, as sureties are held and firmly bound to the United States of America in the sum of _____ dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, A. D. 189____.

The condition of this obligation is such that whereas the said _____ has been on the _____ day of _____, A. D. 18____, appointed by the honorable _____, judge of the district court of the United States for the _____ district of _____, a referee in bankruptcy, in and for the county of _____, in said district, under the acts of congress relating to bankruptcy.

Now, therefore, if the said _____ shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of

_____ (L. S.).

_____ (L. S.).

_____ (L. S.).

Approved this _____ day of _____, A. D. 189____.

_____, district judge.

(FORM No. 18.)

X. Creditors' Meeting.**A. Notice of First Meeting of Creditors.**

In the district court of the United States for the _____ district of _____.

In Bankruptcy.

In the matter of _____

In Bankruptcy.

Bankrupt.

To the creditors of _____, of _____, in the county of _____, and district aforesaid, a bankrupt.

Notice is hereby given that on the _____ day of _____, A. D. 18____, the said _____ was duly adjudicated bankrupt; and that the first meeting of his creditors will be held at _____ in _____, on the _____ day of _____, A. D. 18____, at _____ o'clock in the _____ noon, at which time the said creditors may attend, prove their claims, appoint a trustee, examine the bankrupt, and transact such other business as may properly come before said meeting.

_____, 18____.
_____, referee in bankruptcy.

(FORM No. 19.)

B. List of Debts Proved at First Meeting.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____ in said district, on the _____ day of _____, A. D. 18____, before _____, referee in bankruptcy.

The following is a list of creditors who have this day proved their debts:

Names of Creditors.	Residence.	Debts Proved.	
		Dols.	Cts.

_____, referee in bankruptcy.

(FORM No. 20.)

C. General Letter of Attorney in Fact When Creditor Is Not Represented by Attorney at Law.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

To _____:

I, _____, of _____, in the county of _____ and state of _____, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the acts of congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment

of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In witness whereof I have hereunto signed my name and affixed my seal the _____ day of _____, A. D. 189—.

_____ (L. S.).

Signed, sealed, and delivered in presence of _____.

Acknowledged before me this _____ day of _____, A. D. 189—, _____ (official character).

(FORM NO. 21.)

D. Special Letter of Attorney in Fact.

In the matter of _____ }
 _____ } In Bankruptcy.
 Bankrupt. }

To _____,

I hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at _____, on the _____ day of _____, before _____, or any adjournment thereof, and then and there _____ for _____ and in _____ name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

_____ (L. S.).

In witness whereof I have hereunto signed my name and affixed my seal the _____ day of _____, A. D. 189—.

Signed, sealed, and delivered in presence of _____.

Acknowledged before me this _____ day of _____, A. D. 189—, _____ (official character).

(FORM NO. 22.)

XI. Trustee.

A. Appointment of Trustees by Creditors.

In the district court of the United States for the _____ district of _____.

In the matter of _____ }
 _____ } In Bankruptcy.
 Bankrupt. }

At _____, in said district, on the _____ day of _____, A. D. 18—, before _____, referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the (here insert the names of the newspapers in which notice was published), we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are present at this meeting, do hereby appoint _____, of _____, in the county of _____, and state of _____, to be the trustee of the said bankrupt's estate and effects.

Signature of Creditors.	Residences of the same.	Amt. of debt.	
		Dols.	Cts.

Ordered that the above appointment of trustee be, and the same is hereby approved.

_____, referee in bankruptcy.

(FORM No. 23.)

B. Appointment of Trustee by Referee.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____, in said district, on the _____ day of _____, A. D. 18____, before _____, referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, and of which due notice has been given in the (here insert the names of the newspapers in which notice was published), I, the undersigned referee of the said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of trustee under the said bankruptcy; and I do hereby certify that the creditors whose claims had been allowed and were present, or duly represented, failed to make choice of a trustee of said bankrupt's estate, and therefore I do hereby appoint _____, of _____, in the county of _____ and state of _____, as trustee of the same. _____, referee in bankruptcy.

(FORM No. 24.)

C. Notice to Trustee of His Appointment.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

To _____, of _____, in the county of _____, and district aforesaid:

I hereby notify you that you were duly appointed trustee (or one of the trustees) of the estate of the above

named bankrupt at the first meeting of the creditors, on the _____ day of _____, A. D. 18____, and I have approved the said appointment. The penal sum of your bond as such trustee has been fixed at _____ dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

Dated at _____, the _____ day of _____, A. D. 18____.
_____, referee in bankruptcy.

(FORM No. 25.)

D. Bond of Trustee.

Know all men by these presents: That we, _____, of _____, as principal, and _____, of _____, and _____, of _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this _____ day of _____, A. D. 189____.

The condition of this obligation is such, that whereas the above-named _____, was, on the _____ day of _____ A. D. 189____, appointed trustee in the case pending in bankruptcy, in said court, wherein _____ is the bankrupt, and he, the said _____, has accepted said trust with all the duties and obligations pertaining thereunto:

Now, therefore, if the said _____, trustee as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void; otherwise, to remain in full force and virtue.

Signed and sealed in presence of _____

_____ (Seal).
_____ (Seal).
_____ (Seal).

(FORM No. 26.)

E. Order Approving Trustee's Bond.

At a court of bankruptcy, held in and for the _____ district of _____, at _____, this _____ day of _____, 189____. Before _____, referee in bankruptcy, in the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

It appearing to the court _____, of _____, and in said district, has been duly appointed trustee of the estate of the above-named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by the creditors (or by order of the court), to-wit, in the sum of _____ dollars, it is ordered that the said bond be, and the same is hereby, approved.

_____, referee in bankruptcy.

(FORM No. 27.)

F. Order That No Trustee Be Appointed.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appointment of a trustee of the bankrupt's estate is not now desirable, it is hereby ordered that, until further order of the court, no trustee be appointed and no other meeting of the creditors be called.

_____, referee in bankruptcy.

(FORM No. 28.)

XII. Examination of Bankrupt.**A. Order for Examination of Bankrupt.**

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____, on the _____ day of _____, A. D. 18____.

Upon the application of _____, trustee of said bankrupt (or creditor of said bankrupt), it is ordered that said bankrupt attend before _____, one of the referees in bankruptcy of this court, at _____ on the _____ day of _____, at _____ o'clock in the _____ noon, to submit to examination under the acts of congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

_____, referee in bankruptcy.

(FORM No. 29.)

B. Examination of Bankrupt or Witness.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____, in said district, on the _____ day of _____, A. D. 18____, before _____, one of the referees in bankruptcy of said court. _____, of _____, in the county of _____, and state of _____, being duly sworn and examined at the time and place above mentioned, upon his oath says (here insert substance of examination of party).

_____, referee in bankruptcy.

(FORM NO. 30.)

C. Summons to Witness.

To _____:

Whereas _____, of _____, in the county of _____, and state of _____, has been duly adjudged bankrupt, and the proceedings in bankruptcy is pending in the district court of the United States for the _____ district of _____.

These are to require you, to whom this summons is directed, personally to be and appear before _____, one of the referees in bankruptcy of the said court, at _____, on the _____ day of _____, at _____ o'clock in the _____ noon, then and there to be examined in relation to said bankruptcy.

Witness the honorable _____, judge of said court, and the seal thereof at _____, this day of _____, A. D. 189—.

_____, clerk.

RETURN OF SUMMONS TO WITNESS.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

On this _____ day of _____, A. D. 18—, before me came _____, of _____, in the county of _____, and state of _____, and makes oath, and says that he did, on _____, the _____ day of _____, A. D. 189—, personally serve _____, of _____, in the county of _____, and state of _____, with a true copy of the summons hereto annexed, by delivering the same to him; and he further makes oath, and says that he is not interested in the proceeding in bankruptcy named in said summons.

Subscribed and sworn to before me this _____ day of _____, A. D. 18—.

(FORM NO. 31.)

XIII. Proof of Debts.*A. Proof of Unsecured Debt.*

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____, in said district of _____, on the _____ day of _____, A. D. 189—, came _____, of _____, in the county of _____, in said district of _____, and made oath, and says that _____, the person by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of _____ dollars; that the consideration of said debt is as follows: _____

that no part of said debt has been paid (except _____);

that there are no set-offs or counter-claims to the same (except _____);

and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever.

_____, creditor.
Subscribed and sworn to before me this _____ day of _____, A. D. 18—. _____ (official character).

(FORM NO. 32.)

B. Proof of Secured Debt.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____, in said district of _____

_____, on the _____ day of _____, A. D. 189____, came _____, of _____, in the county of _____, in said district of _____, and made oath, and says that _____, the person by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the sum of _____ dollars; that the consideration of said debt is as follows: _____;

that no part of said debt has been paid (except _____);

that there are no set-offs or counter-claims to the same (except _____); and that the only securities held by this deponent for said debt are the following: _____;

_____, creditor.

Subscribed and sworn to before me this _____ day of _____ A. D. 18____.

_____ (official character).

(FORM NO. 33.)

C. Proof of Debt Due Corporation.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____, in said district of _____, on the _____ day of _____, A. D. 189____, came _____, of _____, in the county of _____, and state of _____, and made oath and says that he is _____ of the _____, a corporation incorporated by and under the laws of the state of _____, and carrying on business at _____, in the county of _____, and state of _____, and that he is duly authorized to make this proof, and says that the said _____, the person by (or against) whom a petition for adjudication of

bankruptcy has been filed, was at and before the filing of the said petition, and still is justly and truly indebted to said corporation in the sum of _____ dollars; that the consideration of said debt is as follows: _____;

that no part of said debt has been paid (except _____);

that there are no set-offs or counter-claims to the same (except _____);

and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever _____, of said corporation.

Subscribed and sworn to before me this _____ day of _____ A. D. 18____.

_____ (official character).

(FORM NO. 34.)

D. Proof of Debt by Partnership.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____, in said district of _____, on the _____ day of _____, A. D. 189____, came _____, of _____, in the county of _____, in said district of _____, and made oath and says that he is one of the firm of _____, consisting of himself and _____, of _____, in the county of _____, and state of _____; that the said _____, the person by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of _____ dollars; that the consideration of said debt is as follows: _____;

that no part of said debt has been paid (except _____);

that there are no set-offs or counter-claims to the same (except _____);

and this deponent has not, nor has his said firm, nor has any person by their order, or to this deponent's knowledge or belief, for their use, had or received any manner of security for said debt whatever.

_____, creditor.

Subscribed and sworn to before me this _____ day of _____ A. D. 18____.

_____ (official character).

(FORM No. 35.)

E. Proof of Debt by Agent or Attorney.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____ in said district of _____, on the _____ day of _____, A. D. 189____, came _____, of _____, in the county of _____, and state of _____, attorney (or authorized agent) of _____, in the county of _____, and state of _____, and made oath and says that _____, the person by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said _____, in the sum of _____ dollars; that the consideration of said debt is as follows: _____;

that no part of said debt has been paid (except _____);

and that this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use had or received any manner of security for said debt whatever. And this deponent further says, that this deposition cannot be made by the claim-

ant in person because _____;

and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

Subscribed and sworn to before me this _____ day of _____, A. D. 18____.

_____ (official character).

(FORM No. 36.)

F. Proof of Secured Debt by Agent.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____, in said district of _____, on the _____ day of _____, A. D. 189____, came _____, of _____, in the county of _____, and state of _____, attorney (or, authorized agent) of _____, in the county of _____, and state of _____, and made oath, and says that _____, the person by (or against) whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to the said _____ in the sum of _____ dollars; that the consideration of said debt is as follows: _____;

that no part of said debt has been paid (except _____);

that there are no set-offs or counter-claims to the same (except _____);

and that the only securities held by said _____ for said debt are the following: _____;

and this deponent further says that this deposition cannot be made by the claimant in person because _____,

and that he is duly authorized by his principal to make this deposition, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated.

Subscribed and sworn to before me this _____ day of _____, A. D. 18____.
 _____ (official character).

(FORM NO. 37.)

G. Affidavit of Lost Bill or Note.

In the district court of the United States for the _____ district of _____.

In the matter of }
 _____ } In Bankruptcy.
 Bankrupt.

On this _____ day of _____, A. D. 18____, at _____, came _____, of _____, in the county of _____, and state of _____, and makes oath and says that the bill of exchange (or note), the particulars whereof are underwritten, has been lost under the following circumstances, to-wit:

and that he, this deponent, has not been able to find the same; and this deponent further says that he has not, nor has the said _____, or any person or persons to their use, to this deponent's knowledge or belief, negotiated the said bill (or note), nor in any manner parted with or assigned the legal or beneficial interest therein, or any part thereof; and that he, this deponent, is the person now legally and beneficially interested in the same.

Bill or Note Above Referred To.

Date.	Drawer or maker.	Acceptor.	Sum.

Subscribed and sworn to before me this _____ day of _____, A. D. 18____.
 _____ (official character).

(FORM NO. 38.)

XIV. Orders on Claims.

A. Order Reducing Claim.

In the district court of the United States for the _____ district of _____.

In the matter of }
 _____ } In Bankruptcy.
 Bankrupt.

At _____, in said district, on the _____ day of _____, A. D. 18____.
 Upon the evidence submitted to this court upon the claim of _____ against said estate (and, if the fact be so, upon hearing counsel thereon), it is ordered, that the amount of said claim be reduced from the sum of _____, as set forth in the affidavit in proof of claim filed by said creditor in said case, to the sum of _____, and that the latter named sum be entered upon the books of the trustee as the true sum upon which a dividend shall be computed (if with interest, with interest thereon from the _____ day of _____, A. D. 18____).
 _____, referee in bankruptcy.

(FORM NO. 39.)

B. Order Expunging Claim.

In the district court of the United States for the _____ district of _____.

In the matter of }
 _____ } In Bankruptcy.
 Bankrupt.

At _____, in said district, on the _____ day of _____, A. D. 18____.
 Upon the evidence submitted to the court upon the claim of _____ against said estate (and, if the fact be so, upon hearing counsel thereon), it is ordered, that said claim be disallowed and expunged from the list of claims upon the trustee's record in said case.
 _____, referee in bankruptcy.

(FORM NO. 40.)

XV. List of Claims and Dividends To Be Recorded by Referee and by Him Delivered to Trustee.

In the district court of the United States for the _____ district of _____.

 In the matter of

 Bankrupt.
 }
 In Bankruptcy.

At _____, in said district, on the _____ day of _____, A. D. 18—.

A list of debts proved and claimed under the bankruptcy of _____, with _____ dividend at the rate of _____ per cent this day declared thereon by _____, a referee in bankruptcy.

No.	Creditors (To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth.)	Sum proved		Dividend	
		Dollars	Cents	Dollars	Cents

_____, referee in bankruptcy.

(FORM NO. 41.)

XVI. Notice of Dividend.

In the district court of the United States for the _____ district of _____.

 In the matter of

 Bankrupt.
 }
 In Bankruptcy.

At _____, on the _____ day of _____, A. D. 18—. To _____, creditor of _____, bankrupt:

I hereby inform you that you may,

on application at my office, _____, on the _____ day of _____, or on any day thereafter, between the hours of _____, receive a warrant for the _____ dividend due to you out of the above estate. If you cannot personally attend, the warrant will be delivered to your order on your filing up and signing the subjoined letter.
_____, trustee.

CREDITOR'S LETTER TO TRUSTEE.

To _____, trustee in bankruptcy of the estate of _____, bankrupt:

Please deliver to _____ the warrant for dividend payable out of the said estate to me.

_____, creditor.

See "How To Use This Volume," Introduction, page v.

(FORM No. 42.)

XVII. Petition and Orders Concerning Property.

A. Petition and Order for Sale by Auction of Real Estate.

In the district court of the United States for the _____ district of _____.

In the matter of	}	In Bankruptcy.
Bankrupt.		
Bankrupt.		

Respectfully represents _____, trustee of the estate of said bankrupt, that it would be for the benefit of said estate that a certain portion of the real estate of said bankrupt, to-wit (here describe it and its estimated value), should be sold by auction, in lots or parcels, and upon terms and conditions, as follows: _____

Wherefore he prays that he may be authorized to make sale by auction of said real estate as aforesaid.

Dated this _____ day of _____, A. D. 18—, _____, trustee.

The foregoing petition having been duly filed, and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat (or after hearing _____ in favor of said petition and _____ in opposition thereto), it is ordered that the said trustee be authorized to sell the portion of the bankrupt's real estate specified in the foregoing petition, by auction, keeping an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this _____ day of _____, A. D. 189—. _____, referee in bankruptcy.

(FORM No. 43.)

B. Petition and Order for Redemption of Property From Lien.

In the district court of the United States for the _____ district of _____.

In the matter of	}	In Bankruptcy.
Bankrupt.		
Bankrupt.		

Respectfully represents _____, trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to-wit (here describe the estate or property and its estimated value) is subject to a mortgage (describe the mortgage), or to a conditional contract (describing it), or to a lien (describe the origin and nature of the lien), (or if the property be personal property, has been pledged or deposited and is subject to a lien) for (describe the nature of the lien), and that it would be for the benefit of the estate that said property should be redeemed and discharged from the lien thereon. Wherefore he prays that he may be empowered to pay out of the assets of said estate in his hands the sum of _____, being the amount of said lien, in order to redeem said property therefrom.

Dated this _____ day of _____, A. D. 18—. _____, trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat (or after hearing _____ in favor of said petition and _____ in opposition thereto), it is ordered that the said trustee be authorized to pay out of the assets of the bankrupt's estate specified in the foregoing petition the sum of _____, being the amount of the lien, in order to redeem the property therefrom.

Witness my hand this _____ day of _____, A. D. 189—. _____, referee in bankruptcy.

(FORM NO. 44.)

C. *Petition and Order for Sale Subject to Lien.*

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

Respectfully represents _____, trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to-wit (here describe the estate or property and its estimated value) is subject to a mortgage (describe mortgage), or to a conditional contract (describe it), or to a lien (describe the origin and nature of the lien), or (if the property be personal property) has been pledged or deposited and is subject to a lien for (describe the nature of the lien), and that it would be for the benefit of the said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon.

Dated this _____ day of _____, A. D. 189—.

_____, trustee.

The foregoing petition having been duly filed, and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat (or after hearing _____ in favor of said petition and _____ in opposition thereto), it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, by auction (or at private sale), keeping an accurate account of the property sold and the price received therefor, and to whom sold; which said account he shall file at once with the referee.

Witness my hand this _____ day of _____, A. D. 189—.

_____, referee in bankruptcy.

(FORM NO. 45.)

D. *Petition and Order for Private Sale.*

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

Respectfully represents _____, duly appointed trustee of the estate of the aforesaid bankrupt.

That for the following reasons, to-wit: _____

it is desirable and for the best interest of the estate to sell at private sale a certain portion of the said estate, to-wit: _____

Wherefore he prays that he may be authorized to sell the said property at private sale.

Dated this _____ day of _____, A. D. 189—.

_____, trustee.

The foregoing petition having been duly filed, and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat (or after hearing _____ in favor of said petition and _____ in opposition thereto), it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, at private sale, keeping an accurate account of each article sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this _____ day of _____, A. D. 189—.

_____, referee in bankruptcy.

(FORM No. 46.)

E. Petition and Order for Sale of Perishable Property.

In the district court of the United States for the _____ district of _____.

_____ }
In the matter of

_____ } In Bankruptcy.

_____ }
Bankrupt.

Respectfully represents _____

_____, the said bankrupt (or a creditor, or the receiver, or the trustee of the said bankrupt's estate).

That a part of the said estate, to-wit: _____

now in _____, is perishable, and that there will be loss if the same is not sold immediately.

Wherefore he prays the court to order that the same be sold immediately as aforesaid.

Dated this _____ day of _____, A. D. 189—.

The foregoing petition having been duly filed, and having come on for a hearing before me, of which hearing ten days' notice was given by mail to the creditors of the said bankrupt (or without notice to the creditors), now, after due hearing, no adverse interest

being represented thereat (or after hearing _____ in favor of said petition and _____ in opposition thereto), I find that the facts are as above stated, and that the same is required in the interest of the estate, and it is therefore ordered that the same be sold forthwith and the proceeds thereof deposited in court.

Witness my hand this _____ day of _____, A. D. 189—.

_____, referee in bankruptcy.

(FORM No. 47.)

XVIII. Trustee's Accounts.**A. Trustee's Report of Exempted Property.**

In the district court of the United States for the _____ district of _____.

_____ }
In the matter of

_____ } In Bankruptcy.

_____ }
Bankrupt.

At _____, on the _____ day of _____, 18—.

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under the provisions of the acts of congress relating to bankruptcy:

General head.	Particular description.	Value.	
		Dollars	Cents
Military uniforms, arms, and equipments			
Property exempted by state laws			

_____, trustee.

(FORM No. 51.)

D. Order Allowing Account and Discharging Trustee.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

The foregoing account having been presented for allowance, and having been examined and found correct, it is ordered that the same be allowed, and that the said trustee be discharged of his trust.

_____, referee in bankruptcy.

(FORM No. 52.)

XIX. Removal of Trustee.**A. Petition for Removal of Trustee.**

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

To the honorable _____ judge of the district court for the _____ district of _____:

The petition of _____, one of the creditors of said bankrupt, respectfully represents that it is for the interest of the estate of said bankrupt that _____, heretofore appointed trustee of said bankrupt's estate, should be removed from his trust, for the causes following, to-wit (here set forth the particular cause or causes for which such removal is requested).

Wherefore _____ prays that notice may be served upon said _____, trustee as aforesaid, to show cause, at such time as may be fixed by the court, why an order should not be made removing him from said trust.

(FORM No. 53.)

B. Notice of Petition for Removal of Trustee.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

At _____, on the _____ day of _____, A. D. 18—. To _____, trustee of the estate of _____, bankrupt:

You are hereby notified to appear before this court, at _____, on the _____ day of _____, A. D. 18—, at _____ o'clock — m., to show cause (if any you have) why you should not be removed from your trust as trustee as aforesaid, according to the prayer of the petition of _____, one of the creditors of said bankrupt, filed in this court on the _____ day of _____, A. D. 18—, in which it is alleged (here insert the allegation of the petition).

_____, clerk.

(FORM No. 54.)

C. Order for Removal of Trustee.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

Whereas _____ of _____, did, on the _____ day of _____, A. D. 18—, present his petition to this court, praying that for the reasons therein set forth, _____, the trustee of the estate of said _____, bankrupt, might be removed:

Now, therefore, upon reading the said petition of the said _____

_____ and the evidence submitted therewith, and upon hearing counsel on behalf of said petitioner and counsel for the trustee, and upon the evidence submitted on behalf of said trustee,

It is ordered that the said _____ be removed from the trust as trustee of the estate of said bankrupt, and that the costs of the said petitioner incidental to said petition be paid by said _____, trustee (or out of the estate of the said _____, subject to prior charges).

Witness the honorable _____, judge of the said court, and the seal thereof, at _____, in said district, on the _____ day of _____, A. D. 18—.

(Seal of the court.)

_____, clerk.

(FORM No. 55.)

D. Order for Choice of New Trustee.

In the district court of the United States for the _____ district of _____.

_____	} In Bankruptcy.
In the matter of _____	
Bankrupt.	

At _____, on the _____ day of _____, A. D. 18—.

Whereas by reason of the removal (or the death or resignation) of _____, heretofore appointed trustee of the estate of said bankrupt, a vacancy exists in the office of said trustee,

It is ordered that a meeting of the creditors of said bankrupt be held at _____, in _____, in said district, on the _____ day of _____, A. D. 18—, for the choice of a new trustee of said estate.

And it is further ordered that notice be given to said creditors of the time, place and purpose of said meeting, by letter to each, to be deposited in the mail at least ten days before that day.

_____, referee in bankruptcy.

(FORM No. 56.)

XX. Certificate by Referee to Judge.

In the district court of the United States for the _____ district of _____.

_____	} In Bankruptcy.
In the matter of _____	
Bankrupt.	

I, _____, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings (here state the question, a summary of the evidence relating thereto, and the finding and order of the referee thereon. And the said question is certified to the judge for his opinion thereon.

Dated at _____, the _____ day of _____, A. D. 18—.

_____, referee in bankruptcy.

(FORM No. 57.)

XXI. Discharge of Bankrupt.

A. Bankrupt's Petition for Discharge.

_____	} In Bankruptcy.
In the matter of _____	
Bankrupt.	

To the honorable _____, judge of the district court of the United States for the district of _____, of _____, in the county of _____ and state of _____, in said district, respectfully represents that on the _____ day of _____, last past, he was duly adjudged bankrupt under the acts of congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the requirements of said acts and of the orders of the court touching his bankruptcy.

Wherefore he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said bankrupt

acts, except such debts as are excepted by law from such discharge.

Dated this _____ day of _____,
A. D. 189—.

_____, bankrupt.

ORDER OF NOTICE THEREON.

District of _____, ss.:

On this _____ day of _____,
A. D. 189—, on reading the foregoing petition, it is

Ordered by the court, that a hearing be had upon the same on the _____ day of _____, A. D. 189—, before said court, at _____, in said district, at _____ o'clock in the _____ noon; and that notice thereof be published in _____, a newspaper printed in said district, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petitioner should not be granted.

And it is further ordered by the court that the clerk shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residence as stated.

Witness the honorable _____, judge of the said court, and the seal thereof, at _____, in said district, on the _____ day of _____, A. D. 189—.

(Seal of the court.)

_____, clerk.

_____ hereby depose, on oath, that the foregoing order was published in the _____ on the following _____ days, viz.:

On the _____ day of _____ and on the _____ day of _____, in the year 189—.

District of _____,
_____, 189—.

Personally appeared _____, and made oath that the foregoing statement by him subscribed is true.

Before me,

_____ (official character).

I hereby certify that I have on this _____ day of _____, A. D. 189—, sent by mail copies of the above order, as therein directed.

_____, clerk.

(FORM No. 58.)

B. Specification of Grounds of Opposition to Bankrupt's Discharge.

In the district court of the United States for the _____ district of _____.

In the matter of

In Bankruptcy.

Bankrupt.

_____, of _____, in the county of _____ and state of _____, a party interested in the estate of said _____, a bankrupt, do hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition do file the following specification (here specify the grounds of opposition).

_____, creditor.

(FORM No. 59.)

C. Discharge of Bankrupt.

District court of the United States,
_____ district of _____.

Whereas _____, of _____, in said district, has been duly adjudged a bankrupt, under the acts of congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said _____ be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the _____ day of _____, A. D. 189—, on which day the petition for adjudication was filed _____ him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the honorable _____, judge of said district court, and the seal thereof this _____ day of _____, A. D. 189—.

(Seal of the court.)

_____, clerk.

(FORM No. 60.)

XXII. Composition.

A. Petition for Meeting to Consider Composition.

In the district court of the United

States for the _____ district of _____

In Bankruptcy.

Bankrupt.

To the honorable _____, judge of the district court of the United States for the _____ district of _____:

The above named bankrupt respectfully represents that a composition of _____ per cent. upon all unsecured debts, not entitled to a priority _____ in satisfaction of _____ debts has been proposed by _____ to _____ creditors, as provided by the acts of congress relating to bankruptcy, and _____ verily believe that the said composition will be accepted by a majority in number and in value of _____ creditors whose claims are allowed.

Wherefore he prays that a meeting of _____ creditors may be duly called to act upon said proposal for a composition, according to the provisions of said acts and the rules of court.

_____, bankrupt.

(FORM No. 61.)

B. Application for Confirmation of Composition.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

Bankrupt.

To the honorable _____, judge of the district court of the United States for the _____ district of _____.

At _____, in said district, on the _____ day of _____, A. D. 189____, now comes _____, the above named bankrupt and respectfully represents to the court that, after he had been examined in open court (or at a meeting of his creditors), and had

filed in court a schedule of his property and a list of his creditors, as required by law, he offered terms of composition to his creditors, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount of such claims; that the consideration to be paid by the bankrupt to his creditors, the money necessary to pay all debts which have priority, and the costs of the proceedings, amounting in all to the sum of _____ dollars, has been deposited, subject to the order of the judge, in the _____ National Bank, of _____, a designated depository of money in bankruptcy cases.

Wherefore the said _____ respectfully asks that the said composition may be confirmed by the court.

_____, bankrupt.

(FORM No. 62.)

C. Order Confirming Composition.

In the district court of the United States for the _____ district of _____.

In the matter of _____

In Bankruptcy.

An application for the confirmation of the composition offered by the bankrupt having been filed in court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited having been deposited as ordered, in such place as was designated by the judge of said court, and subject to his order; and it also appearing that it is for the best interests of the creditors; and that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the acts of congress relating to bankruptcy: It is therefore

hereby ordered that the said composition be, and it hereby is, confirmed.

Witness the honorable _____
_____, judge of said court, and the
seal thereof, this _____ day of
_____, A. D. 189—.

(Seal of the court.) _____, clerk.

(FORM No. 63.)

D. Order of Distribution on Composition.

United States of America.
In the district court of the United
States for the _____ district of
_____.

<p>_____</p> <p>In the matter of</p> <p>_____</p> <p>_____</p> <p>Bankrupt.</p>	}	<p>In Bankruptcy.</p>
---	---	-----------------------

The composition offered by the above named bankrupt in this case having been duly confirmed by the judge of said court, it is hereby ordered and decreed that the distribution of the deposit shall be made by the clerk of the court as follows, to-wit: 1st, to pay the several claims which have priority; 2d, to pay the costs of proceedings; 3d, to pay, according to the terms of the composition, the several claims of general creditors which have been allowed, and appear upon a list of allowed claims, on the files in this case, which list is made a part of this order.

Witness the honorable _____
_____, judge of said court, and the
seal thereof, this _____ day of
_____, A. D. 189—.

(Seal of the court.) _____, clerk.

BANKS AND BANKING.

I. Complaints, 181

- A. *Against Bank Neglecting To Present Note*, 181
- B. *Against Bank Not Giving Due Notice*, 181
- C. *Against Bank Having Certified Check*, 181
- D. *By or Against Individual Banker*, 182
- E. *Banking Association, in Its Associate Name*, 182
- F. *Banking Association in Name of Its President*, 182

I. Complaints.

A. Complaint Against Bank, for Neglecting To Present Note.

I. (Allegation of defendant's incorporation.)

II. That the defendants, on or about the _____ day of _____, 18____, received from the plaintiff, he then being a depositor at their bank, a negotiable promissory note (or bill of exchange), of which the following is a copy: (copy of note).

III. That the defendants, in consideration thereof, undertook and promised the plaintiff to use due diligence in presenting said note, and demanding payment thereof, from the makers (or, if it is a bill of exchange, from the acceptors; * and in case of default in payment thereof, according to its tenor (to cause the same to be duly protested for non-payment, and) to cause due notice thereof to be given to M. N., the indorser (or drawer) thereof, whereby to render him liable thereon.

IV. That the defendants * did not present said (note) for payment on the day of its maturity, but negligently omitted to do so, by reason whereof the plaintiffs have wholly lost the moneys due on said note. 1 Abb. Forms 400.

B. Complaint Against Bank, for Not Giving Due Notice.

As in preceding form to the * and continue, presented said (note) on the day of its maturity, and the same was not paid, but that they did not give due notice thereof to the said (indorser), but negligently omitted so to do, by reason whereof the plaintiffs have wholly lost the moneys due on said note. 1 Abb. Forms 401.

C. Complaint Against Bank, Drawee, Having Certified Check.

I. That the defendants are a corporation, created by and under the laws of this state, organized pursuant to an act of the legislature entitled ("An Act to authorize the business of Banking") (or if the bank was organized under a special charter, state title of its charter). passed _____, and the acts amending the same.

II. That on the _____ day of _____, 18____, at _____, one M. N. made his check (or certain persons, under their firm name of M. N. & Co., made their check) in writing, bearing date on that day, and directed it to the defendants, and thereby required

them to pay to this plaintiff or order (or bearer), _____ dollars, for value received; and delivered the same to this plaintiff (or if payable to a third party, state it).

III. That then and there (or on the _____ day of _____, 18____, at _____) the defendants, by their agent duly authorized thereto in writing, accepted and certified the same to be good.

IV. That thereafter the same was duly presented for payment, but no part thereof has been paid. 1 Abb. Forms 261.

D. Complaint, Action by or Against an Individual Banker.

The plaintiff complaining of the defendant, alleges:

I. That the plaintiff is an individual banker, carrying on the business of banking at _____, in this state, under the designation of the bank of _____ pursuant to authority of an act of the legislature, entitled ("An Act to authorize the Business of Banking"), passed _____, and the acts amending the same. 1 Abb. Forms 134.

E. Complaint, Banking Association Suing or Sued in Its Associate Name.

The A. B. Bank, plaintiff, against W. X. and Y. Z., defendants.

The plaintiffs complaining of the defendants, allege:

I. That the plaintiffs (or defendants) are a banking association created by and under the laws of this state, organized pursuant to an act of the legislature, entitled ("An Act to authorize the Business of Banking"), passed _____, and the acts amending the same. 1 Abb. Forms 133.

F. Complaint, Banking Association Suing or Sued in Name of Its President.

A. B., as president of the bank of C. D., plaintiff, against W. X. and Y. Z., defendants.

The plaintiff, complaining as president of the Bank of C. D., alleges:

I. That the plaintiff is the president of said bank, an association created by and under the laws of this state, organized pursuant to an act of the legislature, entitled ("An Act to authorize the Business of Banking"), passed _____, and the acts amending the same. 1 Abb. Forms 134.

BASTARDY PROCEEDINGS.

I. Complaints, 182

A. *By Female*, 182

B. *By Selectmen*, 183

II. Indictment, 183

III. Warrant for Arrest, 183

IV. Commitment, 183

V. Bond for Compliance With Judgment, 183

VI. Bond To Indemnify Town, 184

VII. Order of Dismissal, 184

For other forms, see 4 STANDARD PROC. 63, 67.

I. Complaints.

A. *Affidavit for Bastardy (Complaint) by Female (a).*

State of Florida, county of Madison.

"Before the subscriber, Robert M. Witherspoon, county judge and ex-officio justice of the peace in and for said county, personally came Maggie C. . . . who, being duly sworn, says that on the 19th day of May, A. D. 1880, in the county and state aforesaid, the deponent, being a single woman, she was delivered of a girl child, which by law is deemed and held a bastard, and that William H. T. . . . is the father of said bastard child.

Maggie C. . . .

Sworn to and subscribed before me this 20th day of October, A. D. 1880.

Robt. M. Witherspoon,
County judge and ex-officio justice of the peace."

W. H. T. v. State, 18 Fla. 883.

Note.—Each complaint under this title must be tested by the statutes of the state where made. There is a great diversity of legislation upon this subject in those states where the action exists. In some states it is of a criminal nature; in other states it is a civil action, and in others it is termed a quasi criminal action.

Complaint for Bastardy by Female (b).

"Martha Roberts being first duly sworn deposes and says that she is a single woman, and is now pregnant with child within the said sixth justice district of the county of Hillsborough, in the state of Florida, which said child when born will in law be deemed and held to be a bastard, and that Franklin C. Thomas, of the said county of Hillsborough and state of Florida is the father of said child." Thomas v. State, 37 Fla. 378, 20 So. 259.

Complaint for Bastardy by Female (c).

"State of Indiana, Tippecanoe county, ss. Before Noah Justice, justice of the peace in and for Fairfield township. The State of Indiana, on the relation of Mary E. Packer, v. Asher Arnold. Complaint.

"Mary E. Packer complains of Asher Arnold, and says that she is pregnant with a bastard child, and that Asher Arnold is the father of said child.

Mary E. Packer.

Subscribed and sworn to before me this 11th day of October, 1889.

William C. Mitchell,
Notary Public. (Seal.)"

Smith v. State, 125 Ind. 440, 25 N. E. 598.

Note.—This complaint would be insufficient in many jurisdictions for the reason that it does not state that defendant is an unmarried woman, and for the further reason that it is sworn to before a notary public.

B. Complaint by Selectmen.

"That one Clarissa Neff, a legal inhabitant of the town of Hampton, a single and unmarried woman, was, on the 23rd of October, 1819, at said Hampton, delivered of a bastard child; that she is poor and needy, and unable to support said child; that said child is now living, and likely to become expensive and chargeable to said town; and that no sufficient security has ever been offered to indemnify said town against all charge and expense, for the support of said bastard child; and that said town has already actually been compelled to contribute toward the expense of maintaining said bastard child; that said child was begotten on the body of the said Clarissa, by Jesse Fuller, on or about the 21st day of January, 1819, and that he is the father of said child; and the said Clarissa Neff, the mother of said child, has, at all times, neglected and omitted to bring forward, in her own name, and prosecute to final judgment, her suit for the maintenance of said child." Fuller v. Hampton, 5 Conn. 416.

II. Indictment for Bastardy.

"The jurors, etc., present that Walter Wynne, on the 4th of October, 1893, and in upon the body of one Mary Neal did wilfully and unlawfully beget a bastard child, she the said Mary Neal being then and there an

unmarried woman, and the said bastard child, as begotten by said Walter Wynne, having been born alive on the fourth day of July, 1894, still lives and is likely to become a county charge, and he the said Walter Wynne then and there refused to provide for the maintenance of said child, against the form of the statute," etc. State v. Wynne, 116 N. C. 981, 21 S. E. 35.

III. Warrant for Arrest.

"The People of the State of Illinois, to the sheriff or any constable of said county: Whereas Clara J. Lee of Lawrence county, Ills., an unmarried woman, has this day made complaint under oath before H. W. Bunn, a justice of the peace in and for said county, that she is pregnant with child, which is liable to be born a bastard, and Thomas E. Palmer is the father of said child. We therefore command you to arrest the said Thomas E. Palmer, and bring him before said justice to answer unto said complaint, and to be further dealt with according to law. Given under my hand and seal of said justice this 26th day of Dec., 1889.

H. W. Bunn."

Palmer v. People, 138 Ill. 356, 365, 28 N. E. 130.

IV. Commitment in Bastardy.

"Whereas Walter L. Myers, the prisoner herewith sent you, has this day been convicted before me, an acting justice of the peace for Boon Station township in said county, on the charge of bastardy, and sentenced for a fine of ten dollars for state and to forty dollars for mother of child and four dollars and fifty-five cents costs, total, \$64.55: you are therefore commanded to receive the said Walter L. Myers into the common jail of the county of Alamance, there to remain until the expiration of the time aforesaid, and that he shall remain in prison until the costs and fine are paid, or he shall otherwise be discharged according to law.

H. F. Tickle,

Justice of the peace."

Myers v. Stafford, 114 N. C. 234, 19 S. E. 764.

V. Bond for Compliance With Judgment in Bastardy.

"Know all men by these presents, that we, Thomas Carpenter and George Such are held and firmly bound unto the state of New Jersey, in the sum of one thousand dollars to be paid to

the said, the state of New Jersey, to which payment, well and truly to be made, we bind ourselves, and each and each of us, jointly and severally, and our and each and every of our heirs, executors and administrators firmly by these presents. Sealed with our seals and dated the twenty-fifth day of June, 1881. The condition of this obligation is such that whereas Thomas Carpenter, at the April term of the Middlesex county court of quarter sessions, was convicted of being the father of a bastard child born in the township of Woodbridge, Middlesex county, New Jersey, of the body of Joanna Jordon, and that the said child is chargeable to the said township of Woodbridge. Now, therefore, if the said Thomas Carpenter shall obey and comply with the order of filiation heretofore made against him and indemnify the township of Woodbridge and each and every of the townships of this state which may have incurred or which may hereafter incur any costs or expense by reason of the birth, education and maintenance of the said bastard child or of its mother during her confinement, or from all actions, suits, troubles and other charges and demands whatsoever, touching or concerning the same, then this present obligation to be void, otherwise to be and remain in full force and virtue.

T. D. Carpenter (L. S.)

Geo. Such (L. S.)

Sealed and delivered in presence of
Howard Wesner,

New Brunswick, N. J."

Such v. State, 55 N. J. L. 289, 26 Atl. 896.

VI. Bond To Indemnify Town in Bastardy.

"The condition of the foregoing bond is such, that whereas the said Samuel Hunn, Jr., is the father of James Hunn, an illegitimate child, and is liable for his support, and whereas the legal place of settlement of said child is in said town of East Hartford, and in the event that he should at any time be unable to support himself said town is in the first place legally chargeable for his support, against which liability it is the duty of said Samuel Hunn, Jr., to indemnify said town; Now if we, the said obligors, shall at all times see that said James Hunn is supported without expense to said town, and fully indemnify and save

harmless said town from all loss, cost and expenses of every kind which said town may incur by reason of his becoming chargeable thereunto, then this bond is to be void, otherwise to remain in full force." Town of East Hartford v. Hunn, 29 Conn. 500.

VII. Order of Dismissal on Provision for Support in Bastardy.

"Comes now the relator in person, and by A. F. Shirts, her attorney, and comes also the defendant, by Thomas J. Kane, his attorney; and the relator Roxana Hines, in person, comes into open court and acknowledges that provision has been made by the defendant to her satisfaction for the maintenance of the bastard child named in the relator's complaint. It is therefore considered by the court that this cause be dismissed at defendant's costs. It is therefore considered by the court that the relator recovered of the defendant all her costs and charges in this before by her paid, laid out and expended, taxed at _____ dollars and _____ cents." Noble v. State *ex rel.* Hines, 39 Ind. 352.

BIGAMY.

CROSS-REFERENCE:

INDICTMENT AND INFORMATION:

(For general forms of.)

Indictment for Bigamy (a).

That D. G., late of, etc., on, etc., at, etc., did marry one F. C., spinster, and the said F. C. then and there had for his wife, and that the said D. G. afterwards, to-wit, on, etc., with force and arms, at, etc., aforesaid, feloniously did marry and take to wife one H. M. R., widow, and to the said H. M. R. was then and there married, the said F. C., his former wife, being then and there living, and in full life, against the form of the statute, etc., and against the peace, etc. 3 Chit. Cr. L. 721.

Indictment for Bigamy (b).

That Elizabeth, the wife of Augustus John Hervey, late of, etc., on, etc., being then married, and then the wife of the said Augustus John Hervey, with force and arms, at the said parish of Saint George Hanover Square, in the said county of Middlesex, feloniously did marry and take to husband Evelyn Pierrepont, duke of Kingston (the said Augustus John Hervey, her husband, being then alive), against the form of

the statute, etc., and against the peace, etc. And the said jurors, etc., further present that the said Elizabeth, heretofore, to-wit, on, etc., at, etc., by the name of Elizabeth Chudleigh, did marry the said Augustus John Hervey, and him the said Augustus John Hervey then and there had for her husband, and that the said Elizabeth being married, and the wife of the said Augustus John Hervey, afterwards, to-wit, on, etc., with force and arms, at the parish of St. George Hanover Square, in the said county of Middlesex, feloniously did marry and take to husband the said Evelyn Pierpont, duke of Kingston (the said Augustus John Hervey, her former husband, being then alive), against the form, etc., and against the peace, etc. 3 Chit. Cr. L. 718.

Indictment for Bigamy (c).

That Charles H. Fleming, late of the first ward of the city of New York, in the county of New York aforesaid, on the eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-five, did marry one Rowena Baldwin, and her the said Rowena did then and there have for wife; and the said Charles, afterwards, to-wit, on the thirty-first day of December, in the year of our Lord one thousand eight hundred and sixty-one, at the ward, city and county aforesaid, with force and arms, did feloniously marry and take as his wife one Jane A. Butt, and to the said Jane was then and there married, the said Rowena being then and there living, and in full life, against the form of the statute in such case made and provided, and against the peace of the people of the state of New York and their dignity.

A. Oakley Hall, district attorney.
Fleming v. People, 5 Park. Crim. (N. Y.) 353.

Note.—Held not necessary to negate all statutory exceptions though in enacting clause.

Indictment for Bigamy (d).

"Chasteen Hughes, at the county of Shawnee, in the state of Kansas aforesaid, and within the jurisdiction of this court, on the twenty-first day of March, 1885, did then and there unlawfully and feloniously marry one Loretta Cavender, and her, the said Loretta Cavender, then and there had for his wife, and the said Chasteen Hughes then and there being a married person, being then and there married to one Mary

Hughes, she, the said Mary Hughes, being then and there alive, and the bond of matrimony between the said Chasteen Hughes and Mary Hughes then being still undissolved." State v. Hughes, 8 Crim. L. Mag. 735, 736.

BILLS AND ANSWERS.

I. Several Parts of Bill, 188

- A. *Address*, 188
- B. *Introductory Part*, 188
 1. *Common Form*, 188
 2. *On Behalf of Crown*, 188
 3. *By Attorney-General*, 188
 4. *By Attorney-General on Relation*, 188
 5. *By Married Woman by Next Friend*, 188
 6. *By Husband and Wife*, 188
 7. *By Feme Covert, Husband Defendant*, 189
 8. *By Feme Covert, Husband Abjured Realm*, 189
 9. *On Behalf of Infant*, 189
 10. *By Corporation*, 189
 11. *By Lunatics*, 189
 12. *By Creditors, Etc.*, 189
- C. *Stating Part*, 189
- D. *Charge of Confederacy*, 189
- E. *Charging Part of Bill*, 189
- F. *Jurisdiction Clause*, 190
- G. *Interrogatory Part*, 190
- H. *Prayer for Relief*, 190
 1. *Introductory Words*, 190
 2. *For Account of Rents and Profits*, 190
 3. *For Account, Money Had and Received*, 190
 4. *For Account of Personal Estate*, 190
 5. *For Production of Deeds, Etc.*, 190
 6. *General Prayer for Relief*, 191

I. Prayer for Process, 191

1. *For Subpoena*, 191
2. *Injunction To Stay Waste*, 191
3. *Injunction Against Proceeding at Law*, 191
4. *For Ne Exeat Regno*, 191
5. *For Ne Exeat Respublica*, 192
6. *For Certiorari*, 192

II. Answers, 192

- A. *Title to Answers*, 192
 1. *One Defendant*, 192
 2. *By Attorney-General*, 192
 3. *By Infant*, 192
 4. *One of Several Defendants*, 192
 5. *Joint and Several Answer*, 192

6. *Joint and Several, Infant and Adult*, 192
7. *Where Bill Misstates Name*, 192
8. *To Amended Bill*, 192
9. *To Original and Amended Bill*, 192
10. *To Bill of Revivor*, 192
11. *By Adult and Infant*, 192
12. *Supplemental Answer*, 192
13. *After Insufficient Answer*, 193
- B. *Introductory Statements*, 193
- C. *Common Forms in Framing Answers*, 193
 1. *Admission*, 193
 2. *Admission of Instrument*, 193
 3. *Relief Without Personal Knowledge*, 193
 4. *Making Deed and Payment*, 193
 5. *Ignorant as to Statement in Bill*, 193
 6. *Where One Defendant Knows*, 193
 7. *Admit Event, No Knowledge of Time*, 193
 8. *Ignorant of Allegations of Bill*, 194
 9. *Denial by One, Belief in by Other*, 194
 10. *Joint and Several Denial*, 194
 11. *Schedule of Deeds*, 194
 12. *Account Set Forth*, 194
- D. *Conclusions to Answers*, 194
 1. *Common Form*, 194
 2. *Claim of Defense as in Demurrer*, 194

For other forms, see 4 STANDARD PROC. 108-110, 144, 145, 148, 181.

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

- Bill by Administrator Against Trustee;
- Bill for Accounting Against Broker;
- Prayer for an Account of Rents, Profits and Sums Received by Mortgagee.

ANNUITIES:

- Bill for Dower and Annuity Against Executors, Devisees in Trust.

BILLS OF REVIEW:

- Bill of Review on Discovery of New Matter;
- Supplemental Bill in Nature of Bill of Review;
- Bill of Review, Error Apparent in Bill.

BILLS TO IMPEACH JUDGMENTS AND DECREES:

- Bill To Set Aside Decree for Fraud.

CERTIORARI:

- Bill for Writ of Certiorari To Remove Proceedings.

CONTRIBUTION:

- Bill for Contribution on General Average.

COPYRIGHT PROCEEDINGS:

- Bill To Restrain Infringement of Copyright, and for Accounting.

CREDITORS' SUITS:

- Bill in Behalf of Themselves and All Other Creditors, etc.;
- Bill by Creditors Against Executors;
- Bill Against a Corporation and Its Stockholders.

CROSS-BILL:

- Cross-Bill by Administrator De Bonis Non To Have Release Executed;
- Cross-Bill in Nature of Plea Puis Darrein Continuance.

DEMURRER:

- Demurrer in Equity; Demurrer and Answer.

DISCLAIMER:

- Answer and Disclaimer.

DISCOVERY:

- Bill for Discovery;
- Objections in Answer Particular Interrogatories;
- Statement in Answer To Prevent Production of Confidential Communication;
- Statement To Prevent Production of Certain Documents.

DIVORCE:

- Bill To Dissolve Marriage.

DOWER, PROCEEDINGS TO RECOVER:

- Bill for Dower, Setting Aside Release for Fraud.

EQUITY JURISDICTION AND PROCEDURE:

- Petition To Amend Bill Requiring Further Answer;
- Petition To Amend Bill Not Requiring Further Answer;
- Petition for Leave To Withdraw Replication and Amend Bill;
- Petition To Amend Bill by Adding Defendant;
- Affidavit in Support of Application To Amend Bill Before Replication;
- Order for Leave To Withdraw and Amend;
- Order for Leave To Amend an Injunction Bill;
- Order for Leave To Amend Bill After General Demurrer;
- Order for Leave To Amend Bill After Plea to Part Is Allowed;
- Exceptions to Answers for Insufficiency (a, b).

ESTOPPEL:

- Substance of Bill Setting Up an

See "How To Use This Volume," Introduction, page v.

- Equitable Estoppel Against Suit at Law.
- FRAUDS, STATUTE OF:**
 Answer, Claiming Benefit of Statute of Frauds (a, b, c).
- FRAUDULENT CONVEYANCES:**
 Bill Requiring Grantee To Pay Over Unpaid Purchase Price.
- HEARING:**
 Order on Hearing of Exceptions for Insufficiency.
- HUSBAND AND WIFE:**
 Bill Relating to Estate of Married Woman, To Enforce Payment Out of Separate Property for Land Conveyed to Separate Use;
 Answer, Statement by Wife Separated From Husband Claiming Costs;
 Answer, Statement by Husband Disclaiming Interest by Reason of Separation.
- INHERITANCE:**
 Bill by Next of Kin for Share (a, b).
- INJUNCTIONS:**
 Prayer for Injunction and for Subpoena;
 Prayer To Restrain Proceedings at Law for Injunction;
 Prayer for Injunction Against Transfer of Property;
 Prayer for Injunction Against Working Quarry;
 Prayer for Injunction Against Receiving Partnership Debts (a, b).
- INSANE PERSONS:**
 Answer in Equity by a Lunatic or Idiot, Etc.
- INTERPLEADER:**
 Statements in Bill by Purchaser Against Different Persons Claiming Payment;
 Bill of Interpleader (Modern English Form);
 Bill by Executor, in Nature of Interpleader To Obtain Instructions of Court;
 Bill of Interpleader, Prayer That Defendants Interplead;
 Affidavit To Be Annexed to Bill of Interpleader;
 Affidavit of Secretary to Public Company To Be Annexed to Bill of Interpleader.
- LIMITATION OF ACTIONS:**
 Answer of Statutes of Limitations;
 Answer, Statement Raising Defense of Statute of Limitations.
- MARSHALING ASSETS:**
 Bill for Marshaling Assets.
- MORTGAGES:**
 Prayer in Bill for Foreclosure and Sale;
 Bill for Foreclosure, Mortgagor in Possession;
 Bill for Foreclosure Against Surviving Mortgagor, Etc.
 Bill for Redemption by Purchaser;
 Bill for Redemption by Heir;
 Statements in Bill for Redemption of Absolute Deed Taken as Security.
- NUISANCE:**
 Bill To Prevent Nuisance Where Irreparable Injury Would Ensure.
- PARTITION:**
 Bill for Partition by Co-heiresses.
- PARTNERSHIP:**
 Bill for Dissolution and To Restrain Collecting of Debts;
 Prayer in Bill for Accounting, Receiver and Injunction;
 Prayer in Bill After Dissolution, for Accounting, Lien on Stock, etc.
- PATENTS:**
 Bill To Restrain Infringement of Patent Right.
- PERPETUATION OF TESTIMONY:**
 Bill To Perpetuate Testimony.
- PLEDGES:**
 Bill for Redemption of Goods Pledged.
- PRAYER FOR RELIEF:**
 Prayer of Bill To Carry Trusts Into Execution and To Ascertain Rights of Parties.
- QUIA TIMET:**
 Bill by Surety on Bond To Compel Debtor To Pay Debt.
- REFORMATION:**
 Bill for Reformation of Conveyance Correcting Boundary.
- RESCISSION AND CANCELLATION:**
 Bill To Cancel or To Rectify and Reform Agreements, Bonds and Other Instruments;
 Bill for Cancellation of Contract for Fraud;
 Bill for Cancellation of Bond Given To Secure Payment for Supposed Interest of Testator, Etc.;
 Substance of Bill for Cancellation of Deed Obtained by Fraud.
- REVIVOR:**
 Answer to Original Bill and Bill of Revivor, and Supplement;
 Bill of Revivor and Supplement;
 Death of Plaintiff and Birth of Heir of Defendant;
 Bill of Revivor on Marriage of Female;

Bill of Revivor by Administrator,
 Executor Renouncing;
 Answer to Original Bill and Bill of
 Revivor and Supplement;
 Bill in Nature of Bill of Revivor,
 Devisee Against Vendee for Spe-
 cific Performance.

SERVICE OF PROCESS AND PAPERS:

Affidavit of Personal Service of Bill;
 Order for Service of Bill Out of
 Jurisdiction.

SPECIFIC PERFORMANCE.

Bill for Specific Performance, Gen-
 eral Form;
 Bill Praying Specific Performance by
 Vendee Against Vendor;
 Bill for Specific Performance by
 Vendor Against Vendee, Title in
 Question;
 Bill for Specific Performance by
 Vendee Against Vendor and Sub-
 sequent Purchaser;
 Bill for Specific Performance, Lessee
 Against Lessor of House;
 Bill for Specific Performance of
 Parol Agreement, Relying on Part
 Performance;
 Bill for Specific Performance of
 Agreement of Compromise;
 Bill by Vendor Against Administra-
 tor and Minor Children for Spe-
 cific Performance;
 Prayer for Specific Performance;
 Prayer by Surety To Compel Specific
 Performance by Principal With
 Oblige, and for Writ of Ne Exeat.

STOCKHOLDERS' SUITS:

Statements of Bill by Minority
 Stockholders of Unfair Manage-
 ment, and To Enjoin Pooling in
 Interest of Majority;
 Statement of Allegations by Minority
 of Gross Mismanagement.

SUPPLEMENTAL PLEADING:

Supplemental Bill, Extension of
 Patent;
 Supplemental Bill To Restrain Ac-
 tion at Law.

TRUSTS AND TRUSTEES:

Bill Praying for Discharge as Trus-
 tee;
 Bill Praying for Appointment of
 New Trustee;
 Bill for Payment of Legacy and Ac-
 counting;
 Bill for Payment of Legacies and
 Execution of Trust;
 Statement in Answer of Trustee of
 Acquiescence of Cestui Que Trust.

VERIFICATION:

Jurat to Bill, Answer or Affidavit.

WASTE:

Bill To Restrain Waste.

WILLS:

Bill by Husband of Legatee Against
 Executor.

I. Several Parts of Bill.

A. Address.

(In Chancery.) To the Right Hon-
 orable John Singleton Lord Lyndhurst
 Baron Lyndhurst of Lyndhurst, in the
 county of Southampton, Lord High
 Chancellor of Great Britain. Van
 Heyth. Eq. Dr. 1.

Address.—To the chancellor of the
 state of ———. 2 Barb. Ch. Pr.
 353.

B. Introductory Part of Bill.

1. Common Form.

Humbly complaining sheweth unto
 your lordship your orator (or oratrix)
 A. B. of ———, in the county of
 ———, that, etc. Van Heyth. Eq.
 Dr. 2.

2. Introductory Part of Bill on Behalf of the Crown.

Informing sheweth unto your lord-
 ship Sir J. S. C. Knt., his majesty's
 attorney (or solicitor) general on be-
 half of his majesty, that, etc. (or at-
 torney-general of her majesty the queen
 consort), that, etc. Van Heyth. Eq.
 Dr. 4.

3. Introductory Part of Bill by At- torney-General.

Complaining sheweth unto your hon-
 or your orator G. P. B., attorney-gen-
 eral of the state of New York, in be-
 half of the people of said state. 2
 Barb. Ch. Pr. 358.

4. Introductory Part of Bill by At- torney-General on Relation of Others.

Complaining sheweth unto your honor
 your orators, G. P. B., attorney-general
 of the state of New York, at and by
 the relation of A. V. 2 Barb. Ch. Pr.
 358.

5. Introductory Part of Bill by Married Woman Suing by Her Next Friend.

Complaining sheweth unto your honor
 your oratrix J. B., the wife of A. B.,
 of, etc., by C. D., her next friend. That,
 etc. 2 Barb. Ch. Pr. 357.

6. Introductory Part of Bill by Husband and Wife.

Complaining show unto your honor
 your orator and oratrix A. B., of, etc.,
 and E., his wife. 2 Barb. Ch. Pr. 357.

7. *Introductory Part of Bill by Feme Covert Whose Husband Is Defendant.*

Humbly complaining showeth unto your lordship your oratrix A. B., of _____, in the county of _____, the wife of L. B., of the same place, Esq. (a defendant hereinafter named) by C. D., of _____, in the county of _____, Esq., her next friend, that, etc. Van Heyth. Eq. Dr. 3.

8. *Introductory Part of Bill by Feme Covert Whose Husband Has Abjured Realm.*

Humbly complaining showeth unto your lordship your oratrix A. B., of _____, in the county of _____, the wife of D. B., late of the same place who hath abjured the realm (or who hath by due course of law been sentenced to transportation to parts beyond the sea where he now is (or who is an alien enemy) that, etc. Van Heyth. Eq. Dr. 3.

9. *Introductory Part of Bill on Behalf of Infant.*

Humbly complaining showeth unto your lordship your oratrix S. N., spinster, an infant under the age of twenty-one years (that is to say) of the age of six years and ten months (the daughter and only child of J. N., late of, etc., deceased) by J. M., of, etc., gentleman, her next friend, that, etc. Van Heyth. Eq. Dr. 3.

10. *Introductory Part of Bill by Corporation.*

Complaining showeth unto your honor, your orators, the mayor, aldermen and commonalty of the city of A. 2 Barb. Ch. Pr. 358.

11. *Introductory Part of Bill by Idiots and Lunatics Suing by Their Committee.*

Complaining show unto your honor your orators A. B., of, etc., and C. D., of, etc. (against whom a commission of lunacy has lately been awarded and issued, which is now in force, and under which said commission the said C. D. was duly found and declared to be a lunatic; and your orator, A. B., appointed committee of his person and estate). That, etc. 2 Barb. Ch. Pr. 358; Van Heyth. Eq. Dr. 4.

12. *Introductory Part of Bill by Creditors, Legatees, etc., on Behalf of Themselves and Others of Same Class.*

Complaining show unto your honor your orators and oratrices, A. B., E. F. and G. H., of, etc., on behalf of them-

selves and all other the bond and simple contract creditors (or legatees and next of kin) of C. D. (late of S. P., deceased), who shall come in and contribute to the expenses of this suit. 2 Barb. Ch. Pr. 358.

C. *Stating Part of Bill.*

That, etc. (setting out cause of action).

(Sometimes concluding) "And your orator well hoped that the said defendant would have complied with such of your orator's reasonable requests as in justice and equity he ought to have done." Followed by the words: "But now so it is," etc.) Van Heyth. Eq. Dr. 26.

D. *Charge of Confederacy in Bill.*

But now so it is may it please your lordship that the said R. H. combining and confederating with divers persons (or—if there are several defendants, then thus: combining and confederating with the said C. H. and M. H. and with divers other persons, or—the said R. H., L. M. and N. M. combining and confederating together and with divers persons) at present unknown to your orator whose names when discovered your orator prays he may be at liberty to insert herein with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your orators in the premises he the said R. H. absolutely refuses to comply with such requests, and he at times pretends that, etc. Van Heyth. Eq. Dr. 5.

Charge of Confederacy in Bill. (Another form.)

But now so it is may it please your lordship that the said R. H., L. M. and N. M. in concert with each other allege that, etc. (or colluding and confederating with each other refuse to comply with such requests, and pretend that, etc.) Van Heyth. Eq. Dr. 5.

E. *Charging Part of Bill.*

"And the said defendant W. P. pretends that," etc.

"Whereas your orator charges the contrary thereof to be the truth, and that," etc. Van Heyth. Eq. Dr. 294.

"And the said J. J. further pretends," etc.

"Whereas your orator charges the contrary of all such pretenses to be the truth and particularly that," etc. "And your orator further charges," etc. Van Heyth. Eq. Dr. 31.

(Concluding.) All which actings, do-

ings, pretenses and refusals are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators in the premises. Van Heyth. Eq. Dr. 5.

F. Jurisdiction Clause.

In consideration whereof and forasmuch as your orators can only have adequate relief in the premises in a court of equity where matters of this nature are properly cognizable and relievable. Van Heyth. Eq. Dr. 5.

G. Interrogatory Part (Introductory Words).

To the end therefore that the said R. H. and C. H. and their confederates when discovered may upon their several and respective corporal oaths to the best and utmost of their several and respective knowledge, remembrance, information and belief full, true, direct and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that the said confederates may in manner aforesaid answer and set forth whether, etc. Van Heyth. Eq. Dr. 5.

H. Prayer for Relief.

1. Introductory Words.

And that (the said defendants may answer the premises; and that the said agreement so made between your orator and the said J. D. as aforesaid may be specifically performed), etc. Van Heyth. Eq. Dr. 16.

2. Prayer for an Account of Rents and Profits of Testator's Real Estate.

And that the said defendants may set forth a full, true, and just rental and particular of the real estates, whereof or whereto the said testator was seized or entitled in fee simple, at the time of his death; and also a full, true, and particular account of all and every sum and sums of money which hath or have been received by them, or either of them, or any other person or persons, by their or either of their order, or for their or either of their use, for, or in respect of the rents and profits of the said estates, or any part thereof; and whether any, and which of the said estates, or any part or parts thereof, have or hath not been sold or disposed of, and at what price or prices respectively, and when and to whom; and whether such price or

prices respectively have or hath not been paid, and to whom; and if not, why not? 2 Barb. Ch. Pr. 359.

3. Prayer for an Account of Money Had and Received.

And that the said defendants may set forth an account of all and every sum and sums of money received by them or either of them, or by any person or persons by their or either of their order, or for their or either of their use, for or in respect of the said (as the case stated in the bill may be), and when and from whom, and from what in particular all and every such sums were respectively received, and how the same respectively have been applied or disposed of. 2 Barb. Ch. Pr. 359.

4. Prayer for an Account of Personal Estate.

And that the said defendants may discover and set forth a full, true, and particular account of all and singular the personal estate and effects of the said testator, and of every part thereof, which hath been possessed by, or come to the hands of, the said defendants, or either of them, or to the hands of any other person or persons by their or either of their order, or for their or either of their use; with the particular nature, quantities, qualities, and true and utmost values thereof, and of every part thereof respectively; and how the same and every part thereof, hath been applied and disposed of; and whether any, and what part thereof, now remains unapplied and undisposed of; and why; and whether any, and what part of such personal estate remains outstanding to any and what amount, and why; and that the said defendants may also set forth an account of the debts due from the said testator, and of his funeral expenses and legacies; and whether any, and which, of such debts are outstanding, and why. 2 Barb. Ch. Pr. 360.

5. Prayer for Production of Deeds and Papers.

And that the said defendants may set forth a list or schedule, and description of every deed, book, account, letter, paper, or writing relating to the matters aforesaid, or any of them; or wherein, or whereupon there is any note, memorandum, or writing, relating in any manner thereto, which now are, or ever were in their or either, and which, of their possession or power; and may particularly describe which

thereof now are in their, or either, and which of their possession or power, and may deposit the same in the office of the register of this court (or the clerk in chancery for the fourth circuit), for the usual purposes; and otherwise that the said defendants may account for such as are not in their possession or power. 2 Barb. Ch. Pr. 359.

6. *General Prayer for Relief (always concluding prayer).*

And that your orator may have such further or other relief in the premises as the nature of the circumstances of this case may require and to your lordship shall seem meet. Van Heyth. Eq. Dr. 5, 6.

I. *Prayer for Process.*

1. *Prayer for Subpoena.*

May it please your lordship to grant unto your orator his majesty's most gracious writ of subpoena to be directed to the said A. B., thereby commanding him at a certain day and under a certain pain therein to be limited personally to be and appear before your lordship in this honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to perform and abide such further order, direction and decree therein as to your lordship shall seem meet. And your orator shall ever pray, etc. Van Heyth. Eq. Dr. 6.

Prayer in Suits Against United States, or State.

And may it please your honor that the district attorney of the United States for the ——— district of New York (or the attorney-general of the state of New York), on being attended with a copy of this bill, may appear and put in an answer thereto, and may stand to, and abide such order and decree in the premises as to your honor shall seem meet. 2 Barb. Ch. Pr. 360.

Prayer in Suits Against Corporation.

And that the said the president, directors and company of the Schenectady bank may appear according to law, and the course and practice of this court. 2 Barb. Ch. Pr. 360.

2. *Prayer for Injunction To Stay Waste.*

May it please your lordship to grant unto your orator not only his majesty's most gracious writ of injunction issuing out of and under the seal of this honorable court, to be directed unto the

said A. B. to restrain him, his servants, workmen, and agents from committing waste, spoil or destruction in the mansion or other houses upon the estates in question, and from cutting down any timber or other trees growing upon the said estates, which are planted or growing there for the protection of the said mansion and other houses belonging to the said estates, or for the ornament of the said house, or which grow in lines, walks, vistas or otherwise for the ornament of the said houses, or of the gardens, parks, or pleasure grounds thereunto belonging, and also to restrain him, his servants, workmen and agents, from cutting down any timber or other trees, except at seasonable times, and in husband-like manner, and likewise from cutting saplings, and young trees not fit to be cut, as and for the purposes of timber, but also his majesty's most gracious writ of subpoena, etc. (proceeding as in form, I, I, 1). Van Heyth. Eq. Dr. 7.

3. *Prayer for Injunction To Restrain Defendant From Proceeding at Law.*

May it please your lordship to grant unto your orator not only his majesty's most gracious writ of injunction issuing out of and under the seal of this honorable court to be directed to the said A. B. to restrain him from proceeding at law against your orator touching any of the matters in question, but also his majesty's most gracious writ of subpoena to be directed, to the said A. B., thereby commanding him at a certain day and under a certain pain therein to be limited personally to be and appear before your lordship in this honorable court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to perform and abide such further order, direction and decree therein as to your lordship shall seem meet. And your orator shall ever pray, etc. Van Heyth. Eq. Dr. 6.

4. *Prayer for Writ of Ne Exeat Regno.*

May it please your lordship the premises considered to grant unto your orator not only his majesty's most gracious writ of ne exeat regno issuing out of and under the seal of this honorable court, to restrain the said defendant C. D. from departing out of the jurisdiction of this court, but also his majesty's most gracious writ of sub-

poena, etc. (proceeding as in form, No. 1, 1, 1). Van Heyth, Eq. Dr. 7.

5. *Prayer for a Ne Exeat Respublica.*

And that the said defendants may be stayed by the people's writ of ne exeat respublica from departing out of the jurisdiction of this court. And that your orator (prayer for general relief). May it please your honor to grant unto your orator the people's writ of ne exeat respublica staying the said C. D. and E. F., or either of them, from departing into parts beyond this state, and out of the jurisdiction of this court, without leave first had. 2 Barb. Ch. Pr. 360.

6. *Prayer for Writ of Certiorari.*

May it please your lordship therefore to grant unto your orator a writ of certiorari to be directed to the said lord mayor of the city of London and his brethren the aldermen of the said city, thereby commanding them upon the receipt of the said writ to certify and remove the record of the said cause and all proceedings thereon into this honorable court, and to stand to and abide such order and direction as to your lordship shall seem meet and the circumstances of the case may require. And your orator shall ever pray, etc. Van Heyth. Eq. Dr. 7.

II. Answers.

A. *Title to Answers.*

1. *Title to Answer, One Defendant.*

The answer of A. B., defendant, to the bill of complaint of C. D., complainant. Van Heyth. Eq. Dr. 563.

2. *Title to Answer by Attorney-General.*

The answer of Sir J. S. C., knt., his majesty's attorney-general, one of the defendants to the bill of complaint of E. C. and R. his wife (late R. A. spinster), complainants. Van Heyth. Eq. Dr. 563.

3. *Title to Answer, Infant.*

The answer of A. R., an infant under the age of twenty-one years by ———, her guardian, one of the defendants to the bill of complaint of J. C. and T. R., J. F. and J. L., complainants. Van Heyth. Eq. Dr. 563.

4. *Title to Answer, One of Several Defendants.*

The answer of S. B., widow, one of the defendants to the (original and) amended bill of complaint of N. P., complainant. Van Heyth. Eq. Dr. 563.

5. *Title to Joint and Several Answer.*

The joint and several answer of J. L. and T. R., two of the defendants to the bill of complaint of A. B. and C. D., complainants. Van Heyth. Eq. Dr. 564.

6. *Title to Joint and Several Answer, Infant and Adult.*

The joint and several answer of A. B. and C. D., and of E. F. and G. H., infants, the above named defendants (or four of the above-named defendants), by ———, their guardian. 3 Dan. Ch. Pl. and Pr. (Perkin's ed.) 2140.

7. *Title to Answer Where Bill Misstates Name of Defendant.*

The joint and several answer of L. M., R. P., in the bill called E. P., J. R. in the bill called R. R., and R. T., defendants to the bill of complaint of R. M., complainant. Van Heyth. Eq. Dr. 564.

8. *Title to Answer to Amended Bill.*

The further answer of S. J., one of the defendants to the original bill, and her answer to the amended bill of complaint of S. T. and R. D., complainants. Van Heyth. Eq. Dr. 564.

9. *Title to Further Answer to Original Bill, and Answer to Amended Bill.*

The further answer of ———, one, etc., to the original bill of complaint of the above-named plaintiff, and the answer of the said defendant to the amended bill of complaint of the plaintiff. 3 Dan. Ch. Pl. & Pr. (Perkin's ed.) 2141.

10. *Title of Answer to Bill of Revivor.*

The joint and several answer of A. B., C. D. and E. F., three of the defendants to the original and amended bill of complaint of N. P., deceased, and also their answer to the bill of revivor and amended bill of A. P., complainant. Van Heyth. Eq. Dr. 564.

11. *Title to Answer by Adult and Infant.*

The joint and several answer of J. B. and M., his wife, H. F., E. F., W. F., J. P. and T. P., and of W. P. and J. P., infants under the age of twenty-one years, by ——— their guardian, nine of the defendants to the bill of complaint of T. G., complainant. Van Heyth. Eq. Dr. 564.

12. *Title to Supplemental Answer.*

The supplemental answer to W. P. T.,

J. S. and R. U., three of the defendants to the bill of complaint of the Rev. F. W. B. and C. E., complainants. Van Heyth. Eq. Dr. 564.

13. *Title to Answer After Insufficient Answer.*

The further answer of ———, one of the above-named defendants, to the bill of complaint of the above-named plaintiff. 3 Dan. Ch. Pl. & Pr. (Perkin's ed.) 2140.

B. *Answer, Introductory Statements (a).*

This defendant (or these defendants respectively), now and at all times hereafter saving to himself (or themselves) all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfection in the said bill contained, for answer thereto or to so much thereof as this defendant is (or these defendants are) advised it is material or necessary for him (or them) to make answer to, answering saith (or severally answering say). 3 Dan. Ch. Pl. & Pr. (Perkin's ed.) 2138; Van Heyth. Eq. Dr. 565.

Answer, Introductory Statements (b).

This defendant (these defendants) reserving to himself (or themselves) all right of exception to the said bill of complaint, for answer thereto, saith (or say), etc. Van Heyth. Eq. Dr. 565.

C. *Common Forms in Framing Answers.*

1. *Statement in Answer, Admission.*

And this defendant further answering, saith he hath been informed and believes it to be true that, etc. Or, this defendant admits, that, etc. Van Heyth. Eq. Dr. 566.

2. *Statement in Answer, Admission of Instrument.*

And this defendant further saith he hath been informed and believes it to be true that, etc., but this defendant for greater certainty therein craves leave to refer to the said ———, when the same shall be produced. Van Heyth. Eq. Dr. 566.

3. *Statement in Answer, Belief Without Personal Knowledge.*

And this defendant further answering saith he believes it to be true that at the time of his said testator's making his said will and at the time of his death the said testator's sister Jane, the wife of ———, in the said will had such children as therein in that

behalf named, but this defendant does not know the same of his own knowledge, nor can this defendant state as to his belief or otherwise whether she had or had not any other children or child at such times, or either of them. Or:

And this defendant further saith that he has never heard or been informed save by the said complainant's said bill whether, etc., but this defendant believes that, etc., as in the said bill is alleged. Van Heyth. Eq. Dr. 566.

4. *Statement in Answer of Making Deed and of Payment.*

And this defendant saith that by a certain deed-poll or instrument in writing under the hands and seals, of, etc., and bearing date, etc., the said ——— did in consideration of the sum of ——— £, to them paid by this defendant, the receipt, etc., and which said sum was in fact so paid, remise, release, etc. As by such deed or instrument, to which this defendant craves leave to refer when the same shall be produced, will appear. Van Heyth. Eq. Dr. 566.

5. *Statement in Answer Where Ignorant With Regard to Statement in Bill.*

And this defendant further answering saith he knows not, and has not been informed save by the said complainant's said bill, and cannot set forth as to his belief or otherwise whether the said complainant has or not applied for or procured letters of administration of the goods, chattels, rights and credits of the said A. B., to be granted to her by and out of the proper or any or what ecclesiastical court, nor whether, etc. Or:

And this defendant further answering saith it may be true for anything this defendant knows to the contrary that, etc., but this defendant is an utter stranger to all and every such matters, and cannot form any belief concerning the same. Van Heyth. Eq. Dr. 567.

6. *Statement in Answer Where One Defendant Knows.*

And this defendant M. M. further severally answering saith, and this defendant E. R. believes it to be true, that the said testator was not, etc. Van Heyth. Eq. Dr. 567.

7. *Statement in Answer, Admit Event, No Knowledge of Time.*

And these defendants severally ad-

mit, etc., but when in particular these defendants or either of them to the knowledge or belief of the other of them do not know, and cannot set forth as to their information and belief or otherwise. Van Heyth. Eq. Dr. 567.

8. *Statement in Answer, Ignorant of Allegations in Bill.*

And these defendants further severally say that they or any or either of them to the knowledge or belief of the others or other of them do not know, and have never been informed save by the said complainant's bill, and cannot set forth as to their belief or otherwise whether, etc. Van Heyth. Eq. Dr. 567.

9. *Statement in Answer, Denial by One, Belief in Denial by Other.*

And this defendant M. M. further severally answering saith she denies, and this defendant E. R. believes such denial to be true, that the said J. S. M. was then incapable of understanding the said codicil, but saith that he fully knew, etc. Van Heyth. Eq. Dr. 568.

10. *Statement in Answer, Joint Denial.*

And these defendants further severally say that they, these defendants, did not nor did either of them to the knowledge or belief of the other of them, nor did the said J. and H. or several or any or either of the members of the said firm to the knowledge or belief of these defendants, a short time or at any time before, etc. Van Heyth. Eq. Dr. 568.

11. *Statement in Answer, Schedule of Deeds Set Forth.*

And this defendant further saith he hath in the schedule to this his answer annexed or underwritten, and which he prays may be taken as part thereof, set forth according to the best and utmost of his knowledge, remembrance, information and belief, a full, true and particular list or schedule of all deeds, etc., and this defendant is ready and willing to produce and leave the same in the hands of his clerk in court for the usual purposes. Van Heyth. Eq. Dr. 568.

12. *Statements in Answer, Account Set Forth.*

And these defendants further severally answering say, they have in the (first) schedule to this their answer annexed or underwritten, and which they pray may be taken as part thereof, set forth according to the best and

utmost of their several and respective knowledge, remembrance, information and belief, a full, true and particular account of all and every sum and sums of money, etc. (Or, if an account required as to the real estates, thus: a full, true and just rental and particular of all and singular the real estates, etc.) Van Heyth. Eq. Dr. 568.

D. *Conclusions to Answer.*

1. *Conclusion of Answer. Common Form.*

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is willing and ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained. Dan. Ch. Pl. & Pr. (Perkin's ed.) 2139; Van Heyth. Eq. Dr. 569.

2. *Conclusion of Answer, Claim of Defense as in Demurrer.*

And this defendant submits to this honorable court, that all and every of the matters in said plaintiff's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said plaintiff is not entitled to any relief from a court of equity, and this defendant hopes he shall have the same benefit of this defense as if he had demurred to the said plaintiff's bill. And this defendant denies, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2139.

BILLS AND NOTES.

I. Bills, 196

A. *Declarations, 196*

1. *Payee Against Acceptor, 196*
2. *First Indorsee Against Acceptor, 197*

B. *Complaints, 197*

1. *Payee Against Acceptor, Setting Out Copy, 197*
2. *Pleading Legal Effect, 197*

3. *Acceptance Varying as to Time*, 198
 4. *Against Acceptor for Honor*, 198
 5. *On Bill by Drawer to Himself*, 198
 6. *Payee Against Drawer, Non-acceptance*, 198
 7. *Setting Out Copy*, 198
 8. *For Non-payment*, 199
 9. *Non-payment After Acceptance*, 199
 10. *Non-presentment Excused, Drawee Not Found*, 199
 11. *Demand and Notice Waived*, 199
 12. *Non-presentment Excused, Countermanded Bill*, 199
 13. *Payee Against Drawer and Actor*, 199
 14. *On Bill Accepted for Honor*, 200
 15. *Remote Indorsee Against Acceptor*, 200
 16. *Against Drawer and Indorser, Non-acceptance*, 200
 17. *Against Drawer, Indorser and Acceptor*, 200
 18. *Against Drawer, Acceptor and Indorser After Acceptance*, 201
 19. *Drawer Against Acceptor, Bill Returned*, 201
 20. *On Bill to Drawer's Order*, 201
 21. *Payee Against Drawer*, 202
 22. *Indorsee or Bearer Against Drawer*, 202
 23. *Notice of Non-payment Excused, No Funds*, 202
 24. *Non-presentment Excused, Insolvency*, 202
 25. *Against Drawer, Indorser and Drawee*, 202
- II. Notes, 202**
- A. *Declarations*, 202
 1. *Payee Against Maker*, 202
 2. *Indorsee Against Maker*, 203
 3. *Indorsee Against Indorser*, 204
 - B. *Complaints*, 204
 1. *Payee Against Maker, Legal Effect*, 204
 2. *On Two Notes*, 205
 3. *On Several, All Due on Default*, 205
 4. *On Note Signed by Agent*, 205
 5. *On Note by Partners*, 205
 6. *On Note by Partners Averring Partnership*, 205
 7. *By Partners*, 205
 8. *By Surviving Partner*, 206
 9. *Against Surviving Maker*, 206
 10. *By Receiver Against Partners*, 206
 11. *By Insurance Company, Deposit Note*, 206
 12. *On Note Payable After Sight*, 206
 13. *On Note Wrongly Dated*, 206
 14. *Indorsee Against Maker, Legal Effect*, 207
 15. *Later Indorsee Against Maker*, 207
 16. *On Note to Bearer, Fictitious Person or Maker*, 207
 17. *Indorser Against Payee, Legal Effect*, 207
 18. *Remote Indorsee Against Payee*, 207
 19. *Remote Indorsee Against Indorser*, 207
 20. *Non-presentment Excused, Notice Waived*, 208
 21. *Non-presentment Excused, Not Found*, 208
 22. *Indorsee Against Maker and Payee*, 208
 23. *On Note Not Valid Against Maker*, 208
 24. *Remote Indorsee Against Maker, Indorser and Later Indorser*, 208
 25. *Payee Against Maker and Indorsee, Value to Maker*, 208
 26. *By Assignee*, 209
 27. *On Negotiable Bond to Bearer*, 209

III. Defenses, 209

 - A. *Denial of Indorsement*, 209
 - B. *Unauthorized Acceptance (Corporation)*, 209
 - C. *Denial of Making or Acceptance*, 209
 - D. *Mistake in Amount*, 209
 - E. *Indorsed as Agent*, 210
 - F. *Illegal Interest*, 210
 - G. *Accommodation Misapplied*, 210
 - H. *Given for Goods Not Delivered*, 211
 - I. *Given for Purchase, Failed To Convey*, 211
 - J. *Fraud in Making*, 211
 - K. *For Goods Sold With False Warranty*, 211
 - L. *For Goods Sold by Deceit*, 212
 - M. *Denial of Transfer*, 212
 - N. *Wrongful Transfer by Partner*, 212
 - O. *Qualified Admission, Denial of Title*, 212
 - P. *Accommodation Indorsers, Extension Given*, 212

- Q. *By Surety, Plaintiff Holds Collaterals, Subrogation Asked*, 212
- R. *Denial of Acceptance, Presentment and Protest*, 213
- S. *Denial of Notice, Dishonor*, 213
- T. *Denial of Presentment*, 213
- U. *Denial of Excuse, Non-presentment*, 213
- V. *Breach of Agreement as to Presentment and Notice*, 213
- W. *Payment Before Indorsement*, 214
- X. *Denial of Guaranty*, 214
- Y. *By Surety, Extension of Time*, 214

For other forms, see 4 STANDARD PROC. 244, 245.

CROSS-REFERENCES:

ALTERATION OF INSTRUMENTS:

- Answer, Alteration of Bill or Note;
- Answer by Surety Alleging Alteration of Contract.

ANSWERS:

- Answers, See Bills and Notes III, A-Y.

ASSOCIATIONS:

- Complaint by Treasurer of Unincorporated Company on Note Payable to Former Treasurer.

ASSUMPSIT:

- Declaration on Contingent Note;
- Declaration on Chattel Note.

BANKRUPTCY:

- Affidavit of Cost Bill or Note;
- Bond of Petitioning Creditor;
- Bond of Referee;
- Bond of Trustee.

BANKS AND BANKING:

- Complaint Against Bank for Neglecting To Present Note;
- Complaint Against Bank for Not Giving Due Notice.

CORPORATIONS:

- Complaint by Corporation Formed Under General Act, Payee, Against Foreign Corporation, Maker.

DECLARATION AND COMPLAINT:

- Complaint Against Buyer for Not Delivering Note;
- Complaint by Assignee of Bill Payable Out of Particular Fund;
- Complaint on Note Payable in Chats;
- Complaint on Non-Negotiable Conditional Note;
- Complaint Against Buyer for Not Delivering Note for Goods.

INJUNCTIONS:

- Complaint To Restrain Negotiation of Bill or Note;
- Complaint on Note Against Maker

- and Indorser, and To Enjoin Withdrawal of Collateral Securities Held by Indorser;
- Injunction Against Transferring Negotiable Paper.

LOST INSTRUMENTS:

- Decree for Indemnity Against Lost Bill of Exchange.

MORTGAGES:

- Complaint on Note and Mortgage (Short Form).

PRINCIPAL AND SURETY:

- Answer, That Signing of Note by Surety Was on Condition That Co-surety Sign;
- Answer, That Note Was Extended Without Consent of Surety.

TROVER AND CONVERSION:

- Declaration in Case in Trover for Promissory Note;
- Complaint for Conversion of a Promissory Note.

USURY:

- Answer, Usury in Making Note (a), (b);
- Answer, Bill Was Given To Secure Usurious Contract;
- Answer, Usury in Transfer of Accommodation Note.

WARRANTY:

- Complaint on Warranty of Genuineness of Note Sold.

I. Bills.

A. Declarations.

1. *Declaration on Bill of Exchange, Payee Against Acceptor.*

Supreme court of (January) term, in the year one thousand eight hundred and (forty-six).

(City and) county (of New York), ss.:

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea of trespass on the case upon promises: For that whereas one J. K., heretofore, to-wit, on the (tenth day of September), in the year one thousand eight hundred and (forty-five), at (the place of the date), to-wit, at (the city and in the county of New York) aforesaid (the venue), made a certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill of exchange to the said defendant (by the name of Mr. C. D.), by which said bill of exchange the said J. K. then and there requested the said defendant (sixty days) after the date thereof, to pay to the said plaintiff, or order, the sum of (five hundred) dol-

lars, for value received, and then and there delivered the said bill of exchange to the said plaintiff: which said bill of exchange the said defendant afterwards, to-wit, on (the same day and year last aforesaid), at (the city and) in the county aforesaid, upon sight thereof accepted. By reason whereof, and according to the usage and custom of merchants, the said defendant then and there became liable to pay to the said plaintiff, the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill of exchange, and of the acceptance thereof; and being so liable, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff to pay unto the said plaintiff the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill of exchange, and of the said acceptance thereof.

And whereas, also, etc. (add the money counts, see *Assumpsit*).

Nevertheless, the said defendant (although often requested, etc.) has not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, the said defendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiff of (one thousand) dollars, and therefore the said plaintiff brings suit, etc. 2 Chit. Pl. 149; Burr. App. 257, §519.

2. Declaration on Bill of Exchange, First Endorsee Against Acceptor.

For that whereas, one J. K., heretofore, to-wit, on, etc., at, etc. (as in last form), made a certain bill of exchange in writing, bearing date the day and year aforesaid; and then and there directed the said bill of exchange to the said defendant (by the name of Mr. C. D.), by which said bill of exchange the said J. K. then and there requested the said defendant (four months) after the date thereof to pay to one L. M., or order, the sum of (five hundred) dollars, for value received, and then and there delivered the said bill of exchange to the said L. M.; which said bill of exchange the said defendant afterwards, to-wit, on the same day

and year last aforesaid, at (the city and) in the county aforesaid, upon sight thereof, accepted. And the said L. M., to whom, or to whose order, the payment of the said sum of money in the said bill of exchange specified, was to be made as aforesaid, afterwards, and before the payment of the said sum of money therein specified, to-wit, on (the same day and year, and) at (the place aforesaid) endorsed the said bill of exchange in writing, and by that endorsement ordered and appointed the said sum of money in the said bill of exchange specified to be paid to the said plaintiff, and then and there delivered the said bill of exchange, so endorsed, to the said plaintiff. By reason whereof, etc. (as in last form to the end). 2 Chit. Pl. 152; Burr. App. 258, §520.

B. Complaints.

1. Complaint by Payee Against Acceptor, Short Form, Setting Out Copy.

I. That on the _____ day of _____, 18—, at _____, the defendant (or the defendants, under their firm name of Y. Z. & Co.) accepted and delivered to the plaintiff a bill of exchange, of which the following is a copy: (Copy of the bill and acceptance.)

II. That there is now due to the plaintiff thereon from the defendant the sum of _____ dollars, with (_____ dollars damages and) interest from, etc. 1 Abb. Forms 245.

Note.—This form is approved in Levy v. Ley, 6 Abb. Pr. (N. Y.) 89.

2. Complaint, Pleading the Legal Effect.

I. That on the _____ day of _____, 18—, at _____, one M. N. (or certain persons under their firm name of M. N. & Co.) made his (or their) bill of exchange in writing, dated on that day, directed to the defendant (or to the defendants under their firm name of Y. Z. & Co.), at _____; and thereby required the defendants to pay to the order of the plaintiff (or of these plaintiffs, under their firm name of A. B. & Co.), _____ dollars, _____ days after said date (or otherwise), for value received.

II. That thereupon (or on the _____ day of _____, 18—, at _____) the defendant (or the defendants under said firm name), upon sight thereof accepted said bill.

III. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 246.

3. *Complaint on Acceptance, Varying as to Time From Bill.*

I. (As in the preceding form.)

II. That thereupon (or on the _____ day of _____, 18—, at _____) the defendant (or the defendants, under said firm name), upon sight thereof, accepted the same, payable at _____ days (or otherwise) after date of said bill (or after said date of acceptance).

III. (As in the preceding form.) 1 Abb. Forms 247.

4. *Complaint Against Acceptor for Honor.*

I. That on the _____ day of _____, 18—, at _____, one M. N. (or certain persons under their firm name of M. N. & Co.), made and delivered to the plaintiff his (or their) bill of exchange in writing, dated on that day, and directed the same to one O. P. (or to certain persons under their firm name of, etc.), and thereby required said O. P. to pay to the order of this plaintiff (or of these plaintiffs under their firm name of A. B. & Co.) the sum of _____ dollars, _____ days after date thereof (or otherwise), for value received.

II. That then and there (or on the _____ day of _____, 18—, at _____) it was duly presented to said O. P. for acceptance, but was not accepted (if a foreign bill, add, and was thereupon duly protested for non-acceptance), of all which due notice was given to said (drawers).

III. That then and there (or on the _____ day of _____, 18—, at _____), the defendant (or the defendants under their firm name of Y. Z. & Co.), upon sight thereof, accepted said bill for the honor of said (drawer).

IV. That at maturity the same was duly presented for payment to said O. P. (the drawee), but was not paid (if a foreign bill, add, and was thereupon duly protested for non-payment), of all which due notice was given to the defendant (acceptor for honor) and to said M. N. (drawer).

V. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 247.

5. *Complaint on Bill by Drawer to Himself and Accepted by Him.*

I. That on the _____ day of _____, 18—, at _____, the de-

fendant (or the defendants under their firm name of Y. Z. & Co.) made and accepted, and delivered to the plaintiff, his (or their bill of exchange in writing, of which the following is a copy: (Copy of the bill and acceptance.)

II. That there is now due to the plaintiff thereon, from the defendant, the sum of _____ dollars, with (_____ dollars damages and) interest from, etc. 1 Abb. Forms 248.

6. *Complaint by Payee Against Drawer for Non-Acceptance.*

I. That on the _____ day of _____, 18—, at _____, the defendants (drawers), under their firm name of Y. Z. & Co., made and delivered to the plaintiff their bill of exchange in writing, dated on that day, and directed the same to one M. N. (or to certain persons under the firm name of M. N. & Co.), and thereby required said (drawee) to pay to the order of this plaintiff (or of these plaintiffs under their firm name of A. B. & Co.) _____ dollars, _____ days (or weeks or months) after the date (or sight) thereof, for value received.

II. That the same was duly presented to (the drawee) for acceptance, but was not accepted (if a foreign bill, add, and was thereupon duly protested for non-acceptance), of all which due notice was given to the defendant (drawer).

III. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 249.

7. *Complaint on Bill Setting Out Copy.*

I. That on the _____ day of _____, 18—, at _____, the defendants (drawers), (under their firm name of Y. Z. & Co.), made and delivered to the plaintiff their bill of exchange in writing, of which the following is a copy: (Copy of the bill.)

II. That the same was duly presented to (the drawee) therein named for acceptance, but was not accepted (if a foreign bill, add: and was thereupon duly protested for non-acceptance), of all which due notice was given to the defendant (drawer).

III. That there is now due to the plaintiff thereon the sum of _____ dollars with _____ dollars damages and interest from, etc. 1 Abb. Forms 250.

8. *Complaint on Bill for Non-Payment.*

I. That on the _____ day of _____, 18—, at _____, the defendants (drawers), (under their firm name of, etc.), made and delivered to the plaintiff their bill of exchange in writing, dated on that day, and directed the same to one M. N. (or to certain persons under their firm name of, etc.), and thereby required said (drawee) to pay to the order of this plaintiff (or of these plaintiffs under their firm name of, etc.) _____ dollars on the _____ day of _____, 18— (or at sight, or _____ days after the date thereof, or otherwise), for value received.

II. That the same was duly presented to (the drawee) for payment, but was not paid (if a foreign bill, add: and was thereupon duly protested for non-payment), of all which due notice was given to the defendant (drawer).

III. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 250.

9. *Complaint on Bill for Non-Payment After Acceptance.*

I. That on the _____ day of _____, 18—, at _____, the defendants (under their firm name of Y. Z. & Co.) made and delivered to the plaintiff their bill of exchange in writing, dated on that day, and directed the same to one M. N. (or to certain persons under their firm name of M. N. & Co.), and thereby required said (drawee) to pay to the order of this plaintiff (or of these plaintiffs, under their firm name of A. B. & Co.) _____ dollars, _____ days after the date thereof (or otherwise), for value received.

II. That then and there (or on the _____ day of _____, 18—, at _____), the said (drawee), upon sight thereof, accepted said bill.

III. That at maturity the same was duly presented to said (drawee) for payment, but was not paid (if a foreign bill, add: and was thereupon duly protested for non-payment), of all which due notice was given to the defendant (drawer).

IV. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 251.

10. *Complaint, Averment, Non-Presentation Excused, Drawee Not Found.*

I. (As in 6 or 8 above).

II. That on the _____ day of _____, 18—, due search and inquiry was made for said drawee at (the place of address), in order that the same might be presented to him for acceptance, but he could not be found, and the same was not accepted (and if a foreign bill, add: and was thereupon duly protested for non-acceptance), of all which due notice was given to the defendant (drawer). 1 Abb. Forms 252.

11. *Complaint on Bill, Demand and Notice Excused by Waiver.*

I. (As in preceding forms.)

II. That the defendant at the time said bill was transferred by him, waived as well the presentation of the same to said W. X. for payment, as notice of the non-payment thereof, and no part thereof has been paid. 1 Abb. Forms 252.

12. *Complaint on Bill, Non-Presentation Excused, Drawer Having Countermanded Bill.*

I. (State the making and delivery of the bill.)

II. That on or about the _____ day of _____, 18—, said bill not then having been for acceptance (or for payment), the defendant countermanded the same by instructions to the said (drawee) not to accept or pay (or if payable at sight, not to pay) the same; wherefore it was not presented.

III. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 252.

13. *Complaint, Payee Against Drawee and Acceptor, Bill Accepted by Drawee.*

I. That on the _____ day of _____, 18—, at _____, the defendants (drawers), (under their firm name of Y. Z. & Co.), made and delivered to the plaintiff their bill of exchange in writing, dated on that day, and directed the same to the defendant (acceptor; or to the defendants, acceptors, under their firm name W. X. & Co.), and thereby required said (acceptor) to pay to the order of the plaintiff (or of the plaintiffs, under their firm name of A. B. & Co.) _____ dollars, _____ days after the date thereof (or otherwise), for value received.

II. That then and there (or on the _____ day of _____, 18—, at _____), the defendant (acceptor), upon sight thereof, accepted said bill.

III. That at maturity the same was duly presented to the defendant (acceptor) for payment, but was not paid (if a foreign bill, add: and was thereupon duly protested for non-payment), of all which due notice was given to the defendant (drawer).

IV. That no part of the same has been paid. 1 Abb. Forms 253.

14. *Complaint on Bill Accepted for Honor.*

I. That on the _____ day of _____, 18—, at _____, the defendants (drawers), (under their firm name of Y. Z. & Co.), made and delivered to the plaintiff their bill of exchange in writing, dated on that day, and directed the same to one M. N. (or to certain persons, under their firm name of M. N. & Co.), and thereby required said (drawee) to pay to the order of this plaintiff (or of these plaintiffs under their firm name of A. B. & Co.) _____ dollars, _____ days after the date thereof (or otherwise), for value received.

II. That then and there (or on the _____ day of _____, 18—, at _____) it was duly presented to said (drawee) for acceptance, but was not accepted (if a foreign bill, add: and was thereupon duly protested for non-acceptance), of all which due notice was given to the defendant (drawer).

III. That then and there (or on the _____ day of _____, 18—, at _____), the defendant (acceptor for honor), upon sight thereof, accepted said bill for the honor of said (drawer).

IV. That at maturity the same was duly presented for payment to said (drawee), but was not paid (if a foreign bill, add: and was thereupon duly protested for non-payment), of all which due notice was given to the defendants (drawers).

V. That thereupon the same was duly presented to the defendant (acceptor for honor) for payment, but was not paid (and was thereupon duly protested for non-payment), of all which due notice was given to the defendant (drawer).

VI. That no part of the same has been paid. 1 Abb. Forms 253.

15. *Complaint by Remote Indorsee Against Acceptor.*

I. That on the _____ day of _____, 18—, at _____, the defendant (or the defendants under their firm name of Y. Z. & Co.) accepted and delivered to the payee therein

named a bill of exchange, of which the following is a copy: (Copy of the bill and acceptance.)

II. That said (payee), (under their firm name of M. N. & Co.), thereafter indorsed said bill and delivered it so indorsed, and thereafter (and before maturity) the same came lawfully into the possession of these plaintiffs for value.

III. That there is now due to this plaintiff thereon from the defendant the sum of _____ dollars with (damages and) interest from, etc. 1 Abb. Forms 254.

Note.—Approved in *Levy v. Ely*, 15 How. Pr. (N. Y.) 395.

16. *Complaint Against Drawer and Indorser, Non-Acceptance.*

I. That on the _____ day of _____, 18—, at _____, the defendants (drawers), (under their firm name of Y. Z. & Co.), made their bill of exchange in writing, dated on that day, and directed it to one M. N. (or to certain persons under the firm name of M. N. & Co.), and thereby required said (drawee) to pay to the order of the defendant (indorser, or of one O. P.) _____ dollars, _____ days after the date thereof (or otherwise), for value received.

II. That the said (drawers) then and there delivered the same to the defendant (indorser, or to said O. P., who then and there indorsed it to the defendant, indorser).

III. That then and there (or on the _____ day of _____, 18—, at _____), the defendant (indorser) indorsed the same to the plaintiff (or indorsed the same and delivered it so indorsed, and thereafter [and before maturity] the same came lawfully into the possession of the plaintiff for value).

IV. That the same was duly presented to (the drawee) for acceptance, but was not accepted (if a foreign bill, add: and was thereupon duly protested for non-acceptance), of all which due notice was given to the defendants.

V. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 254.

17. *Complaint Against Drawer, Indorser Before Acceptance, and Acceptor for Non-Payment.*

I. That on the _____ day of _____, 18—, at _____, the defendant (drawer) made his (or the defendants, drawers, under their firm

name of, etc., made their) bill of exchange in writing, dated on that day, and directed it to the defendants (acceptors, under their firm name of, etc.), and thereby required the defendants (acceptors) to pay to the order of the defendant (indorser, or of one M. N.) _____ dollars, _____ days (or weeks, or months) after the date (or sight) thereof, for value received.

II. That the said (drawer) then and there delivered the same to the defendant (indorser, or to the said M. N., who thereupon indorsed it to the defendant, indorser).

III. That then and there (or on the _____ day of _____, 18—, at _____) the defendant (indorser) indorsed the same to this plaintiff (or indorsed the same and delivered it so indorsed, and thereafter [and before maturity] the same came lawfully into the possession of this plaintiff for value).

IV. That then and there (or on the _____ day of _____, 18—, at _____) the defendants (acceptors), (under their firm name of, etc.), upon sight thereof, accepted said bill.

V. That at maturity the same was duly presented to the defendant (acceptor) for payment, but was not paid (if a foreign bill, add: and was thereupon duly protested for non-payment), of all which due notice was given to the defendants (drawer and indorser).

VI. That no part of the same has been paid. 1 Abb. Forms 255.

18. *Complaint Against Drawer, Acceptor and Indorser After Acceptance for Non-Payment.*

I. That on the _____ day of _____, 18—, at _____, the defendants (drawers), (under their firm name of, etc.), made their bill of exchange in writing, dated on that day, and directed it to the defendants (acceptors), (under their firm name of, etc.), and thereby required said defendants (acceptors) to pay to the order of the defendant (indorser, or of one M. N., or of certain persons under their firm name of, etc.) _____ dollars, _____ days after the date thereof (or otherwise), for value.

II. That then and there the defendants (drawers) delivered the same to the defendant (indorser, or to said M. N., who thereupon indorsed it to the defendant, indorser).

III. That then and there (or on the _____ day of _____, 18—, at _____)

_____ the defendants (acceptors), (under their firm name of, etc.), upon sight thereof, accepted said bill.

IV. That then and there (or on the _____ day of _____, 18—, at _____) the defendant (indorser) indorsed the same to this plaintiff (or indorsed the same and delivered it so indorsed, and thereafter [and before maturity] the same came lawfully into the possession of this plaintiff for value).

V. and VI. (As in the preceding form). 1 Abb. Forms 256.

19. *Complaint, Drawer Against Acceptor on Bill Returned and Taken Up.*

I. That on the _____ day of _____, 18—, at _____, the plaintiffs (under their firm name of, etc.) made and delivered to the payee therein named their bill of exchange in writing, dated on that day, and directed it to the defendants (under their firm name of, etc.), and thereby required the defendant to pay to the order of one M. N. (or of certain persons under their firm name of, etc.) _____ dollars, _____ days after the date thereof (or otherwise).

II. That then and there (or on the _____ day of _____, 18—, at _____) the defendants (under their said firm name), upon sight thereof, accepted said bill for value received.

III. That at maturity the same was duly presented for payment, but was not paid.

IV. That on the _____ day of _____, 18—, at _____, the same was returned to the plaintiff for non-payment, and the plaintiff, as drawer thereof, was then and there compelled to take up the same and to pay to said (payee, or to the holder thereof) the sum of _____ dollars, being the amount of _____ said bill with damages (or with costs of protest) and interest.

V. That no part of the same has been repaid (except the sum of, etc.). 1 Abb. Forms 256.

20. *Complaint on Bill Payable to Drawer's Own Order, Not Negotiated.*

I. That on the _____ day of _____, 18—, at _____, the plaintiffs (under their firm name of A. B. & Co.) made their bill of exchange in writing, dated on that day, and directed it to the defendants (under their firm name of, etc.), and thereby required

the defendant to pay to the order of the plaintiffs ——— dollars, ——— days after date thereof (or otherwise).

II. That the defendant thereupon (or on the ——— day of ———, 18—, at ———), upon sight thereof, accepted said bill, for value received, and delivered it to the plaintiff.

III. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 257.

21. *Complaint, Payee Against Drawer.*

I. That on the ——— day of ———, 18—, at ———, the defendant (or the defendants, under their firm name of Y. Z. & Co.) made and delivered to the plaintiff his (their) check in writing, dated on that day, and directed the same to the bank of M. N. (or to certain persons under their firm name of, etc.), and thereby required said (drawee) to pay to the plaintiff or order (or bearer) ——— dollars, for value received.

II. That the same was duly presented to the said (drawee) for payment, but was not paid; of all which due notice was given to the defendant (drawer).

III. That no part of the same has been paid. 1 Abb. Forms 258.

22. *Complaint, Indorsee or Bearer Against Drawer.*

I. That on the ——— day of ———, 18—, at ———, the defendant made his check (or the defendants, under their firm name of, etc., made their check) in writing, dated on that day, and directed the same to the bank of M. N. (or to certain persons under their firm name of, etc.), and thereby required said (drawees) to pay to one O. P. or order (or bearer) ——— dollars, for value received.

II. That the defendant then and there delivered the same to said (payee), (if payable to order, add: who indorsed the same and delivered it so indorsed), and the same thereafter came lawfully to the possession of this plaintiff.

III. That thereafter the same was duly presented to said (drawee) for payment, but was not paid, of all which due notice was given to the defendant.

IV. That no part of the same has been paid. 1 Abb. Forms 259.

23. *Complaint, Omission of Notice of Non-Payment Excused, Drawer Had no Funds.*

I. (As in preceding forms.)

II. That thereafter the same was duly presented to said (drawee) for payment, but the defendant had no funds with said (drawee), and no part of the same has been paid. 1 Abb. Forms 260.

24. *Complaint, Non-Presentation Excused, Insolvency of Drawee.*

I. (As in preceding forms.)

II. That on the ——— day of ———, 18—, at ———, said (drawee) was insolvent (or had stopped payment), and no part of the same has been paid. 1 Abb. Forms 260.

25. *Complaint Against Drawer, Indorser and Drawee.*

I. That on the ——— day of ———, 18—, at ———, the defendant (drawer), (or the defendants under their firm name of, etc.), made his (their) check in writing, dated on that day, and directed the same to the bank of M. N. (or to certain persons under, etc.), and thereby required said (drawee) to pay to the defendant (indorser), or order (or bearer), ——— dollars, for value received, and delivered it to the defendant (indorser).

II. That thereupon said defendant (indorser, or the defendants, indorsers, under their firm name of, etc.), indorsed the same to this plaintiff (or indorsed the same and delivered it so indorsed; and thereafter it came lawfully into the possession of this plaintiff), for value.

III. That said check was duly presented for payment, but was not paid, of all which due notice was given to the defendants.

IV. That no part of the same has been paid. 1 Abb. Forms 260.

II. *Notes.*

A. *Declarations.*

1. *Declaration on Promissory Note, Payee Against Maker.*

For that whereas the said defendant, heretofore, to-wit, on the (fourteenth) day of (June), in the year one thousand eight hundred and (forty-five), at (New York), to-wit, at (the city and) in the county of (New York), aforesaid, made a certain note in writing commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to the said plaintiff. By which said note the said defendant promised to pay the said plaintiff, by the name and addition of (Mr. A. B.), (thirty) days (or "four months"),

after the date thereof, the sum of (five hundred) dollars, for value received. By reason whereof, and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff, the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note: And being so liable, he the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year and at the place aforesaid undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note. And whereas also the said defendant, afterwards, to-wit, on the (first day of January, in the year one thousand eight hundred and forty-six), (some day after the note was due, and before suit brought, and generally very recently), at (New York), to-wit, at (the city, and) in the county of (New York) aforesaid, was indebted to the said plaintiff in the sum of (one thousand) dollars, lawful money of the United States of America, for (here add the money counts for money lent and advanced, paid, laid out and expended, and had and received, in a condensed form thus): Money before that time lent and advanced by the said plaintiff to the said defendant, and at the special request of the said defendant. And for other money by the said plaintiff before that time paid, laid out and expended for the said defendant, and at the like request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when he the said defendant should be thereunto afterwards requested. And whereas also the said defendant afterwards, to-wit, on, etc. (here add the insimal computas sent count. See *Assumpsit*). Nevertheless the said defendant (although often requested, etc., to-wit, on the day when the said note became due and

payable, according to the tenor and effect thereof, and oftentimes since, to-wit, at the place aforesaid), has not yet paid the said several sums of money above mentioned, or any, or either of them, or any part thereof, to the said plaintiff; but to pay the same, or any part thereof, to the said plaintiff the said defendant has hitherto altogether refused, and still does refuse; to the damage of the said plaintiff of (one thousand) dollars, and therefore he brings suit, etc.

E. F., attorney for plaintiff.

Burr. App. 254, §516.

2. *Declaration on Promissory Note, Indorsee Against Maker.*

For that whereas the said defendant, on the (fifteenth day of November), in the year one thousand eight hundred and (forty-five), at (New York), to-wit, at (the city and) in the county (of New York), aforesaid, made a certain note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to one K. L.; by which said note the said defendant promised to pay the said K. L. (by the name and addition of Mr. K. L.) or order (four months), after the date thereof, the sum of (six hundred) dollars, for value received. And the said K. L., to whom, or to whose order, the payment of the said sum of money in the said note specified was to be made as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and also before the time limited and appointed by the said note for the payment thereof, to-wit, on the same day and year, and at the place aforesaid, indorsed the said note in writing, and by that indorsement ordered and appointed the contents of the said note to be paid to the said plaintiff or order, and then and there delivered the said note, so indorsed, to the said plaintiff; of which said indorsement so made thereon as aforesaid, the said defendant afterwards, to-wit, on the same day and year, and at the place aforesaid, had notice. By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said indorsement so thereon made as afore-

said; and being so liable, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year, and at the place aforesaid, undertook, and faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said indorsement so thereon made as aforesaid. And whereas also the said defendant afterwards, to-wit, etc. (here add the money counts as in last form).

Nevertheless the said defendant (although often requested, etc., to-wit, at the time when the said note became due and payable, according to the tenor and effect thereof, and oftentimes since, to-wit, at the place aforesaid), has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff, the said defendant has hitherto altogether refused, and still does refuse; to the damage of the said plaintiff of (twelve hundred) dollars, and thereof the said plaintiff brings suit, etc.

E. F., plaintiff's attorney.

Burr. App. 255, §517.

3. *Declaration on Promissory Note, Indorsee Against Indorser.*

For that whereas one J. K. (the maker) heretofore, to-wit, on the _____ day of _____, in the year, etc., at, etc. (as in last form), made a certain note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to the said defendant. By which said note the said J. K. promised to pay to the said defendant, by the name of C. D., or order (four months), after the date thereof, the sum of (three hundred) dollars, for value received. And the said defendant to whom or to whose order the payment of the said sum of money in the said note specified was to be made as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and also before the time limited and appointed by the said note for the payment thereof, to-wit, on the same day and year, and at the place aforesaid, indorsed the said note in writing, and by that indorsement ordered and appointed the

contents of the said note to be paid to the said plaintiff, and then and there delivered the said note so indorsed to the said plaintiff. And the said plaintiff avers, and in fact says, that afterwards, when the said note became due and payable, according to the tenor and effect thereof, to-wit, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, at the place aforesaid, the said note with the said indorsement so thereon made as aforesaid, was presented and shown to the said J. K., the maker thereof, for payment thereof, who then and there had notice of the said indorsement, and who then and there was requested to pay the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said indorsement so thereon made as aforesaid. But that neither the said J. K., nor any person or persons on behalf of the said J. K., did or would, at the said time when the said note was so presented and shown as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but wholly neglected and refused so to do; of all which said several premises the said defendant afterwards, to-wit, on the same day and year last aforesaid, at the place aforesaid, had notice. By reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified; and being so liable, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said note specified, when the said defendant should be thereunto afterwards requested.

And whereas also, etc. (add money counts and conclude as in preceding forms). Burr. App. 256, §518.

B. *Complaints.*

1. *Complaint, Payee Against Maker; Ordinary Form, Pleading the Legal Effect of Note.*

I. That heretofore the defendant made his promissory note in writing, * dated on the _____ day of _____, 18—, at _____, and thereby promised to pay to the plaintiff (or his order)

_____ dollars, _____ months after said date (or on the _____ day of _____).

II. That no part of said note has been paid (except the sum of, etc.). 1 Abb. Forms 219.

Note.—4 STANDARD PROC. 244, *et seq.*

2. *Complaint on Two Notes, One Partly Paid.*

First. For a first cause of action.

I. That heretofore the defendant made his promissory note in writing (continue as in last form, from the *).

II. That no part thereof has been paid, except the sum of _____ dollars.

Second. For a second cause of action.

I. That heretofore the defendant made his other promissory note in writing (continue as above).

II. That no part thereof has been paid.

Wherefore the plaintiff demands judgment against the defendant for the sum of (aggregate principal), with interest on _____ dollars thereof from the _____ day of _____, and with interest on _____ dollars thereof from the _____ day of _____. 1 Abb. Forms 220.

3. *Complaint on Several Notes Given on Agreement To Pay All on Default in Any.*

I. That upon the _____ day of _____, 18—, the defendants were indebted to the plaintiffs in the sum of _____ dollars.

II. That to secure the payment of that sum the defendants agreed to deliver, and did make and deliver to the plaintiffs their promissory notes in writing, of which copies are hereto annexed.

III. That at the same time the defendants agreed with the plaintiffs in writing that in case of any default of the payment of any of the said notes at any time when the same should become due and payable, the whole amount of the said sum of _____ and interest, then remaining unpaid, should forthwith, at the option of the plaintiffs, become at once due and payable.

IV. That the defendant has made default in the payment of the first of said notes which became due and payable on the _____ day of _____, and no part thereof has been paid. 1 Abb. Forms 221.

Note.—Better incorporate copies as exhibits.

4. *Complaint on Note Signed by Agent.*

I. That heretofore the defendant, by one M. N., his agent (or his attorney in fact), duly authorized thereto, made his promissory note in writing, dated on the _____ day of _____, at _____; and thereby promised to pay to the plaintiff (or his order) _____ dollars, _____ months after said date (or on the _____ day of _____).

II. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 221.

5. *Complaint on Note Made by Partners.*

I. That heretofore the defendants, under their firm name of Y. Z. & Co., made their promissory note in writing, dated on the _____ day of _____, at _____; and thereby promised to pay to the plaintiff (or his order) _____ dollars, _____ months after said date (or on the _____ day of _____).

II. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 222.

Note.—Some jurisdictions require an allegation that the defendants were partners doing business under the firm name of _____. *Reins v. Bolin*, 6 Ind. App. 181, 33 N. E. 218.

6. *Complaint on Note Made by Partners Averring Partnership.*

I. That at the time of the making of the note hereinafter mentioned the defendants were partners doing business at _____, under the firm name of Y. Z. & Co.

II. That on the _____ day of _____, the defendants under said firm name, made their promissory note in writing, dated on that day, at _____; and thereby promised to pay the plaintiff (or his order) _____ dollars, _____ months after said date (or on the _____ day of _____).

III. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 223.

7. *Complaint by Partners on Note Payable to Order of Firm Name.*

I. That heretofore the defendant made his promissory note in writing, dated on the _____ day of _____, at _____; and thereby promised to pay to these plaintiffs under their firm

name of A. B. & Co. (or their order) _____ dollars, _____ months after said date (or on the _____ day of _____).

II. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 223.

Note. Though it may not be essential in some jurisdictions, it is advisable to allege the partnership of plaintiffs. See paragraph 1 of preceding form.

8. *Complaint by Surviving Partner on Note Payable to Order of Late Firm.*

I. That at the time of the making of the note hereinafter mentioned, the plaintiff and one C. D. were partners, doing business under the firm name of A. B. & Co.

II. That on the _____ day of _____, 18—, at _____, the defendant made his promissory note in writing, dated on that day; and thereby promised to pay to them, under their said firm name (or their order), _____ dollars, _____ months after said date (or on the _____ day of _____).

III. That no part thereof has been paid (except the sum of, etc.).

IV. That on the _____ day of _____, 18—, at _____, said C. D. died, leaving the plaintiff the sole surviving partner of said firm. 1 Abb. Forms 224.

9. *Complaint by Payee Against Surviving Maker.*

I. That at the time of the making of the note hereinafter mentioned the defendant and one W. X. were partners, doing business under the firm name of Y. Z. & Co.

II. That on the _____ day of _____, 18—, at _____, they made, under their said firm name, their promissory note in writing, dated on that day; and thereby promised to pay to the plaintiff (or his order) _____ dollars, _____ months after said date (or on the _____ day of _____).

III. That no part thereof has been paid (except the sum of, etc.).

IV. That on the _____ day of _____, 18—, at _____, said W. X. died, leaving the defendant the sole surviving partner of said firm. 1 Abb. Forms 224.

10. *Complaint by Receiver, Payee, Against Partners, Makers.*

I. That heretofore the defendants, under their firm name of Y. Z. & Co.,

made their promissory note in writing, dated on that day; and thereby promised to pay to the plaintiff, as such receiver (or his order), _____ dollars, _____ months after said date (or on the _____ day of _____).

II. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 225.

11. *Complaint by an Insurance Company on Deposit Note.*

I. That the plaintiffs are a mutual insurance company, duly organized under and pursuant to an act of the legislature of this state, entitled _____, and passed on the _____ day of _____, and the acts amending the same.

II. That on the _____ day of _____, at _____, the defendant made his promissory note in writing, dated on that day; and thereby promised to pay to the plaintiffs the sum of _____ dollars, in such portions or at such time or times as the directors should, agreeably to their charter and by-laws, require.

III. That the plaintiffs by their directors, agreeably to the said charter and to the by-laws of the corporation, on the _____ day of _____, at _____, required the defendant to pay the sum of _____ dollars, a portion of said note, on the _____ day of _____.

(Or III. That the plaintiffs have duly performed all the conditions thereof on their part, by requiring the defendant to pay the sum of _____ dollars, on the _____ day of _____.)

IV. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 226.

12. *Complaint on a Note Payable at a Certain Time After Sight.*

I. (Allege the note as in preceding forms.)

II. That on the _____ day of _____, 18—, at _____, said note was duly presented to the defendant (maker), with notice that payment was required according to the terms thereof.

III. (Allege non-payment, as in preceding forms.) 1 Abb. Forms 227.

13. *Complaint on Note Wrongly Dated.*

I. That on the _____ day of _____, 18—, the defendant made his promissory note in writing, bearing date, by mistake, on the _____ day

of ———, 18—, whereas, in truth, it was intended to bear date on said ——— day of ———, 18—, and thereby promised to pay the plaintiff (or his order) ——— dollars, ——— days after said (intended date).

II. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 227.

Note.—"Mistake" is required to be alleged, though failure to do so may be cured by amendment. *Drake v. Rogers*, 32 Me. 524; *Almich v. Downey*, 45 Minn. 460, 48 N. W. 197.

14. *Complaint by First Indorsee Against Maker. — Ordinary Form, Pleading Legal Effect.*

I. That heretofore the defendant (maker) made his promissory note in writing, dated on the ——— day of ———, at ———; and thereby promised to pay to the order of one M. N. ——— dollars, ——— months after said date (or on the ——— day of ———).

II. That said M. N. thereafter (and before its maturity) indorsed it to the plaintiff (for value).

III. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 228.

15. *Complaint by Second or Later Indorsee Against Maker.*

I. That heretofore the defendant (maker) made his promissory note in writing, dated on the ——— day of ———, at ———; and thereby promised to pay to the order of M. N. & Co. ——— dollars, ——— days after said date (or on the ——— day of ———).

II. That said (payee) thereafter indorsed it and delivered it so indorsed; and thereafter (and before maturity) the same was indorsed (or passed) to the plaintiff (for value).

Or II. That said (payee) thereafter indorsed it, and delivered it so indorsed, and the plaintiff thereafter (and before maturity) became, and now is, the owner thereof for value.

III. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 229.

16. *Complaint on a Note Payable to Bearer, or to a Fictitious Person, or to the Maker's Own Order.*

I. That heretofore the defendant (maker) made and delivered (to M. N.) his promissory note in writing, dated on the ——— day of ———, at

—————; and thereby promised to pay to the bearer (said M. N.) ——— dollars, ——— months after said date (or on, etc.).

II. That the same thereafter (and before maturity) came lawfully to the possession of the plaintiff (for value).

III. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 231.

17. *Complaint by First Indorsee Against Payee, Indorser, Ordinary Form, Pleading Legal Effect.*

I. That heretofore one M. N. (or M. N. & Co.) made his (their) promissory note in writing, dated on the ——— day of ———, at ———; and thereby promised to pay to the defendant (or to the defendants under their firm name of Y. Z. & Co.), (or order), ——— dollars, ——— days after said date (or on, etc.).

II. That the defendant (indorser) (or the defendants, indorsers, under their said firm name) then and there (or thereafter and before this action) indorsed the same to the plaintiff (for value).

III. That (at maturity) said note was duly presented for payment, but was not paid, of all which due notice was given to the defendant (indorser).

(Or III. That the plaintiffs have duly performed all the conditions thereof on their part.)

IV. That the cost of protest thereof was ———.

V. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 231.

18. *Complaint by Remote Indorsee Against Payee.*

As in preceding form, substituting for paragraph II: That the defendant (or the defendants, under their firm name of Y. Z. & Co.) then and there (or thereafter) indorsed the same, and delivered it so indorsed; and thereafter, and before (this action) it lawfully came to the possession of the plaintiff for value. 1 Abb. Forms 233.

19. *Complaint by Remote Indorsee Against His Immediate Indorser.*

I. That heretofore M. N. (& Co.) made their promissory note in writing, dated on the ——— day of ———, at ———; and thereby promised to pay to the order of O. P. (& Co.) ——— dollars, ——— days after said date (or on, etc.).

II. That the said payees then and there (or thereafter) indorsed the same to the defendant (or indorsed the same, and delivered it so indorsed).

III. That thereafter, and before (this action), the defendants indorsed the same to the plaintiff for value.

(Continue as in I, B, 17, IV and V.)
1 Abb. Forms 234.

20. *Complaint, Special Averment of Excuse for Non-Presentment, Where Indorser Has Waived Notice.*

III. That at maturity said note was duly presented for payment, but was not paid.

IV. That the defendant (indorser) thereafter waived the laches of the plaintiff in not giving him due notice thereof, and promised to pay said note.
1 Abb. Forms 234.

21. *Complaint, Special Averment of Excuse for Non-Presentment, Where the Maker Could Not Be Found.*

III. That at the maturity of said note, due search and inquiry was made for said (maker) at (the place of date), in order that the same might be duly presented to him for payment, but he could not be found, and the same was not paid; of all which due notice was given to the defendant. 1 Abb. Forms 234.

Note.—Facts excusing the delay are an essential part of the complaint and must be alleged. *Daley v. Russ*, 86 Cal. 114, 24 Pac. 867; *Jerome v. Stebbins*, 14 Cal. 457.

22. *Complaint by First Indorsee Against Maker, and Payee, Indorser.*

I. That heretofore the defendant (maker), (or the defendants, makers, under their firm name of W. X. & Co.), made his (their) promissory note in writing, dated on the _____ day of _____, at _____; and thereby promised to pay to the order of the defendant (indorser), (or to the order of the defendants, indorsers, under their firm name of Y. Z. & Co.), _____ dollars, _____ days after said date (or on, etc.). (Continue as in I, B, 17.)
1 Abb. Forms 235.

23. *Complaint on Note Not Valid as Against Maker.*

I. That the defendant indorsed to plaintiff a promissory note, made (or purporting to have been made) by one M. N. on the _____ day of _____, 18—, at _____, for the sum of

_____ dollars, payable to the order of defendant (or one O. P.), _____ days after date (and indorsed by the said O. P. to the defendant). (Continue as in I, B, 17, paragraphs III, IV, and V.) 1 Abb. Forms 235.

24. *Complaint by Remote Indorsee Against Maker, First Indorser and Later Indorser.*

I. (As in 22 above.)

II. That the defendants (naming the payees), (under their said firm name), indorsed the same, and delivered it so indorsed.

III. That thereafter the defendants (naming the later indorsers), (under their firm name of U. V. & Co.), indorsed the same, and delivered it so indorsed, and thereafter and before its maturity, it lawfully came to the possession of the plaintiff for value. (Continue as in form I, B, 17, from beginning of paragraph III.) 1 Abb. Forms 236.

25. *Complaint by Payee Against Maker and Indorser, Payee Having Parted With Full Value.*

I. That on the _____ day of _____, 18—, at _____, the defendant W. X. made his promissory note in writing, dated on that day, and thereby promised to pay to the order of the plaintiff, at _____, the sum of _____ dollars, _____ months after said date (or on, etc.).

II. That the defendant Y. Z. indorsed said note, when said W. X. delivered the same to the plaintiff.

III. That said note at maturity was duly presented for payment, but was not paid; of all which due notice was given to the defendant Y. Z.

IV. That said note was made by the defendant W. X., and indorsed by the defendant Y. Z., for the purpose of paying for (coal sold and delivered by this plaintiff to the defendant W. X.), on the credit of such indorsement; that the defendant Y. Z. indorsed the same for the purpose of procuring for the said maker a credit with the plaintiff, knowing that it would be so applied, and that said note was so passed and so indorsed by the defendant with his privity, to the plaintiff, in payment for (coal then sold and delivered).

V. That no part thereof has been paid. 1 Abb. Forms 236.

Note.—The better practice is to allege that the indorsement was prior to

the delivery to plaintiff, and also that plaintiff has ever since been the owner thereof. *Gfroehner v. McCarty*, 2 Abb. N. C. (N. Y.) 76.

26. *Complaint by Assignee of Note.*

I. (Plead the instrument, as in any other case.)

II. That M. N. (the payee) sold and delivered said note to the plaintiff (for a valuable consideration, before it was payable).

III. (Aver breach, as in other cases.)

1 Abb. Forms 237.

27. *Complaint on Negotiable Bond Payable to Bearer.*

I. That on the _____ day of _____, 18—, at _____, the defendants, a corporation incorporated by the laws of this state, in pursuance of a resolution of their board of directors, passed on the _____ day of _____, 18—, made and delivered their note or obligation, partly printed and partly in writing, which they signed by their president and treasurer, and affixed the seal of the company thereto, and of which note or obligation the following is a copy: (Copy of bond.)

II. That upon receipt of the sum therein mentioned, or other valuable consideration, therefor, from some person unknown to the plaintiff, the defendants delivered the same to such person for the purpose and with the intent that the same should be assignable and transferrable by delivery from hand to hand, without other writing.

III. That before the maturity of said note or obligation, it came lawfully into the possession of the plaintiff for value received, so that he became the owner and holder thereof, and entitled to the money therein promised to be paid.

IV. That there is now due to this plaintiff thereon, from the defendant, the sum of _____ dollars, with interest thereon from the _____ day of _____, 18—. 1 Abb. Forms 238.

Note.—In some jurisdictions it is required to allege that no part of the bill or note has been paid, in addition to an allegation as to what is now due.

III. *Defenses.*

A. *Answer, Denial of Indorsement (a).*

The defendant, answering the complaint herein, denies that he ever indorsed the said note. 2 Abb. Forms 21.

Answer, Denial of Indorsement (b).

The defendant, answering the com-

plaint herein, says that he never indorsed the said note. 2 Abb. Forms 21.

Answer, Denial of Indorsement (c).

That the defendant (or M. N.) did not indorse (nor deliver) the promissory note (or bill) mentioned therein. 2 Abb. Forms 68.

Note.—These denials must be positive. If want of knowledge or information on the subject is set up, it must appear how it happens that the defendant has no knowledge or information on the subject. *Fales v. Hicks*, 12 How. Pr. (N. Y.) 153.

B. *Answer, Unauthorized Acceptance in Name of Corporation.*

I. That the said bill was, without the authority or consent of these defendants, and out of the course of their regular business, and without consideration to them, accepted in their name by one M. N., fraudulently pretending to act under their authority.

II. That these defendants have no knowledge or information sufficient to form a belief as to whether the said bill was ever indorsed by said (payee), and delivered to the plaintiffs; but these defendants aver that the same was not so indorsed until after its maturity (or was so indorsed and transferred without consideration), and that prior to such indorsement the plaintiffs had full notice and knowledge of all the facts hereinbefore stated. 2 Abb. Forms 68.

Note.—If it be intended to deny that the genuineness of the signature, the allegation should be that defendant denies that he signed his name to a promissory note of the tenor and effect of the copy set out. *Douglass v. Matheny*, 35 Iowa 112.

The better practice is to deny acceptance of the draft as alleged in the complaint.

C. *Answer, Denial of Making or Acceptance of Note or Bill.*

That the defendant (or M. N.) did not make the promissory note (or accept the bill) alleged in the complaint. 2 Abb. Forms 68.

D. *Answer, Mistake in Amount of Note.*

That said note was given upon a settlement of account between the defendant and the plaintiff, and was intended by them to be made and received for the sum of _____ dollars, then claimed by the plaintiff to be the amount due him from this defendant;

but that when it was made, it was, by mistake of the parties, given for the sum of _____ dollars mentioned in the complaint, instead of the sum of _____ dollars, which was all that was due; and as to the excess, to-wit, _____ dollars, the same is without consideration. 2 Abb. Forms 69.

E. Answer, Defendant Indorsed as Agent; Where Complaint Set Forth Contract Untruly in This Respect.

I. (Denial of making indorsement, and protest of note such as alleged.)

II. This defendant says that the following is a true copy of the promissory note made by the said firm of A. & Co., and on which this action is brought: (Copy of note and indorsement, with addition of "treasurer" to defendant's signature.)

III. That at the time of the making and indorsement of said note this defendant was the treasurer of the _____ company, at _____, a foreign corporation, duly incorporated by and under the laws of the state of _____; and that he was authorized by them to receive the said note, and to indorse the same to the plaintiffs, as such treasurer; of all which facts the plaintiffs had notice.

IV. That said corporation was, at the time of said indorsement indebted to the plaintiffs to the amount of about _____ dollars for goods, wares and merchandise, furnished by the said plaintiffs to the said corporation; and said note was received and endorsed by him as such treasurer, and not in his individual capacity, and was received by the plaintiffs as an obligation of the said corporation, on account of said precedent debt due to them from the said corporation, and for and on account of no other consideration whatever, and that he received no consideration therefor. 2 Abb. Forms 69.

Note.—Another form that may be used is as follows, "that when the note for \$_____ was made, the same was by mistake given for a greater sum than was due from defendant to the payee, to-wit, a sum sufficient to cancel the balance claimed to be due on said note, making said note without consideration and therefore the defendant claims a deduction from the note equal to the balance claimed to be due thereon." Seeley v. Engel, 13 N. Y. 542.

Note.—Babcock v. Beman, 11 N. Y. 200.

F. Answer, Illegal Interest in Note.

As to the sum of _____ dollars, parcel of said sum of _____ dollars, in said complaint demanded, the said defendant admits that he owes the said sum of _____ dollars to the said plaintiff; but as to the sum of _____ dollars, the residue of the said sum of _____ dollars, the said defendant says that the said promissory note in the complaint mentioned was given by the said defendant to the said plaintiff for the loan of _____ dollars for _____ years, and no more; and that the said sum of _____ dollars was included in said note, as interest on the said sum of _____ dollars for the said term of _____ years, at the rate of _____ per cent per annum. 2 Abb. Forms 72.

Note.—The usurious agreement must be set out (Dagal v. Simmons, 23 N. Y. 491). Merely alleging "that the loan was at a greater rate of interest than at the rate of _____ per cent. per annum" without giving the particulars of the transaction is not sufficient. Dagal v. Simmons, *supra*; Manning v. Tyler, 21 N. Y. 567.

G. Answer, Note Was for Accommodation, and Was Misapplied.

I. That the note mentioned and described in the complaint was given by this defendant to (the payee) therein named, without any other consideration than is hereinafter stated.

II. That theretofore, this defendant had loaned his promissory note for _____ dollars, dated on the _____ day of _____, 18—, to said (payee) without consideration, and solely for the accommodation of said (payee), and upon his promise to take up and pay the same at maturity.

III. That said note fell due on the _____ day of _____, 18—, and that, at the request of said (payee) this defendant then gave him the note in suit, for the special purpose of enabling him therewith to take up and renew said first note of _____ dollars, he paying the balance, and upon the agreement with him that it should be so used, and not otherwise.

IV. That the plaintiff having a claim then overdue against the said (payee), he the said (payee) wrongfully diverted said note from the purpose for which it was given, and fraudulently misap-

plied the same by giving it to the plaintiff as collateral to secure the payment of said claim.

V. That the plaintiff is not a bona fide holder of the note in suit for a valuable consideration; but received the same with notice of the foregoing facts, and as collateral to secure the payment of an antecedent debt, and without paying any consideration therefor.

VI. This defendant denies each and every allegation of the complaint, in consistent with the foregoing statement. 2 Abb. Forms 75.

H. *Answer, Note or Acceptance Was Given for Goods Sold But Never Delivered.*

I. That the bill (or note) mentioned in the complaint was accepted (or given) by the defendant for the price of goods to be sold and delivered by the plaintiff to the defendant before the said bill (or note) should become due.

II. That defendant has always been ready and willing to buy and accept said goods from the plaintiff, and has duly performed all the conditions on his part.

III. That the plaintiff has not sold and delivered the same to the defendant (though the defendant, on the _____ day of _____, at _____, duly requested him so to do).

IV. That except as aforesaid there never was any consideration for the acceptance or payment of said bill (or giving or payment of said note) by the defendant. 2 Abb. Forms 76.

I. *Answer, Notes Were Given for Purchase-Money, and Plaintiff Failed To Convey.*

I. That the only consideration of the said three several notes was and is the sale of a certain piece of land, situate in the county of _____ and state of _____, and known and described as (description).

II. That at the time of making said several promissory notes, the said plaintiff agreed to convey the said premises to this defendant, at the time when the sum named in the note described in the first count of the said complaint should become due and payable, to-wit, on the said _____ day of _____, 18—; and take a mortgage from this defendant on said premises to secure the payment of the sums mentioned in the two notes described in the second and third counts of the said complaint.

III. That the defendant duly performed all the conditions of said agreement on his part, and on said day, and ever since, been ready and willing to pay the first named sum, and execute and deliver said mortgage, on the delivery by the said plaintiff of such deed of conveyance.

IV. That said plaintiff did not, on the said _____ day of _____, 18—, nor at any time since, offer to convey the said premises to the said defendant, on the payment of the sum mentioned in the said first note, and the execution of a mortgage by the said defendant as aforesaid, to secure the sums of money mentioned in the two other notes (or, if by agreement it was necessary, allege demand and refusal). 2 Abb. Forms 77.

Note.—This form in general follows. *Ellis v. Hubbard*, 4 Ind. 206. Allegation of tender is necessary. *Lee v. Dozier*, 40 Miss. 477.

J. *Answer, Fraud in the Making.*

I. That the plaintiff induced him to make the note mentioned in the complaint, by representing that he was authorized by one M. N., to whom the defendant owed the amount of the same, to take a note to himself in satisfaction of such debt.

II. That the said representation was false, and made with intent to deceive and defraud this defendant.

III. That the defendant received no consideration for the said note. 2 Abb. Forms 77.

K. *Answer, Note Was for Goods Sold With False Warranty.*

I. That the defendant gave the note mentioned in the complaint for and on account of certain goods, called _____, theretofore furnished by the plaintiff to him, the defendant, under a representation and warranty by the plaintiff, at the time of so furnishing them, made to the defendant, that the said goods were fit and proper materials for _____ (stating the warranty), and suitable for such purpose; and for no other consideration whatever.

II. That the defendant then accepted and purchased said goods for the purpose of _____, trusting in the said representation and warranty of the plaintiff; all of which the plaintiff then well knew.

III. That the same were not fit or proper for said purpose, but altogether unsuitable, and have always been and

are altogether useless to the defendant.
2 Abb. Forms 78.

L. Answer That the Note Was for Goods Sold by Means of Deceit.

I. (Allege sale as in the case of an action for damages for deceit, omitting at the end the words: whereby the plaintiff was misled, to his damage, etc.).

II. That said note was given to the plaintiff without any other consideration than said (sale).

III. That immediately on discovering said fraud, the defendant rescinded said (contract), and delivered (or tendered) to the plaintiff all that the defendant had received under said contract, upon condition of his returning said note, which the plaintiff refused to do. 2 Abb. Forms 78.

M. Answer, Denial of Transfer to the Plaintiff.

That the said note was made and indorsed by defendants, and by them delivered to one M. N., a person other than the plaintiff, with whom defendants had business transactions; and defendant deny that they have any knowledge or information sufficient to form a belief whether or not said note was thereafter duly transferred and delivered by the lawful, or other, holders thereof to the plaintiff; and the defendants further deny that they have any knowledge or information sufficient to form a belief whether or not the plaintiff is the lawful owner and holder of said note. 2 Abb. Forms 80.

Note.—This is approved in *Chadwick v. Booth*, 13 Abb. Pr. (N. Y.) 249, but is disapproved in *Kamlah v. Salter*, 6 Abb. Pr. (N. Y.) 226.

N. Answer, Wrongful Transfer by Partner.

That the note alleged was not indorsed by M. N. & Co., but that it was indorsed in the name of said firm by B., and by him transferred to the plaintiffs in payment of an individual debt of said B., and without the knowledge or consent of said A., his partner, and that the plaintiffs at the time of the said transfer had full knowledge thereof. 2 Abb. Forms 81.

Note.—*Union Nat. Bank v. Underhill*, 21 Hun (N. Y.) 178.

O. Answer, Qualified Admission of Note, and Denial of Plaintiff's Title.

I. Admit that heretofore they executed and delivered a promissory note

to the plaintiff; but the defendants deny that the description of said note in the complaint is a true description of said note, or correctly states the terms thereof.

II. Defendants further answering, deny (knowledge or information sufficient to form a belief) that the plaintiff is now, or was at the commencement of this action, the lawful and bona fide owner and holder of said promissory note, or has any interest whatever therein; and the defendants allege, on information and belief, that before this action said plaintiff sold and delivered said note for a valuable consideration to one John Doe, who is, and at the commencement of this action was, the lawful owner and holder of said note. 2 Abb. Forms 81.

P. Answer, by Accommodation Indorsers, Extension Given To Makers.

I. That the said note was indorsed by these defendants without consideration, and for the accommodation of the defendant Z., the maker thereof.

II. That the plaintiffs, at the time they received said note, had notice thereof.

III. That about the time of its maturity the plaintiffs, for a valuable consideration, and without the knowledge or assent of these defendants, made an agreement with said (maker), whereby they agreed to extend the time for the payment of said note by said (maker) _____ days. 2 Abb. Forms 82.

Note.—While this form has been held to be sufficient under a strict rule of pleading, it is better to also state "the particular time for which the extension was granted." *Huey v. Pinney*, 5 Minn. 310.

Q. Answer, Defendant Was Surety, and Plaintiff Holds Collateral Securities, Defendant Asks To Be Subrogated.

I. That said draft was accepted by the defendant without any consideration, for the accommodation of said (drawers), which the plaintiff well knew.

II. That the same was made under an agreement between said (drawers) and the plaintiff; whereby said (drawers) executed to the plaintiff a bond for _____ dollars, together with a mortgage on house and lot No. _____, _____ street _____, in _____, as security for the payment thereof,

which securities the plaintiff still holds, and are ample to secure and satisfy the plaintiff's demand.

III. That said (drawers) are insolvent and unable to pay said acceptance, and the defendant has no recourse for the payment or security of the sum for which he is liable to the plaintiff, except the said mortgages and securities held by the plaintiff.

IV. That the defendant has offered to pay the said draft, with interest and costs, if the plaintiff will surrender and transfer to the defendant upon such payment the mortgages and securities held by the plaintiff; which the plaintiff refuses to do, but claims to hold said securities for some other demand due to the plaintiff from said (drawers).

V. That the plaintiff is a foreign corporation, created and doing business in the province of Canada, and the defendant will be remediless under the laws of the state of New York, where the defendant resides, except by the aid and interposition of this court.

Wherefore the defendant demands that upon his paying said draft, with interest and costs, the plaintiff be adjudged to transfer said bond and mortgage to the defendant (and that he may hold and enforce them for his reimbursement, with interest). 2 Abb. Forms 82.

Note.—Bank of Toronto v. Hunter, 4 Bosw. (N. Y.) 646.

R. Answer, Denial of Acceptance, Presentment and Protest.

Deny that (they have any knowledge or information sufficient to form a belief as to whether) the bill of exchange mentioned in plaintiff's first cause of action was presented for acceptance, or was accepted as alleged, or was presented for payment, or was protested for non-payment, or whether payment was refused. 2 Abb. Forms 83.

Note.—If the protest of the notary is attached to the bill, a denial on information and belief will be stricken out. Gridler v. Farmers' & Drovers' Bank, 75 Ky. 333.

S. Answer, Denial of Notice of Dishonor.

That due notice of the dishonor of the said promissory note (or bill) was not given to defendant. 2 Abb. Forms 83.

T. Answer, Denial of Presentment.

That the promissory note (or bill of exchange) mentioned therein was never presented for payment (or for acceptance) to him (or to M. N.), as alleged. 2 Abb. Forms 84.

U. Answer, Denial of Excuse for Non-Presentment.

That due search was not made when the said bill of exchange (or promissory note) became due and payable, to discover the residence and person of the said _____, at _____, or elsewhere, in order that the said bill might be presented to the said _____ for payment, as alleged. 2 Abb. Forms 84.

Note.—It is also proper to allege: "Defendant denies that due or any search was made," etc.

V. Answer, Breach of Special Agreement as to Presenting and Giving Notice.

I. That the bill of exchange (or check) in the said complaint mentioned was by the said defendant delivered to the said plaintiff, and by him discounted for the said defendants, upon the express condition and understanding that the plaintiff should cause the same to be presented to the respective drawers thereof for acceptance or payment, and acceptance or payment thereof to be demanded as soon after the delivery thereof as the same could be done by the exercise of reasonable diligence in that behalf; and that in case of the non-acceptance or non-payment thereof by the respective drawees, on presentation or demand, immediate notice of such non-acceptance or non-payment should be given to the said defendants by telegraph, or that the said defendants should not be bound or liable to pay the said bill of exchange.

II. That the said plaintiff failed to comply with the condition or understanding aforesaid, and did not present the same for acceptance or payment, or demand acceptance or payment of the same within a reasonable time after the delivery thereof to the said plaintiff; nor was immediate notice of the non-acceptance or non-payment thereof given to the defendants, by telegraph or otherwise. 2 Abb. Forms 84.

Note.—If defendant seeks to recover special damage by reason of the breach, an allegation to that effect should be added.

W. Answer, Payment of Bill to Drawer Before Indorsement.

I. That after the bill mentioned in the complaint was due, and while said (drawer) was the holder thereof, and before this action, the defendant satisfied and discharged the principal and interest (and damages) due on said bill, by payment to the said (drawer).

II. That said (drawer) first indorsed said bill to the plaintiff after said payment. 2 Abb. Forms 85.

X. Answer, Denial of Guaranty.

I. That the defendant never guaranteed the payment or collection of the said note, but the plaintiff bought the same at his own risk as to the responsibility of the maker and the payment thereof by him.

II. That at the time of the assignment by the defendant to the plaintiff the defendant expressly declined to guarantee the payment or collection of said note, and that the words "and agree that it is good" were inserted in said assignment at the instance of the plaintiff, and only for the purpose of defendant's agreeing to the genuineness of the signature of the maker of said note, and that it was so represented at the time by the plaintiff to the defendant. 2 Abb. Forms 90.

Y. Answer by a Surety, Alleging an Extension of Time.

I. That on the _____ day of _____, 18—, at _____ (or at some time and place unknown to the defendant), the plaintiff agreed with said (debtor), in consideration of _____ (or for a valuable consideration), to forbear and extend the time of payment of the said rent guaranteed by the defendant _____ days (or from the _____ day of _____, 18—, on which the same was due, until the _____ day of _____, 18—).

II. That the defendant had no knowledge of (or did not assent to) the said agreement to extend the time. 2 Abb. Forms 99.

BILLS OF DISCOVERY.—See DISCOVERY.

BILLS OF EXCEPTIONS.

- I. Defendant's Exceptions to Charge to Jury, 214**
- II. Plaintiff's Exceptions to Charge to Jury, 215**
- III. Exceptions to Decision Rejecting Evidence, 216**

IV. Exceptions to Decision Admitting Evidence, 216

V. Setting Forth Pleadings, 217

VI. Bill of Exceptions Prepared for Settlement, 217

VII. Indorsement on Bill of Exceptions, 220

VIII. Amendments to Bill of Exceptions, 220

IX. Notice of Settlement, 221

X. Judge's Certificate, 221

For other forms, see 4 STANDARD PROC. 322, 353, 355.

CROSS-REFERENCES:

CASE ON APPEAL:

Case Containing Exceptions on a

Trial by the Court or a Referee;

Case Containing Exceptions Upon

Trial by Jury;

Indorsement on Case or Bill of Exceptions;

Amendments Proposed to Case, Etc.;

Notice of Settlement of Case, Etc.

MANDAMUS:

Alternative Mandamus to Court of Common Pleas, Commanding Sealing of Bill of Exceptions.

I. Defendant's Bill of Exceptions To Charge To Jury.

Afterwards, to-wit, at a circuit court held at the (court house) in the town of (Richmond), in and for the county of (Richmond), (or at a circuit court held at the city hall in the city of New York, in and for the city and county of New York), on the (fifteenth) day of (November), in the year one thousand eight hundred and (forty-five), before (John W. Edmonds), esquire, circuit judge, appointed to hold the said circuit court, according to the form of the statute in such case made and provided, the aforesaid issue, so joined between the said parties as aforesaid, came on to be tried by a jury of the county of (Richmond), (or city and county of New York), aforesaid, for that purpose duly empaneled, good and lawful men of the said county (or city and county). At which day came there as well the said plaintiff as the said defendant, by their respective attorneys aforesaid; and the jurors of the jury aforesaid, empaneled to try the said issue, being called, also come, and were then and there in due manner chosen and sworn to try the same issue. And upon the trial of that issue the counsel for the said plaintiff, to maintain and prove the said issue on his part, gave in evidence that, etc.

(here set out the evidence on the part of the plaintiff, and then proceed as follows): And thereupon the counsel for the said defendant, to maintain and prove the said issue on his part, gave in evidence that, etc. (here set out the evidence on the part of the defendant, and then proceed as follows): Whereupon the said counsel for the said defendant did then and there insist before the said circuit judge, on the behalf of the said defendant, that the said several matters, so produced and given in evidence on the part of the said defendant as aforesaid, were sufficient, and ought to be admitted and allowed as decisive evidence to entitle the said defendant to a verdict, and to bar the said plaintiff of his action aforesaid; and the said counsel for the said defendant did then and there pray the said circuit judge to admit and allow the said matters so produced, and given in evidence for the said defendant, to be conclusive evidence in favor of the said defendant, to entitle him to a verdict in this cause, and to bar the said plaintiff of his action aforesaid. But to this, counsel for the said plaintiff did then and there object, and insist before the said circuit judge, that the same were not sufficient, nor ought to be admitted or allowed to entitle the said defendant to a verdict; or to bar the said plaintiff of his action aforesaid. And the said circuit judge did then and there declare, and deliver his opinion to the jury aforesaid, that the said several matters, so produced and given in evidence on the part of the said defendant, were not sufficient to bar the said plaintiff of his action aforesaid; whereupon the said counsel for the said defendant did then and there, on the behalf of the said defendant, except to the aforesaid opinion of the said circuit judge, and insisted on the said several matters as an absolute bar to the said action. And the said circuit judge did also, then and there, further declare and deliver his opinion to the said jury, that, etc. (stating particularly and separately each specific remark which is excepted to, in the charge to the jury, and expressly stating, after each remark, the exception thereto, as follows): to which said last mentioned opinion of the said circuit judge, the said counsel for the said defendant did then and there, on the behalf of the said defendant, except.

And the said circuit judge, under

the charge, and with the directions aforesaid, left the aforesaid issue, and the evidence so given on the trial thereof as aforesaid, to the said jury; and the jury aforesaid then and there gave their verdict for the said plaintiff, and ——— dollars damages: And inasmuch as the said several matters, so produced and given in evidence on the part of the said defendant, and by his counsel aforesaid objected and insisted on, as a bar to the action aforesaid, do not appear by the record of the verdict aforesaid, the said counsel for the said defendant did then and there propose their aforesaid exceptions to the opinion of the said circuit judge, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence on the part of the said defendant, as aforesaid, according to the form of the statute in such case made and provided; and thereupon the said circuit judge, at the request of the said counsel for the said defendant, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided on the (fifteenth) day of (November), in the year of our Lord one thousand eight hundred and (forty-five).

———, circuit judge (L. S.).

Burr. App. 48, §91; Till. Forms 182.

II. Plaintiff's Bill of Exceptions To Charge To Jury.

Whereupon the said counsel for the said plaintiff did then and there, on the behalf of the said plaintiff, insist before the said circuit judge that the said matters, so produced and given in evidence on the part of the said plaintiff as aforesaid, were sufficient and ought to be admitted, and allowed as decisive evidence to entitle the said plaintiff to a verdict on the said issue between him and the said defendant so joined as aforesaid: And the said counsel for the said plaintiff did then and there pray the said circuit judge to admit and allow the said matters so produced and given in evidence for the said plaintiff to be conclusive in favor of the said plaintiff to entitle him to a verdict in this cause; but to this the counsel for the said defendant did then and there object, and insist before the said circuit judge that the same matters so given in evidence on the part of the said plaintiff were not sufficient, and ought not to be ad-

mitted and allowed to bar the said plaintiff to a verdict; but that the said matters so produced and given in evidence on the part of the said defendant were sufficient, and ought to be admitted and allowed to bar the said plaintiff of his action aforesaid. And the said circuit judge did then and there declare and deliver his opinion to the jury aforesaid, that the several matters so produced and given in evidence, on the part of the said plaintiff, were not sufficient, to entitle him to a verdict in this cause; but that the said several matters so produced and given in evidence on the part of the said defendant were sufficient to bar the said plaintiff of his action aforesaid. Whereupon the said counsel for the said plaintiff did then and there, on the behalf of the said plaintiff, except to the aforesaid opinion and decision of the said circuit judge, and insisted on the said several matters as sufficient to sustain the said action on the part of the said plaintiff, and to entitle him to a verdict. And the said circuit judge, etc. (conclude as in last form, substituting "plaintiff" for "defendant"). Burr. App. 49, §91a; Till. Forms 184.

III. Bill of Exceptions, Decision Rejecting Evidence.

Afterwards, to-wit, at a circuit court held at the courthouse in the town of _____, in and for the county of _____, on the _____ day of _____, in the year one thousand eight hundred and _____, before _____, esquire, one of the circuit judges appointed to hold the said circuit court, according to the form of the statute in such case made and provided, the aforesaid issue, so joined between the said parties as aforesaid, came on to be tried by a jury of the county of _____ aforesaid, for that purpose duly empaneled, good and lawful men of the said county.

At which day there came there as well the said plaintiff as the said defendant, by their respective attorneys aforesaid, and the jurors of the jury aforesaid, empaneled to try the said issue, being called, also came and were then and there in due manner chosen and sworn to try the said issue. And upon the trial of the said issue, the counsel for the said plaintiff, to maintain and prove the said issue on his part, called M. P., who, being sworn,

testified that, etc. (state the testimony).

The counsel for the plaintiff, further to maintain and prove the said issue, called D. K., who, being sworn, testified that, etc. (state the testimony).

The counsel for the said defendant, to maintain and prove the said issue on his part, then cross-examined the said D. K., and on such cross-examination, he testified that, etc. (state the testimony).

The counsel for the said plaintiff, further to maintain and prove the said issue on his part, introduced, etc. (state the documentary evidence, if any, and how proved).

The counsel for the plaintiff here rested his cause.

And the counsel for the said defendant, to maintain and prove the said issue on his part, offered to prove that, etc. (state the evidence offered).

But the counsel for the plaintiff then and there objected to the introduction of such evidence, on the ground that, etc. (state the ground of objection). And thereupon the said circuit judge declared and delivered his opinion that, etc. (state the opinion), and rejected the said evidence as inadmissible; to which opinion and decision of the said circuit judge, the said counsel for the defendant did then and there except.

The said issue was then submitted to the jury (on the question of damages), and they found a verdict for the plaintiff for six cents damages, and six cents costs.

And because none of the said exceptions, so offered and made to the opinion and decision of the said circuit judge, do appear upon the record of the said trial, therefore, on the prayer of the said defendant by his counsel, the said circuit judge hath to this bill of exceptions put his seal, according to the statute in such case made and provided, this _____ day of _____, in the year one thousand eight hundred and _____.

_____, circuit judge (L. S.).

Burr. App. 50, §92.

Note.—Bills of Exceptions in present practice are not usually settled at trial, but subsequently.

IV. Bill of Exceptions To Decision Admitting Evidence.

(As in the preceding form to the *.) And upon the trial of the said issue, the counsel for the said plaintiff, to

maintain and prove the said issue on his part, produced and offered in evidence a certain deed of bargain and sale (or a certain writing obligatory, or a certain promissory note; or otherwise, as the case may be, setting out the instrument offered in evidence, and then proceed as follows): But to the reading of the same in evidence the said counsel for the said defendant did then and there object, because, etc. (here state the objections, and then add): But the said circuit judge did then and there declare and deliver his opinion that the said objection so taken by the said counsel for the said defendant as aforesaid ought not to be allowed, but that the said deed (or writing obligatory, or promissory note, etc.) ought to be admitted in evidence; and did accordingly decide that the same should be read in evidence on the part of the said plaintiff: to which said opinion and decision of the said circuit judge, the said counsel for the said defendant did then and there on the behalf of the said defendant except. (Conclude as in I or III.)

And upon the trial of the said issue, the counsel for the said plaintiff, to maintain and prove the said issue on his part, produced as a witness J. K., and offered to prove by the said J. K., that, etc. (stating what was intended to be proved by the witness, and then proceed as follows): But to the admission of the said J. K. as a witness (or to the admission of the said matters so offered to be given in evidence on the part of the said plaintiff as aforesaid), the said counsel for the said defendant did then and there object because, etc. (here state the objections and then add): But the said circuit judge did then and there declare and deliver his opinion, that the said objections, so taken by the said counsel for the said defendant, ought not to be allowed, but that the said J. K. ought to be admitted to testify as a witness (or that the matter so offered to be given in evidence on the part of the said plaintiff ought to be admitted and received in evidence), and did accordingly decide that the said J. K. should be admitted and sworn as a witness (or that the matter so offered as aforesaid should be given in evidence, on the part of the said plaintiff; to which said opinion and decision of the said circuit judge the said counsel for the said defendant did then and there, on

the behalf of the said defendant, except. (Conclude as in I or III.) Burr. App. 51, §93; Till. Forms 185.

V. Bill of Exceptions Setting Forth Pleadings.

Be it remembered that in the term of (July), in the year of our Lord one thousand eight hundred and ——— (the term of the declaration), came A. B., by E. F., his attorney, into the supreme court of judicature of the people of the state of New York, before the justices thereof, and impleaded C. D., in a certain plea of trespass on the case upon promises (or as the action is), on which the said plaintiff declared against the said defendant in these words (here set out the declaration, omitting the signature): To which said declaration the said defendant, by G. H., his attorney, pleaded in these words (here set out the plea or pleas, and the subsequent pleadings, to issue, and then proceed as follows): And thereupon issue was joined between the said plaintiff and the said defendant. And afterwards, to-wit, at a circuit court held, etc. (the rest of the bill is in the ordinary form). Burr. App. 52.

Note.—The pleadings are not properly a part of the bill of exceptions. They are a part of the record proper without being incorporated, but for convenience they are sometimes set forth within the bill.

VI. Bill of Exceptions Prepared for Settlement.

1. (Be it remembered that) The
2. issues in said action came on for
3. trial before the Hon. M. N., one
4. of the justices of this court, at a
5. circuit court (or special term of
6. this court), on the ——— day
7. of ———, 18—.
8. A jury was called and sworn,
9. and the plaintiff, by his counsel,
10. opened the case.
11. The plaintiff, ther, to maintain
12. the issues upon his part, offered
13. in evidence, as an ancient deed,
14. the following instrument (insert
15. the instrument).
16. The court held that the said in-
17. strument was not admissible as an
18. ancient deed, and the plaintiff
19. excepted.
20. The plaintiff thereupon called on
21. as a witness J. K., who testified
22. that he was a brother of the sub-
23. scribing witness to said deed; and

24. that said witness had left this
 25. state on a voyage to Europe
 26. twenty-five years ago, and that
 27. he had not since been heard from,
 28. nor had any account of the vessel
 29. in which he had sailed been re-
 30. ceived. On cross-examination he
 31. testified that he had not examined
 32. the shipping lists or marine ga-
 33. zette at the time of the supposed
 34. loss of the vessel.

35. The defendant objected that the
 36. failure to call the subscribing
 37. witness was not excused; the court
 38. overruled the objection, and the
 39. defendant excepted. The witness
 40. then proved the genuineness of
 41. the grantor's signature, and that
 42. of the subscribing witness; and
 43. thereupon the court allowed the
 44. deed to be read in evidence, and
 45. defendant excepted.

46. The plaintiff asked the same
 47. witness, "What, if you know, was
 48. the consideration of the said deed
 49. other than what is therein ex-
 50. pressed?" The defendant object-
 51. ed that this evidence was not ad-
 52. missible to vary the deed; the
 53. court sustained the objection, and
 54. plaintiff excepted.

55. The defendant offered to show
 56. that the said deed was made for
 57. the purpose of defrauding the
 58. grantor's creditors; he did not
 59. claim that the defendant, or any
 60. one through whom he claimed, was
 61. a creditor of the said grantor.

62. The offer was allowed, and the
 63. plaintiff excepted.

64. The court directed the jury to
 65. find a verdict for the defendant,
 66. to which direction the plaintiff
 67. excepted. 2 Abb. Forms 484.

*Bills of Exceptions. Florida Supreme
 Court Rules (b).*

In the circuit court of _____ coun-
 ty, Florida, _____ term, 189—.

I, _____, judge of the circuit court
 of the _____ judicial circuit of the
 state of Florida, do hereby certify
 that during the progress of the cause
 pending in said court, wherein A. B.
 was plaintiff, and C. D. was defendant,
 the following proceedings were had,
 viz:

On the _____ day of _____,
 189—, during the term of said court
 (or in vacation, as the case may be),
 the defendant filed the following peti-
 tion for a change of venue:

(Here insert petition in full if any
 error is assigned thereon; and if not,
 the same to be omitted.)

On the _____ day of _____,
 189—, during a term of said court
 (or in vacation, as the case may be),
 said petition came on to be heard, and
 the following evidence was introduced
 in support of and in opposition there-
 to:

(Here insert the evidence introduced
 for and against the petition, provided
 an assignment of error for the appel-
 late court is based thereon; and if not,
 the same to be omitted.)

Thereupon the court denied said pe-
 tition, to which ruling the defendant
 then and there excepted.

On the _____ day of _____,
 189—, during a term of said court the
 defendant made the following motion,
 and filed therewith the following affi-
 davit for a continuance of said cause:

(Here set out the motion and affi-
 davit for continuance.)

Said motion coming on to be heard
 on the _____ day of _____, 189—,
 during term time, the following evi-
 dence was introduced for and against
 the same:

(Here insert the evidence introduced
 for and against the motion, provided an
 assignment of error be based thereon;
 and if not, the same to be omitted.)

Upon consideration of said motion by
 the court, the same was overruled, to
 which ruling the defendant then and
 there excepted.

Note.—If there be any other motion
 before the trial of the cause, the rul-
 ing upon which has been excepted to
 and assigned as error for the appel-
 late court, it should be inserted in the
 bill of exceptions in a manner similar
 to that above stated in cases of ap-
 plications for change of venue or mo-
 tion for continuance.

On the _____ day of _____,
 189—, during a term of said court, the
 issues joined between the said parties
 came on to be tried before a jury, and
 thereupon the plaintiff produced and
 offered in evidence the following
 paper:

(Here set out the paper in full.)

But to the reading of the same in
 evidence the defendant then and there
 objected on the grounds:

(Here state the grounds of the ob-
 jection.)

But the said judge overruled said
 objections, and admitted the said paper

in evidence, to which ruling the defendant then and there excepted.

And the said plaintiff further to maintain the issues on his behalf then and there produced as a witness J. K., and offered to prove by him that:

(Here state in substance what was intended to be proven.)

But to the admission of the said J. K. as a witness (or to the admission of the said matters so offered to be proven) the defendant did then and there object, on the grounds that:

(Here state the grounds of objection.)

But the said judge did then and there overrule said objections, and admitted said evidence, to which ruling defendant then and there excepted.

Note.—All rulings of the court admitting or rejecting evidence either for or against the plaintiff or defendant that are excepted to and assigned as error for the appellate court must be stated in similar manner to the above.

The said parties having concluded and submitted their evidence, the court thereupon gave the following instructions to the jury at plaintiff's request (or on its own motion, as the case may be).

(Here insert the charge in full that is excepted to, with its proper number.)

To the giving of which said charge the defendant excepted.

The said charge was predicated upon the following state of facts, or facts that the testimony tended to prove:

(Here give briefly and concisely the substance of such portions only of the proof as are pertinent to the charge, and upon which it was predicated.)

Thereupon the defendant requested the court to give the following charge to the jury:

(Here give the charge in full, with its proper number.)

But the court refused to give said charge, to which refusal the defendant excepted.

The said charge was predicated upon the following state of facts, or facts that the testimony tended to prove:

(Here give briefly and concisely the substance of such portions only of the proof as are pertinent to the charge, and upon which it was predicated.)

Note.—All charges given or refused, upon which exceptions are taken, and upon which errors are assigned for the appellate court, may be inserted as in-

dictated above, and if the proof or statement of what the evidence tended to prove is sought to be given, the same must follow each charge predicated upon it. If the supposed injury of any charge given or refused by the court, that is assigned as error, is deemed to be corrected by another charge or charges not excepted to and not assigned as error, the judge, in settling the bill of exceptions, shall at the request of defendant in error, or of his own motion, insert such charge or charges in the bill of exceptions immediately following the charge excepted to, unless such correcting charge or charges were given in writing and made a part of the record as provided by statute. In the event the exhibition of any charge or charges that may have been given orally, and not excepted to, shall be necessary to the full and complete presentation of any assignment of error relied on, such charges shall be inserted here.

The said cause having been submitted to the jury by the court under its charges, and the jury having rendered a verdict for the plaintiff against the defendant, the defendant on the _____ day of _____, 189—, at the term of the court aforesaid, made and submitted the following motion for a new trial:

(Here insert the motion in full.)

On the _____ day of _____, 189—, at the term aforesaid (or at a subsequent term, if the motion be continued) the said motion coming on to be heard, the following evidence was introduced for and against the same:

(Here insert any evidence that may have been introduced after the trial for and against the motion.)

Upon consideration of said motion the court, on the _____ day of _____, 189—, during the said term (or at a subsequent term, if the motion be continued) denied the same, to which ruling the defendant excepted.

(Here insert assignment of errors presented to the judge at the time of applying for the settlement of the bill of exceptions.)

And inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record, the said defendant did on the _____ day of _____, 189—, during said term (or on the

— day of —, 189—, after the expiration of said term, by virtue of a special order herein made) propose this his bill of exceptions to the said rulings of said judge and request him to sign the same, which, after due notice to the opposite party or his attorney, is done this — day of —, 189—.

Judge of the circuit court of the — judicial circuit of Florida.

Note.—If there is an assignment of error to be insisted on in the appellate court predicated on the refusal of the court to grant a new trial on the ground that the verdict is contrary to the evidence, or not supported thereby, or if the defendant shall have demanded in writing that all the evidence adduced at the trial shall be submitted to the appellate court, then an "Evidentiary Bill of Exceptions" will become necessary, to be settled and signed by the judge, entirely separate and distinct from the foregoing bill of exceptions, and shall contain all of the evidence, and nothing but the evidence adduced at the trial of the cause, and to be inserted here immediately following the foregoing bill of exceptions. Rules of Supreme Court, 38 Fla. 24.

Evidentiary Bill of Exceptions. Florida Supreme Court Rules (c).

In the circuit court of —, — county, Florida.

Evidentiary bill of exceptions containing the evidence adduced on the trial of the cause wherein A. B. was plaintiff and C. D. was defendant, made up and settled at the instance of the plaintiff in error in support of an assignment of error predicated on the refusal of the court to grant a new trial on the ground that the verdict was contrary to the evidence, or not supported thereby (or on the written demand of the defendant in error, as the case may be).

Thereupon the plaintiff produced and caused to be sworn — (give name of witness), who testified as follows:

(Here give testimony of witness in narrative form, omitting repetitions and questions, except when the trial judge shall be satisfied that the questions, together with the answer, are indispensable for a proper understanding of the case by the appellate court.)

Thereupon the plaintiff introduced

and read in evidence the following paper:

(Here set out the paper in full.)

The plaintiff offered and read in evidence the following written deposition of — (give name of witness), taken upon commission in his behalf:

(Here give deposition of witness in narrative form, omitting interrogatories, unless the judge shall deem them indispensable to a proper understanding of the case by the appellate court, and omitting the commissions, instructions, jurats, signatures or certificates accompanying such depositions. If the interrogatories are given, the answer to each must follow immediately after it.)

Note.—Testimony in behalf of defendant to be set forth in the same way, and all exceptions to evidence of either party, or the rulings thereon by the court, to be omitted from this evidentiary bill of exceptions. If the evidentiary bill of exceptions be made up and settled on the written demand of the defendant in error, such demand shall be inserted here at the close of the evidence, and before the certificate of the judge.

I, —, judge of the circuit court of the — judicial circuit of Florida, do hereby certify that the foregoing evidentiary bill of exceptions contains all the evidence adduced at the trial in the above stated cause.

Judge of the circuit court of the — judicial circuit of Florida.

Rules of Supreme Court, 38 Fla. 27.

VII. Indorsement on Bill of Exceptions.

Take notice that the within is a copy of the bill of exceptions proposed on behalf of the plaintiff (or defendant) herein.

—, plaintiff's attorney.

2 Abb. Forms 484.

Note.—Bills of exceptions in most jurisdictions are understood to include what in some jurisdictions are designated as case, or case on appeal. For such jurisdictions further reference is here made to "Case on Appeal."

VIII. Amendments To Bill of Exceptions.

(Please take notice that the plaintiff (defendant) proposes the following amendments to the bill of exceptions):

Amendment 1. On page (2), line (21), strike out the words (state them

particularly), and insert (state what).
Amendment 2. On page (6), line (7), after the words (state them), insert the words (insert them).

(And so throughout as the case may require.)

_____, attorney for plaintiff.

Burr. App. 36, §70.

IX. Notice of Settlement of Bill of Exceptions.

Please to take notice that the bill of exceptions made and served on you in this cause, together with the amendments proposed thereto, will be settled before his honor (name the judge), at his chambers in (name the place), on the _____ day of _____ next (or instant). Dated, etc. Burr. App. 201.

X. Judge's Certificate To Bill of Exceptions.

(The foregoing contains all the evidence, objections and exceptions given, made and taken on both sides at the trial of said action.) And because the foregoing does not appear of record, I the undersigned, the circuit judge who presided at said trial, have on due proof that the foregoing proposed bill of exceptions was duly served (or that the amendments thereto allowed have been duly and fully incorporated therein), settled and signed this bill of exceptions, to the end that the same may be made a part of the record herein, this _____ day of _____, 19____, _____, circuit judge.

See also I and III.

Note.—The matter in parentheses should be incorporated in the bill or set out in the foregoing certificate, according to the practice of the particular jurisdiction.

BILLS OF PARTICULARS.

I. Proceedings To Obtain by Defendant, 221

- A. *Affidavit*, 221
- B. *Alternative Order*, 222
- C. *Proof of Service of Order and Default*, 222
- D. *Peremptory Order*, 222

II. Bill of Particulars by Plaintiff, 222

III. Proceedings for Further Particulars, 222

- A. *Affidavit*, 222
- B. *Order*, 223

IV. Proceedings on Failure To Furnish Particulars, 223

- A. *Notice of Motion To Preclude Evidence*, 223
- B. *Order Precluding Evidence*, 223
- C. *Notice of Motion To Dismiss*, 223
- D. *Order To Serve or To Dismiss*, 223

V. Proceedings To Obtain by Plaintiff, 223

- A. *Affidavit for Particulars of Counterclaim*, 223
- B. *Alternative Order*, 224
- C. *Peremptory Order*, 224

VI. Proceedings To Obtain Copy of Account, 224

- A. *Demand*, 224
- B. *Affidavit To Stay and To Extend Time*, 224
- C. *Copy of Account*, 224
- D. *Verification*, 224

CROSS-REFERENCE:

JUDGMENTS:

Judgment Dismissing Complaint (Non Pros.) for Failure To Furnish Particulars.

I. Proceedings To Obtain by Defendant.

- A. *Affidavit To Obtain Order for a Bill of Particulars*.

Y. Z., the defendant in this action, being duly sworn, says:

I. That the complaint herein was served on the deponent (or on the attorney of this deponent), on the _____ day of _____, and that the cause of action alleged in the complaint is (here state it briefly).

II. That said cause of action is alleged generally in the complaint, and without stating the particulars of the claim (or the particulars of the breaches of said bond, or the particulars of the property which the plaintiff seeks to recover).

III. That he intends in good faith to defend this action, and that he is ignorant of the particulars of the claim (or of the breaches, etc., as above) alleged by the plaintiff, and that it is necessary and material to his defense in this cause (and to enable him to answer herein), that he shall have rendered to him a bill of the particulars thereof; as he is advised by Q. R., his counsel, and verily believes.*

IV. Deponent further says that he has appeared in the action, but has not answered (or otherwise show the state of the cause, e. g.), that the cause

is at issue by the service of his answer herein, on the _____ day of _____; and that the reason why this application was not sooner made is as follows: (stating the excuse for delay). (If an extension of time to plead is sought for, add):

V. That the time to answer or demur herein will expire on _____, and that no extension thereof has been had herein, by stipulation or consent (except, stating what, if any); and that this defendant has fully and fairly stated the case to Q. R., his counsel, who resides at _____ (specifying his residence); and that he has a good and substantial defense on the merits to the action, as he is advised by his said counsel, after such statement, and verily believes. 2 Abb. Forms 183.

B. Alternative Order for Plaintiff To Furnish Bill of Particulars.

Upon the summons and complaint in this action, and the annexed affidavit, let the plaintiffs (or their attorneys) deliver to the defendant's attorney an account in writing of the particulars of the plaintiff's demand, for which this action is brought (or of the breaches of the bond on which this action is brought, or of the property to recover which this action is brought), on or before the _____ day of _____, at _____ o'clock; or show cause at that time, before me, at _____, why he should not deliver such account; and in the meantime let all further proceedings on the part of the plaintiff be stayed (and let the defendant have _____ days further time to answer after the _____ day of _____). 2 Abb. Forms 184.

C. Proof of Service of Alternative Order and Default.

M. N., being duly sworn, says that he is managing clerk in the office of the defendant's attorney herein; that on the _____ day of _____, at _____, he served a copy of the annexed affidavit and alternative order for a bill of particulars upon the plaintiff's attorney herein, by delivering the same personally to him (or other mode); and that no bill of particulars in this action has been served on the defendant's attorney herein. 2 Abb. Forms 185.

D. Peremptory Order That Plaintiff Serve Bill of Particulars.

On the foregoing order to furnish a bill of particulars, or to show cause,

and on proof of service thereof (and default therein), and on motion of Q. R., counsel for Y. Z., and hearing S. T. for A. B. (or and no one appearing) in opposition thereto:

Ordered, * that the plaintiff's attorney deliver to the defendant's attorney an account in writing of the particulars of the plaintiff's demand for which this action is brought (or of the breaches of the bond on which this action is brought, or of the property to recover which this action is brought), within _____ days; and in the meantime let all further proceedings in this action on the part of the plaintiff be stayed. (And it is further ordered, that the defendant have _____ days further time from that date, or from the service of such bill, if sooner served, within which to answer the complaint). 2 Abb. Forms 186.

II. Bill of Particulars Furnished by a Plaintiff.

To Q. R., defendant's attorney.

This action is brought to recover _____ dollars, being (the balance) due to the plaintiff for work and materials at _____, as follows (here set out the items with certainty and precision).

(Or, that this action is brought upon a bond given by the defendant for the faithful performance of duty by M. N. as a clerk of the plaintiff, and his accounting for moneys intrusted to him, and that the particulars of the breaches of said obligation are as follows, etc.).

Above are the particulars of the plaintiff's demand in this action. 2 Abb. Forms 186.

III. Proceedings for Further Particulars.

A. Affidavit To Obtain Further Bill of Particulars.

Y. Z., the defendant herein, being duly sworn, says that the plaintiff herein, in pursuance of an order requiring him so to do (or voluntarily, or on request of the defendant's attorney), served upon the defendant's attorney a bill of particulars, of which the annexed is a copy; and that said bill is defective, and insufficient to enable the defendant to answer (or to proceed to trial), in that it does not state the dates of the several items (or otherwise specifying the defect); and that a further and better bill of particulars in this respect is essential and material

to the defense of the defendant in this action. 2 Abb. Forms 187.

B. Order for Further Bill of Particulars.

On the annexed affidavit, let the plaintiff's attorney deliver to the defendant's attorney a further account in writing of the particulars of the plaintiff's demand for which this action is brought, within _____ days, specifying the dates of the said several items (or otherwise pointing out the defect to be supplied); and in the meantime let all further proceedings in this action on the part of the plaintiff be stayed. (And it is further ordered that the defendant have _____ days further time from that date, or from the service of such bill, if sooner served, within which to answer the complaint). 2 Abb. Forms 188.

IV. Proceedings on Failure to Furnish Particulars.

A. Notice of Motion to Preclude Evidence by Reason of Defective Bill.

Please take notice that on the further account heretofore served by the plaintiff upon the attorney of the defendant, and upon the affidavit with a copy of which you are herewith served, the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, will be moved for an order that the plaintiff be precluded from giving evidence, on the trial of this action, of the following items contained in the further account served by said plaintiff upon the attorney of the defendant, to-wit (here specify particularly the items which are defectively stated in the account); and for such other or further relief as may be just (and for the costs of this motion). 2 Abb. Forms 188.

B. Order Precluding Evidence by Reason of Defective Bill.

At a special term of the _____ court, held at the court house in the city of _____, on the _____ day of _____, 18—. Present, Hon. M. N., Justice.

On reading and filing the annexed notice of motion and affidavit (and on proof of due service thereof), and on motion of Q. R. for the defendant, and after hearing S. T. for the plaintiff (or no one appearing) in opposition thereto:

Ordered, that the plaintiff be precluded from giving any evidence, on the trial of this action, in support of said account (or in support of the demand for _____, mentioned in said account). 2 Abb. Forms 189.

C. Notice of Motion for Judgment of Dismissal for Not Furnishing Bill of Particulars.

Upon the foregoing peremptory order for a bill of particulars, and the annexed proof that none has been furnished, take notice that I shall move the court, on the _____ day of _____, at a special term to be held at _____, at _____ o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order that the defendant have judgment in this action dismissing the complaint (or judgment in this action on the first cause of action mentioned in the complaint); and for such other relief as may be just, with costs of this motion. 2 Abb. Forms 189.

D. Order to Serve Bill of Particulars or That Defendant May Dismiss Complaint.

(As in Form I, D, to the *), that plaintiff's attorney, within (ten) days after service of this order, deliver to defendant's attorney an account in writing of the particulars of said plaintiff's demand (or a further account of, etc., as in III, B; and that in default thereof the defendant have leave to enter judgment dismissing the plaintiff's complaint, with costs and disbursements to be taxed (and with _____ dollars costs of this motion). 2 Abb. Forms 190.

V. Proceedings to Obtain by Plaintiff.

A. Affidavit on the Part of the Plaintiff to Obtain Particulars of Defendant's Counterclaim or Set-Off.

A. B., plaintiff in this action, being duly sworn, says:

I. That the defendant herein has served his answer, setting up a counterclaim (or a set-off against the plaintiff's claim) arising upon (here state the nature of the cause of action or set-off), which is alleged generally in his answer, without stating the particulars thereof.

II. Deponent further says, that he intends in good faith to resist said counterclaim or set-off, but that he is ignorant of the particulars of the same, and that he is advised and believes

that it is necessary and material to his resisting the same (or to enable him to reply thereto), that he should have rendered to him a bill of particulars thereof.

III. Deponent further says, that he has not replied in this action (or that he has heretofore replied in this action), but the reason that this application is not sooner made is (here state excuse; and also, if extension of time to plead is desired, oath to merits, etc., as in I, A). 2 Abb. Forms 191.

B. *Alternative Order for Defendant To Furnish Bill of Particulars.*

On the pleadings in this action and the annexed affidavit, let the defendant's attorney deliver to the plaintiff's attorney an account in writing of the particulars of the defendant's demand, which he has pleaded as a counterclaim (or as a set-off), by the _____ day of _____, at _____ o'clock, or show cause at that time before me (or, before one of the justices of this court), at _____, why he should not deliver such account; or in default of doing so, why he should not be precluded from giving evidence at the trial in support of said counterclaim or set-off; and that in the meantime all further proceedings in this cause be stayed (and let the plaintiff have _____ days further time to reply, after compliance with this order). 2 Abb. Forms 191.

C. *Peremptory Order That Defendant Serve Bill of Particulars.*

(As in I, D, to the *, continuing):

Ordered, that the defendant's attorney deliver to the plaintiff's attorney an account in writing of the particulars of the defendant's demand which he has pleaded as a counterclaim (or as a set-off), within _____ days; or in default thereof, that the defendant be precluded from giving evidence at the trial in support of said counterclaim or set-off. 2 Abb. Forms 192.

VI. Proceedings To Obtain Copy of Account.

A. *Demand of Copy.*

(Address to plaintiff's attorney.)

I hereby demand that you deliver to me a (verified) copy of the account referred to in the complaint (or the answer) in this action.

(Signature and address of the attorney.)

2 Abb. Forms 192.

B. *Affidavit To Obtain Stay of Proceedings and Extension of Time on Demanding Copy of Account.*

Y. Z., defendant above named, being duly sworn, says that this action was commenced by the service of a summons and complaint on this defendant, on the _____ day of _____; that the action is brought to recover the sum of _____ dollars on an alleged account (here state cause of action, e. g., thus), for goods alleged to have been sold and delivered by the plaintiff to this defendant; that the particulars respecting such sale and delivery do not appear in the plaintiff's complaint, and that this defendant has demanded a copy of said account, of which demand a copy is annexed; and that this defendant is advised by his counsel, Q. R., who resides at, etc., and verily believes that he will not be able to answer the same properly without a copy of said account (continue as in I, A, from the *). 2 Abb. Forms 193.

C. *Copy of Account.*

(Here set forth the account referred to in the pleading.)

(Address to the attorney.)

Please take notice, that the above is a copy of the account demanded by you (or referred to in the complaint, or answer) in this action. 2 Abb. Forms 193.

D. *Verification.*

A. B., the said plaintiff, being duly sworn, says that the above account is a true copy of the account referred to in the complaint (or answer) in this action. 2 Abb. Forms 194.

BILLS OF QUIA TIMET.—See QUIA TIMET.

BILLS OF REVIEW.

I. Bills of Review, 225

A. *On Error Apparent in Bill*, 225

B. *On Discovery of New Matter*, 225

II. Bills in Nature of Bill of Review, 226

For other forms, see 4 STANDARD PROC. 448, 449, 465.

CROSS-REFERENCES:

DEMURRER:

Demurrer to Bill of Review and Supplemental Bill.

EQUITY JURISDICTION AND PROCEDURE:

Petition for Leave To File a Bill

of Review on Ground of Discovery of New Matter;
Affidavit of New Matter Discovered for Bill of Review.

I. Bills of Review.

A. Bill of Review, Error Apparent.

Humbly complaining, sheweth unto your honors your orator A. B., of, etc., that on the _____ day of _____, W. S., of, etc., the defendant, hereinafter named, exhibited his bill of complaint in this honorable court against your orator, and thereby set forth that, etc. (here insert the original bill). And your orator being served with the proper process for that purpose, appeared and put in his answer to the said bill, to the effect following (here recite the substance of answer). And the said W. S. replied to the said answer, and issue having been joined, and witnesses examined, and the proofs closed (or the said W. S. joined issue on the answer and), the said cause was set down to be heard, and was heard, before your honors, on the _____ day of _____, when a decree was pronounced, which was afterwards passed and entered, in which it was set forth and recited that it was at the hearing on your orator's behalf, insisted that your orator had, by his answer, set forth that, etc. (here insert the recital and decree). And the said decree has since, and on or about the _____ day of _____, been duly signed and enrolled, which said decree your orator insists is erroneous, and ought to be reviewed, reversed, and set aside for many apparent errors and imperfections, inasmuch as it appears by your orator's answer, set forth in the body of said decree (here insert the apparent errors). And no proof being made thereof, no decree ought to have been made or grounded thereon, but the said bill ought to have been dismissed for the reasons aforesaid. In consideration whereof, and inasmuch as such errors and imperfections appear in the body of the said decree, and there is no proof on which to ground any decree to set aside the said rent-charge, your orator hopes that the said decree will be reversed and set aside, and no further proceedings had thereon. To the end, therefore, that the said W. S., etc.; and that for the reasons and under the circumstances aforesaid, the said decree may be reviewed, reversed, set aside, and

no further proceedings taken thereon, and your orator permitted to remain in the undisturbed possession and enjoyment of the said rent-charge.

May it please, etc. (Prayer for subpoena in usual form.) 3 Dan. Ch. Pl. (Perkin's ed.) 2095.

B. Bill of Review on Discovery of New Matter.

Humbly complaining, sheweth unto your honors your orator, A. B., of, etc., that on or about _____, C. D., of, etc., the defendant hereinafter named, exhibited his bill of complaint in this honorable court against your orator, and thereby set forth that, etc. (Here insert the original bill.) And your orator being duly served with process for that purpose, appeared and put in his answer to the said bill, to the effect following: (Here state the substance of the answer.) And the said C. D. replied to the said answer, and issue having been joined and witnesses examined, and the proofs closed (or, the said C. D. joined issue on the answer, and) the said cause was set down to be heard, and was heard before your honors, on the _____ day of _____, when a decree was pronounced, whereby your honors decreed that your orator's title to the premises was valid and effectual, after which the said C. D. petitioned your honors for a rehearing, and the said cause was accordingly reheard, and a decree of reversal made by your honors on the ground of the said C. D. being the heir-at-law of the said E. F., deceased, and which said decree of reversal was afterwards duly signed and enrolled, as by the said decree and other proceedings now remaining filed as of record in this honorable court, reference being thereto had, will appear. And your orator sheweth unto your honors, by leave of this honorable court first had and obtained for that purpose, by way of supplement, that since the signing of the said decree of reversal, your orator has discovered, as the fact is, that the said E. F. was, in his lifetime, seized in his demesne as of fee, of and in the hereditaments and premises in question in the said cause, and that the said E. F., while so seized, and when of sound mind, duly made and published his last will and testament in writing, bearing date on the _____ day of _____, which was executed by him, and attested according to law,

and thereby gave and devised unto the said J. W., his heirs and assigns forever, to and for his and their own absolute use and benefit, the said hereditaments and premises in question in the said cause (to which your orator claims to be entitled as purchaser thereof from the said J. W.) And your orator further sheweth unto your honors, that since the said decree of reversal was so made, signed, and enrolled, as aforesaid, and on or about ———, the said C. D. departed this life, intestate, leaving G. H., of, etc. (the defendant hereinafter named) his heir-at-law, who, as such, claims to be entitled to the said hereditaments and premises, in exclusion of your orator. And your orator is advised and insists that, under the aforesaid circumstances, the said last-mentioned decree, in consequence of the discovery of such new matter as aforesaid, ought to be reviewed and reversed; and that the first decree, declaring your orator entitled to the said hereditaments and premises, should stand, and be established and confirmed; and for effectuating the same, the said several proceedings, which became abated by the death of the said C. D., should stand and be revived against the said G. H., as his heir-at-law.

To the end, therefore, etc. And that the said suit may be revived against the said G. H., or that he may show good cause to the contrary, and that the said last decree, and all proceedings thereon, may be reviewed and reversed, and that the said first-mentioned decree may stand and be established and confirmed, and be added to, by the said will being declared a good and effectual devise of such hereditaments and premises, as aforesaid; and that the said G. H. may be decreed to put your orator into possession of the said hereditaments and premises, and in the same situation, in every respect, as far as circumstances will now permit, as your orator would have been in case such last decree had never been pronounced and executed; and that your orator may have such other, etc. May it please, etc. (Pray subpoena to revive and answer against the said G. H.) 3 Dan. Ch. Pl. & Pr. (Perkin's ed.) 2096.

II. Supplemental Bill in Nature of Bill of Review.

(Commence as in last form.) Whereby your honors decreed that, etc. (state

the effect of the decree), as by the said proceedings and decree now remaining as of record, in this honorable court, reference being thereunto had, will appear. And your orator further sheweth unto your honors (state the supplemental matter, by leave of the court, etc.), that the said decree has never hitherto been signed and enrolled, and in consequence of the discovery of such new matter as aforesaid, your orator is entitled, as he is advised, to have the said cause heard thereon by your honors, when reheard on the said original bills (a petition for that purpose having been presented by your orator, and acceded to by your lordships) in the same manner as if such new matter had been put in issue in the said original suit. To the end, therefore, etc. (Interrogate as to supplemental matters.)

And that the said will may be established, and declared a valid and effectual devise of the said hereditaments and premises, and that the said cause may be heard on such new and supplemental matter as aforesaid, at the same time that it is reheard on the said original bill; and that your orator may have such further and other relief as, under the circumstances hereinbefore particularly mentioned to your honors, shall seem meet, and the nature of this case, as it hereby appears, may require. May it please, etc. 3 Dan. Ch. Pl. & Pr. (Perkin's ed.) 2097.

Note.—In nature of bill of review where decree is not signed and enrolled. 2 Dan. Ch. Pl. & Pr. 1627.

BILLS OF REVIVOR.—See REVIVOR.

BILLS TO ENFORCE DECREES.

Plea to Bill To Carry Decree Into Execution.

This defendant by protestation not confessing or acknowledging all, or any, of the matters and things in the said complainant's bill of complaint mentioned and contained to be true, in such sort, manner and form as the same are therein set forth and alleged for plea to the whole of the said bill says that he is advised that the complainant by his bill, claims to be entitled to divers land in his said bill mentioned, for the term of his life, by virtue of the last will and testament of A. B., in the said bill mentioned, to bear date the ——— day of ———, and prays that he may have

the benefit of a certain decree of this honorable court, made in a cause wherein the said A. B. was complainant, and this defendant was defendant, and that such decree may be carried into execution; to which bill this defendant doth plead, and for plea says, that the will of the said A. B., in the complainant's bill mentioned, was not duly executed and attested, so as to pass real estates, and therefore the lands therein, and in the said complainant's said bill mentioned, descended to E. D., of, etc., as the heir at law of the said A. B.; wherefore this defendant is advised that the complainant is not entitled to have the benefit of the decree, or to have the same carried into execution; and this defendant demands the judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed, with his reasonable costs in this behalf sustained. 2 Barb. Ch. Pr. 558.

Note.—For bill see 4 STANDARD PROC. 465.

BILLS TO IMPEACH JUDGMENTS AND DECREES.

For other forms, see 4 STANDARD PROC. 480.

Bills To Set Aside Decree for Fraud.

Humbly complaining, sheweth unto your honors your orator A. B., of, etc., that T. B., of, etc., deceased, your orator's late father, during his life, and on or about the _____ day of _____, was seized in his demesne, as of fee, of and in the real estate hereinafter particularly described; and by indenture of that date, made between the said T. B., of the one part, and C. D., of, etc., the defendant hereinafter named, of the other part, the said T. B., in consideration of \$_____, bargained, sold and conveyed unto the said T. B., his heirs and assigns, all, etc. (describe the mortgaged premises), subject to redemption on payment of the said principal money and lawful interest at the time therein mentioned, and long since past; as by the said indenture, reference being thereto had, will more fully appear. And your orator further sheweth that the said T. B. departed this life on or about _____, leaving your orator his heir at law, and only child, then an infant

under twenty-one years of age, that is to say, of the age of seven years, or thereabouts, him surviving. And your orator further sheweth, that during your orator's minority, on or about _____, the said C. D. filed his bill of complaint in this honorable court, against your orator, for a foreclosure of your orator's right and equity of redemption in the said mortgaged premises; but your orator was not represented in such bill to be then an infant; and the said C. D. caused and procured one L. M., since deceased, who acted in the management of the affairs of your orator's said father, to put in an answer in the name of your orator, and without ever acquainting your orator, or any of his friends or relations, therewith; in which said answer a much greater sum was stated to be due from your orator, on the said mortgage security, to the said C. D., than in fact was really owing to him, and for which it was untrue stated that the said mortgaged premises were an insufficient security; and in consequence of such answer being put in, the said C. D. afterwards, in conjunction with the said L. M., on or about _____, obtained an absolute decree of foreclosure against your orator, which your orator has only lately discovered, and of which your orator had no notice, and in which said decree no day is given to your orator, who was an infant when the same was pronounced, to show cause against it when he came of age; as by the said proceedings now remaining as of record in this honorable court, reference thereto being had, will more fully appear. And your orator further shows that your orator, on the _____ day of _____ last, attained the age of twenty-one years, and shortly afterwards, having discovered that such transactions had taken place during his minority as aforesaid, by himself and his agents, represented the same to the said C. D., and requested him to deliver up possession of the said mortgaged premises to your orator, on being paid the principal money and interest, if any, actually and fairly due thereon, which your orator offered, and has at all times been ready to pay, and which would have been paid by the personal representatives of the said T. B., out of his personal assets, during your orator's minority, had any application been made for that purpose. And

your orator hopes that the said C. D. would not have insisted on the said decree of foreclosure, so fraudulently obtained as aforesaid, but would have permitted your orator to redeem the said mortgaged premises, as he ought to have done. But now so it is, etc., the said C. D., etc., pretends that the said decree of foreclosure was fairly and properly obtained, and that a day was therein given to your orator, when of age, to show cause against the same, but your orator has neglected to do so, and that your orator is neither entitled to redeem, or to travel into the said accounts; whereas your orator charges the contrary thereof to be true, that your orator only attained the age of twenty-one years on the said _____ day of _____, and that he has now since discovered the several matters aforesaid by searching in the proper offices of this honorable court; and your orator expressly charges that, under the circumstances aforesaid, the said decree, so fraudulently obtained, as hereinbefore mentioned, ought to be set aside, and your orator ought not to be precluded thereby, or in any other manner, from redeeming the said mortgaged premises, of which the said C. D. has possessed himself, by such means as aforesaid. All which actings, etc. In consideration whereof, etc. To the end, etc.; and that the said decree of foreclosure may, for the reasons and under the circumstances aforesaid, be set aside by this honorable court, and declared to be fraudulent and void; and that an account may be taken of what, if anything, is now due to the said C. D. for principal and interest on the said mortgage; and that an account may also be taken of the rents and profits of the said mortgaged premises, which have, or without his wilful default, might have been received by or on behalf of the said C. D., and if the same shall appear to have been more than the principal and interest due on the said mortgage, then that the residue thereof may be paid over to your orator, and that your orator may be at liberty to redeem the said mortgaged premises, on payment of the principal and interest, if any, remaining due on the said security; and that the said C. D. may be decreed on being paid such principal money and interest, to deliver up possession of the said mortgaged premises free from all incumbrances, to your orator, or as he

shall appoint, and to deliver up all title deeds and writings relating thereto. (General relief.) May it please, etc. (Prayer for subpoena against C. D., etc.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2099.

BILLS TO PERPETUATE TESTIMONY.—See PERPETUATION OF TESTIMONY.

BLASPHEMY.

Indictment at Common Law for Verbal Blasphemy.

Middlesex. The jurors for our lord the king upon their oath present, that T. D., late of, etc., not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and contriving and intending to scandalize and vilify the true and Christian religion, as received and publicly professed within this realm of England; and to blaspheme God and our Lord Jesus Christ the Savior of the world, on, etc., at, etc., aforesaid, having and holding in his hand a certain cup of wine, unlawfully, wickedly, and blasphemously, in the presence and hearing of divers liege subjects of our said lord the king, spoke, pronounced, and with a loud voice published these profane and blasphemous words following, that is to say, "Here's a health to Father, Son, and Holy Ghost" (meaning Almighty God, Jesus Christ the Savior of the world, and the Holy Spirit), and immediately thereupon, then and there drank the wine from the said cup, to the great dishonor of Almighty God, in contempt and disgrace of the Holy Trinity, to the great scandal of the profession of the Christian religion, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. 2 Chit. Cr. L. 13.

BONDS.

I. Declarations, 230

- A. *On Bond*, 230
- B. *On Several Bonds*, 230
- C. *On Bond With Condition, Assigning Breaches*, 230
- D. *On Bond To Perform Covenants*, 231
- E. *On Bond for Costs*, 231

II. Complaints on Bonds, 232

- A. *For Payment of Money*, 232

- B. *For Money, Pleading Legal Effect*, 232
- C. *By Surviving Obligee*, 232
- D. *Pleading Substance*, 232
- E. *Other Than for Payment of Money*, 232
- F. *For Rent, Against Principal and Surety*, 232
- G. *For Fidelity of Clerk*, 233
- H. *For Accounting of Subscription Agent*, 233
- I. *For Refusal To Comply With Award*, 234
- J. *For Revoking Arbitrator's Powers*, 234
- K. *For Costs*, 235
- L. *To Discharge Attachment Against Vessel*, 235
- M. *To Stay Proceedings*, 236
- N. *Administration Bond*, 236

III. Plea of Non Est Factum, 237

IV. Answers, 237

- A. *Failure of Consideration*, 237
 - B. *Condition Fulfilled*, 237
 - C. *Failure of Consideration*, 238
- For other forms, see 4 STANDARD PROC. 496, 497, 505.

CROSS-REFERENCES:

ADMIRALTY:

See Stipulations in Admiralty.

ARREST IN CIVIL CASES:

Bail Bond.—See Undertakings in Arrest in Civil Cases.

ATTACHMENT:

Bond on Attachment (a, b, c);
Claim Bond by Third Person in Attachment;
Bond To Discharge Attachment.

BASTARDY PROCEEDINGS:

Bond for Compliance With Judgment in Bastardy;
Bond To Indemnify Town in Bastardy.

BILLS AND NOTES:

Complaint on Negotiable Bond Payable to Bearer.

DECLARATION AND COMPLAINT:

Complaint on Undertaking To Discharge Attachment;
Complaint on Undertaking in Claim and Delivery To Secure Return of Property, Etc.

DEFAULT:

Judgment Record on Default for Not Pleading in Debt, on Writ of Inquiry.

EMINENT DOMAIN:

Bond for Payment of Assessed Damages in Condemnation Proceedings.

FORTHCOMING BONDS:

Forthcoming Bond, Condition of.

GUARDIAN AND WARD:

Bond of General Guardian;
Bond of Guardian on Sale of Land of Minor.

HABEAS CORPUS:

Bond on Habeas Corpus to Sheriff for Transportation of Prisoner.

INFANTS:

Bond by Prochein Ami to Infant for Moneys Which May Be Recovered.

INHERITANCE:

Declaration Against Heir on Bond of His Ancestor.

INJUNCTIONS:

Bond on Obtaining Injunction To Stay Proceedings.

INQUIRY, WRIT OF:

Writ of Inquiry in Debt on Bond.

JUDICIAL SALES:

Bond Required as Condition of Ordering Resale.

NE EXEAT:

Bond on Arrest.

OFFICERS:

Complaint, Assignment of Breach in Sheriff's Bond for Neglect To Levy;

Complaint, Assignment of Breach in Sheriff's Bond, Neglect To Sell;
Complaint, Assignment of Breach of Bond of County Treasurer;
Complaint, Assignment of Breach in Sheriff's Bond, Neglect To Return;
Complaint, Allegation of Judgment Against Sheriff.

PARTITION:

Bond of Guardian in Partition.

PERFORMANCE:

Plea of Performance in Debt on Bond;
Plea in Excuse of Performance in Debt on Bond, Non-performance of Condition Precedent.

RECEIVERS:

Receiver's Bond.

REMOVAL OF CAUSES:

Security Offered by Petitioner on Removal.

REPLEVIN:

Plaintiff's Bond in Replevin;
Plaintiff's Second Bond in Replevin;
Defendant's Bond in Replevin;
Exceptions to Sureties in Replevin Bond.

SECURITY FOR COSTS:

Bond for Defendant's Costs;
Bond for Costs by Foreign Corporation;
Bond for Costs on Attachment Against Foreign Corporation.

SHERIFFS AND CONSTABLES:

Bond of Indemnity to Sheriff, Title of Property in Dispute.

TROVER AND CONVERSION:

Complaint for Conversion of a Bond by Assignee After Conversion.

WRIT OF ERROR:

Bond in Error.

I. Declarations.

A. *Declaration on Bond (commenced by capias).*

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea, that he render to the said plaintiff the sum of (five thousand) dollars (the penalty of the bond), of lawful money of the United States of America, which he owns to, and unjustly detains from him:

For that whereas the said defendant heretofore, to-wit, on the (first) day of (January), in the year one thousand eight hundred and (forty-five), date of the bond), to-wit, at (the city and county of New York), aforesaid, by his certain writing obligatory, sealed with his seal, and to the court here now shown, the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound unto said plaintiff, in the sum of (five thousand) dollars above demanded, to be paid to the said plaintiff.* Yet the said defendant (although often requested so to do), hath not as yet paid the said sum of (five thousand) dollars above demanded, or any part thereof, to the said plaintiff, but hath hitherto wholly neglected and refused, and still neglects and refuses so to do. To the damage of the said plaintiff, of (one thousand) dollars (a nominal sum), and therefore he brings his suit, etc. Burr. App. 270, §539.

B. *Declaration on Several Bonds.*

(First count on first bond, as in last form to the *. the sum named in the commencement being the amount of the penalties of both bonds; second count as follows): And whereas also, the said defendant, heretofore, to-wit, on, etc. (date of the other bond) at, etc., by his certain other writing obligatory, sealed, etc. (as in the first count (stating the penalty of the second bond), to the *, and then as follows): which said several sums of money, in the said first and second counts mentioned, amount together to the said sum of ——— dollars, above demanded (the amount

named in the commencement of the declaration). Yet the said defendant, etc. (proceed with the breach as in last form to the end). Burr. App. 271, §540; 2 Chit. Pl. 439.

C. *Declaration on Bond With Condition, Assigning Breaches.*

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea that he render to the said plaintiff the sum of (one thousand) dollars (the penalty of the bond), which he owes to, and unjustly detains from him: For that whereas the said defendant, heretofore, to-wit, on the (first day of January), in the year of our Lord one thousand eight hundred and (forty-five), (the date of the bond), at (Kingston in the county), aforesaid (the venue), by his certain writing obligatory, sealed with his seal, and to the court here now shown, the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound unto the said plaintiff, in the sum of (one thousand) dollars, above demanded, to be paid to the said plaintiff. And the said plaintiff, according to the form of the statute in such case made and provided, says that the said writing obligatory was and is subject to a certain condition thereunder written, whereby (if there be any recital in the bond, add: "after reciting to the effect following, to-wit, that," etc., stating the recital), it is provided that, etc. (here state the condition of the bond), then the said obligation to be void, otherwise to remain in full force and virtue. And the said plaintiff, for assigning a breach of the condition of the said writing obligatory, according to the form of the statute in such case made and provided, in fact says, that after the making of the said writing obligatory, to-wit, on, etc., at, etc. (the venue), aforesaid, the said defendant, etc. (here state the breach, and, if more than one, proceed as follows): And the said plaintiff, for assigning a further breach of the condition of the said writing obligatory, according to the form of the statute in such case made and provided, further says that, etc. (here state the further breach). By means of which said several premises, the said writing obligatory became forfeited, and the said plaintiff hath sustained damages to a large amount, to-wit, to the amount

(five hundred) dollars, and thereby an action hath accrued to the said plaintiff to demand and have, of and from the said defendant, the said sum of (one thousand) dollars (the penalty), above demanded. Yet the said defendant (although often requested, so to do), hath not as yet paid the said sum of (one thousand) dollars, above demanded, or any part thereof, to the said plaintiff, but hath hitherto wholly neglected and refused and still neglects and refuses so to do. To the damage of the said plaintiff of (one hundred) dollars, and therefore he brings his suit, etc. Burr. App. 271, §541; Till. Forms 385; 2 Chit. Pl. 444; Yeates' Forms 459, 471.

D. Declaration on Bond To Perform Covenants of Another Instrument.

(As in I, A, to the *, and then as follows): And the said plaintiff, according to the from of the statute in that case made and provided, says, that the said writing obligatory was made with a condition thereunder written, that if (here set out the condition verbatim, as thus): the above bounden C. D., did well and truly observe, etc., all and singular the covenants, etc., which, on the part of the said C. D., were or ought to be observed, etc., in a certain indenture bearing even date with the said writing obligatory, and made between the said A. B. of the one part, and the said C. D. of the other part, according to the true intent and meaning of the said indenture, then the said obligation was to be void, etc. And the said plaintiff further says, that by the said indenture in the condition of the said writing obligatory mentioned, which he, the said plaintiff, now brings here into court, he did demise unto the said defendant, all that, etc. (here set out the demise, and such of the covenants as have been broken, and assign breaches of them, as in a declaration in covenant, infra, and conclude thus): By reason of which said breaches the said writing obligatory became forfeited, and thereby an action hath accrued to the said plaintiff, to demand and have of and from the said defendant, the said sum of (one thousand) dollars (the penalty), above demanded. Yet the said defendant (although often requested so to do) hath not as yet paid the said sum of (one thousand) dollars, above demanded, or any part thereof, to the said plaintiff, but hath hitherto wholly neglected and refused,

and still neglects and refuses so to do. To the damage, etc. (conclude as in I, A). Burr. App. 272, §542; 2 Chit. Pl. 444.

E. Declaration on Bond for Costs.

Supreme Court. Of (July) term, in the year one thousand eight hundred and (forty-six). _____ county, ss:

C. D., plaintiff in this suit, by E. F., his attorney, comes into this court according to the form of the statute authorizing the commencement of suits by declaration, and complains of (A. B.) I. N. and I. S., defendants in this suit, of a plea that they render to the said plaintiff the sum of two hundred and fifty dollars, lawful money, etc., which they owe to, and unjustly detain from him. For that whereas the said defendants heretofore, to-wit, on the (fourth day of October), in the year of our Lord one thousand eight hundred and (forty-five), at _____, in the county aforesaid, by their certain writing obligatory, sealed with their seals, and to the court here now shown, the date whereof is the same day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiff, in the sum of two hundred and fifty dollars, above demanded, to be paid to the said plaintiff. And the said plaintiff, according to the form of the statute in such case made and provided, says, that the said writing obligatory was and is subject to a certain condition thereunder written, whereby after reciting to the effect following, to-wit, that the said (or "one") A. B. has commenced a certain suit in the supreme court of judicature against the said C. D. (the plaintiff in this suit) it is provided that if the above bounden (A. B.) shall pay on demand all costs that may be awarded to the defendant in the said suit, then the said obligation to be void, otherwise to remain in full force and virtue. And the said plaintiff for assigning a breach of the condition of the said writing obligatory, according to the form of the statute in such case made and provided, in fact says, that after the making of the said writing obligatory, to-wit, on, etc., at, etc., aforesaid, the sum of (sixty) dollars was awarded to the defendant in the suit mentioned in the condition of the said writing obligatory, for his costs in and about the defense of the said suit. And the said plaintiff in fact further says that afterwards, to-wit, on, etc., at, etc.,

the said sum of (sixty) dollars was duly demanded of the said (A. B.) but that the said A. B. did not nor would then pay the said last mentioned sum, nor hath he since paid the same, or any part thereof; and that the said costs, so awarded as aforesaid, still remain wholly unpaid. By means of which said several premises, the said writing obligatory became forfeited, and thereby an action hath accrued to the said plaintiff, to demand and have of and from the said defendants the said sum of two hundred and fifty dollars, above demanded. Yet the said defendants (although often requested so to do), have not as yet paid the said sum of two hundred and fifty dollars above demanded, or any part thereof to the said plaintiff, but have hitherto wholly neglected and refused, and still neglect and refuse so to do. To the damage of the said plaintiff, on one hundred dollars, and therefore he brings suit, etc. Burr. App. 277, §545; 5 Hill (N. Y.) 37, 41, 1 How. (U. S.) 100.

E. F., plaintiff's attorney.

II. Complaints on Bonds.

A. Complaint on Bond for Payment of Money Only.

I. That on the _____ day of _____, at _____, the defendant covenanted with the plaintiff, under his hand and seal, to pay to the plaintiff the sum of (state the penalty).

II. That no part thereof has been paid.

Wherefore the plaintiff demands judgment against the defendant for (the penalty). 1 Abb. Forms 268.

B. Complaint on Bond for Payment of Money Only, Pleading Legal Effect.

I. That on the _____ day of _____, 18____, at _____, the defendant covenanted with the plaintiff, under his hand and seal, to pay to the plaintiff the sum of (state, not the penalty, but the actual debt), on the _____ day of _____, with interest from, etc. (or, as follows: _____ dollars thereof on the _____ day of _____, and _____ dollars thereof on the _____ day of _____, with interest on each of said sums from, etc., or otherwise, according to the condition).

II. That no part of the same has been paid (except the sum of, etc.) Wherefore the plaintiff demands judgment

against the defendant for the sum of (state the amount due). 1 Abb. Forms 268.

C. Complaint by Surviving Oblige in Joint Bond.

I. That on the _____ day of _____, at _____, the defendant covenanted with the plaintiff and one C. D., under his hand and seal, to pay to the plaintiff and said C. D. (proceed as in other forms).

II. That on the _____ day of _____, at _____, said C. D. died.

III. (Allege breach as in other cases.) 1 Abb. Forms 268.

D. Complaint on Bond Pleading Substance of Condition.

I. That on the _____, at _____, the defendant covenanted with the plaintiff, under his hand and seal, to pay to the plaintiff the sum of (state the penalty).

II. That said obligation was upon the express condition thereunder written (whereby after reciting that, etc., it was provided), that if, etc. (set forth the substance or words of the condition), the said obligation was to be void, otherwise to remain in full force.

III. (Allege breaches, as in other cases.) 1 Abb. Forms 269.

E. Complaint on Bonds Other Than for Payment of Money.

I. That the defendant, on the _____ day of _____, 18____, made his bond or writing obligatory, sealed with his seal, of which the following is a copy: (set forth copy of bond, including condition).

II. (Set forth a breach: see following forms.)

III. For a further breach the plaintiff alleges, etc. 1 Abb. Forms 269.

F. Complaint on Bond for Rent; Against Principal and Sureties.

I. That the plaintiffs were, at the time next hereinafter mentioned, possessed of certain issues and profits arising and accruing from certain wharves in the city of New York, hereinafter mentioned—viz., the right to collect wharfage from such vessels as should lie against or touch at the said wharves; and being so possessed, on the _____ day of _____, by an instrument in writing, bearing date on that day, and one part whereof was duly executed under the common seal of the city of New York, and the other part whereof was duly executed under the hand and seal of the de-

fendant (lessee), the plaintiffs demised and leased to the said (lessee), in consideration of certain rents and covenants therein reserved and contained, the right to levy and collect to his own use all the wharfage which should or might arise, accrue, or become due between the _____ day of _____, and the _____ day of _____, from the use or occupation by vessels of more than five tons burden, of any of the wharves belonging to the plaintiffs, from and including the easterly side and end of the middle pier at Coenties Slip, or Pier No. 7, to and including the westerly half of Pier No. 8, or the pier on the easterly side of Coenties Slip, together with the bulkhead between said piers, and which were known as "District No. 5 of Public Docks and Slips," except certain docks, slips, wharves, piers, and places therein mentioned and excepted. And the plaintiffs further thereby authorized the said (lessee) to demand and receive all lawful sums of money due for wharfage thereon.

II. And the said (lessee) on his part covenanted to pay to the said (plaintiffs) the sum of _____ dollars, in four equal quarterly payments, on the first days of August, November, February, and May next thereafter.

III. That the said (lessee) on that day, in order to secure the payment of the said rent, in and by the said lease agreed to be paid, duly executed, together with the defendants (sureties), under their respective hands and seals, a joint and several bond, in the penalty of _____ dollars, conditioned for the payment of the rents in said lease reserved unto the said (plaintiffs) at the times at which they should respectively fall due.

IV. That the said (lessee) entered upon the said premises, and collected and retained for his own use and benefit and behoof, of the wharfage thereof, under and in pursuance of the said lease for the full term thereof, but has neglected and failed to pay the full amount due to the (plaintiffs) under the said lease, but that there is still due and unpaid for rent thereon from the said (lessee), the sum of _____ dollars, with interest upon the sum of _____ dollars from, etc., upon the sum of, etc.

V. (State the demand on principal, notice to surety, and demand on surety,

where these facts are necessary.) 1 Abb. Forms 269.

G. *Complaint on Bond for Fidelity of Clerk, or Cashier.*

I. That on the _____ day of _____, 18____, at _____, the plaintiffs being then about to employ one M. N. as a clerk (or, to appoint one M. N. as their cashier), the defendants, under their hands and seals, covenanted with the plaintiffs that if the said M. N. should not faithfully perform his duties as such clerk (or cashier) to the plaintiffs, or should fail to account to the plaintiffs for all moneys, evidences of debt, or other property received by him for the use of the plaintiffs, the defendants would pay to the plaintiffs whatever loss they might sustain by reason thereof, not exceeding _____ dollars (or otherwise, according to the condition; or say: That on the _____ day of _____, 18____, at _____, the plaintiffs being then about to employ one M. N. as a clerk (or to appoint one M. N. as their cashier), the defendants executed to the plaintiffs a bond, a copy of which is annexed).

II. That between the _____ day of _____, 18____, and the _____ day of _____, 18____, the said M. N. as such clerk (or cashier), received money and other property, amounting to the value of _____ dollars, to the use of the plaintiffs, for which he has not accounted to them. 1 Abb. Forms 271.

H. *Complaint on Bond for Accounting of Subscription Agent.*

I. That on the _____ day of _____, 18____, at _____, it was mutually agreed between this plaintiff and one M. N., that the said M. N. should canvass the cities of _____, for subscribers to certain books then in course of publication in numbers by the plaintiff, and had for sale by him to subscribers (or, for subscribers to the _____, a magazine or periodical then published by this plaintiff); that the said M. N. should collect for account of the plaintiff the moneys which should grow due upon the subscriptions procured by him; that the plaintiff should pay to said M. N. _____ dollars upon each order or subscription obtained by him, the same to be payable whenever _____ numbers of the work subscribed for should have been paid for by the subscriber thereof; and

that the said M. N. should faithfully account to this plaintiff for all books and parts of books intrusted to him, and should faithfully pay over to the plaintiff all the money that he should from time to time collect under the authority given him by the said agreement, exceeding his commission of _____ dollars for each order or subscription.

II. That then and there (or, on the _____ day of _____, 18____, at _____), the defendant made and delivered to the plaintiff his bond under his hand and seal, and thereby bound himself in the penal sum of _____ dollars to this plaintiff, the condition of which bound was, that if the said M. N. should faithfully render up, or account for, to this plaintiff, all books and parts of books and other publications and specimens, and all sums of money, evidences of debt, and things in action which should be intrusted to him by or on behalf of this plaintiff, or by or on behalf of others to the use of this plaintiff, in the course of the employment of said M. N. as a canvasser as aforesaid, up to and not exceeding the amount of _____ dollars at any one time, then said bond should be void, otherwise it should be of full force and effect.

III. That the plaintiff did thereafter intrust and deliver to said M. N. in the course of his employment under the agreement aforesaid, certain books and parts of books of the value of _____ dollars, for which he has failed to account to the plaintiff (or that thereafter said M. N. did collect and receive divers sums of money in the course of his employment under the agreement aforesaid, exceeding his commissions, to-wit, the amount of _____ dollars, which sums he failed to render up, account for, or pay over to the plaintiff).

IV. That on the _____ day of _____, 18____, at _____, the said M. N. was duly requested to account to this plaintiff for said books and parts of books (or to account for and pay over to this plaintiff such sums), but he has not done so, of which this plaintiff gave due notice to the defendant, and thereupon demanded payment from him of the said sum of _____ dollars, according to the terms of said bond, but the same has not been paid, nor any part thereof. 1 Abb. Forms 271.

I. Complaint on Arbitration Bond for Refusal To Comply With Award.

I. That certain differences having arisen between the plaintiff and the defendant, in consideration thereof, and in consideration of a like bond executed by this plaintiff to the defendant, the defendant heretofore made and delivered to the plaintiff a bond of arbitration, conditioned to abide the award of M. N. upon said differences, of which bond a copy is hereto annexed, as a part of this complaint, and marked Exhibit A.

(II. That on the _____ day of _____ (or thereafter, and within the time limited for making the award), by agreement of plaintiff and the defendant, the time for the making of the award was extended to the _____ day of _____.)

III. That the said arbitrator having undertaken the arbitration on the _____ day of _____, duly made and published his award in writing upon the matter submitted, ready to be delivered to the parties, or to such of them as should desire the same, and thereby awarded that the defendant should (here indicate briefly the provision which the defendant has disregarded); of which award a copy is hereto annexed, as a part of this complaint, and marked Exhibit B.

IV. That the plaintiff duly performed all the conditions of said bond on his part (and on the _____ day of _____, gave notice of said award to the defendant, and tendered to him, etc., and demanded of him, etc.

V. That the defendant has not (here allege breach, specifying the particular act or omission). 1 Abb. Forms 273.

J. Complaint on Arbitration Bond for Revoking Arbitrator's Powers.

(Allege submission, as in preceding form.)

III. That thereafter, and before the matters aforesaid were finally submitted to said arbitrator, the defendants by writing under their hands and seals, delivered to _____, revoked the powers of the arbitrators. 1 Abb. Forms 274.

Note.—Add paragraph alleging damage.

This form is approved substantially in Williams v. Maden, 9 Wend. (N. Y.)

240; *Frets v. Frets*, 1 Cow. (N. Y.) 335.

K. Complaint on Bond of Security for Costs.

I. That heretofore one M. N. commenced an action in this court (or in the _____ court) against this plaintiff, wherein such proceedings were had, as that, on the _____ day of _____, the defendants above named executed under their hands and seals, and duly filed with a clerk of said court, for the benefit of this plaintiff (or where the bond was directed to be given under section —, and where it is directed to be delivered to plaintiff instead of being filed under section —, duly executed, pursuant to an order of said court, made on the _____ day of _____, 18—, and _____ delivered to the plaintiff a bond), whereby they bound themselves, their heirs, executors, and administrators, in the penal sum of _____ dollars, to this plaintiff; the condition of which bond was such, that if the said M. N. should pay on demand all costs that might be awarded to this plaintiff in the action aforesaid, then the above obligation should be void, otherwise it should remain in full force and virtue (or otherwise, according to the condition; or, refer to a copy annexed).

II. That such proceedings were thereafter had in said action, as that this plaintiff, on the _____ day of _____, 18—, recovered judgment therein against the said M. N. for _____ dollars, his costs and expenses of defending said action.

III. That on the _____ day of _____, 18—, at _____, this plaintiff duly demanded payment of the said judgment from the said M. N., but no part thereof has been paid. 1 Abb. Forms 274.

L. Complaint on Bond To Discharge Attachment Against Vessel.

I. That on the _____ day of _____, 18—, M. N. and O. P., who were then co-partners in the trade and business of shipbuilders, in the city of _____, under the name and firm of, etc., and who were then, as the plaintiff is informed and believes, the owners of a certain unfinished and unnamed ship or vessel, then, and at the time of the application hereinafter mentioned, lying upon the stocks in the course of construction in the shipyard occupied by the said N. & P., at

_____, contracted a debt with the said plaintiff, amounting to the sum of _____ dollars, for certain materials or articles furnished by the said plaintiff, in this state, towards the building of the said vessel.

II. That afterwards, and on the _____ day of _____, 18—, the said N. & P., who then, also, as the plaintiff is informed and believes, were such copartners as aforesaid, and such owners of the said unfinished and unnamed ship or vessel, contracted a certain other debt with the said plaintiff, amounting to the sum of _____ dollars, for other materials or articles furnished by the said plaintiff, in this state, towards the building of the said ship or vessel.

III. That the said materials or articles for which said debts were so contracted were certain cedar logs, furnished by the said plaintiff, to and at the request of the said N. & P., at _____, at the times respectively hereinbefore stated, towards the building of the said vessel; and that the amount of such debts, that is to say, the sum of _____ dollars, together with interest thereon, was justly due to the plaintiff, at the time of the application hereinafter mentioned.

IV. That having a lien upon the said ship or vessel for the sum of _____ dollars, and interest thereon, he did heretofore, and on the _____ day of _____, 18—, make application to Hon. _____, one of the justices of this court, pursuant to the statute, that such lien might be enforced, and that a warrant might be issued to the sheriff of, etc.

V. That thereupon such warrant was issued by the said justice to the said sheriff, whereby he was, among other things, commanded to attach, seize, and safely keep the said ship or vessel, her tackle, apparel, and furniture, to answer the said plaintiff's lien, and all other liens that should be established against her, according to law.

VI. That the said sheriff, in pursuance of the said warrant, attached and seized the said vessel, and that afterwards, and on or about the _____ day of _____, 18—, the above-named defendants applied to the said justice for, and obtained, an order to discharge the said warrant, and that thereupon the defendants executed and delivered, and the said justice received as a sufficient security therefor,

a bond to the said plaintiff, of which the following is a copy: (copy bond).

VII. That the plaintiffs' aforesaid claims were a subsisting lien on the said ship or vessel, at the time of the exhibition thereof, as hereinbefore mentioned.

VIII. That no part of the same has been paid. 1 Abb. Forms 278.

M. Complaint on Bond for Stay of Proceedings, for Reformation, and for Judgment on Bond.

I. That on the _____ day of _____, 18____, the plaintiffs recovered a judgment against one M. N. in the _____ court of this state, in and for the county of _____, for the sum of _____ dollars, in an action wherein these plaintiffs were plaintiffs and said M. N. was defendant.

II. That on the _____ day of _____, 18____, pending the proceedings of the plaintiffs, supplementary to execution on said judgment, to collect the same from said M. N., he the said M. N., moved said court to have the judgment satisfied of record.

III. That thereupon, and at the request of said M. N., the plaintiffs, by their attorneys, stipulated with him that if he would give them security for the payment of said judgment, to-wit, the bond of some third person, conditioned for the payment by M. N., upon demand, if his said motion was denied, of the amount due on said judgment, they would stay such proceedings to collect the judgment until the determination of the court upon such motion.

IV. That in pursuance of such stipulation said M. N. thereupon caused to be drawn a bond, of which a copy is hereinafter set forth, which he represented to the plaintiffs that he intended to have executed by one O. P., in the body thereof named as the obligor therein.

V. That on the day limited by said stipulation for the delivery of said bond, said M. N. represented to the plaintiffs that said O. P. was out of town, and that access could not be had to him to obtain the execution by him of said bond, and the said M. N. thereupon offered to procure such a bond to be executed by the defendant Y. Z., instead of by said O. P., which these plaintiffs thereupon consented to receive.

VI. That on or about the _____

day of _____, 18____, in consideration of the premises and of the stipulation of these plaintiffs to stay proceedings as aforesaid, the defendant Y. Z., at the city of New York, executed and delivered to these plaintiffs his bond in writing, under his hand and seal, of which the following is a copy: (copy of the bond, with name of O. P. in the title, but signed by Y. Z., the defendant).

VII. That the striking out of the name of said O. P. from the bond as prepared for execution, and the insertion instead thereof of the name of said Y. Z., were accidentally omitted, by mistake of the parties to said bond, and that the name of O. P. remained therein contrary to their intention.

VIII. That thereupon the plaintiffs stayed proceedings, as agreed, until the determination of the court upon said motion.

IX. That thereafter the determination of said court was duly made, that the said motion be denied, and that the whole amount of said judgment was still due and owing to the plaintiffs from the said M. N.

X. That on the _____ day of _____, 18____, payment of the amount due on said judgment was duly demanded of said M. N.; but no part thereof has been paid, and there is now justly due to these plaintiffs from said M. N. thereon the sum of _____ dollars, with interest from said 22d of November, 1855, of all which the defendant had due notice.

XI. That thereafter, and on or about the _____ day of _____, 18____, said bond was duly presented to said Y. Z., and payment thereof demanded; but no part thereof has been paid, and there is now due thereon from the defendant to these plaintiffs the sum of _____ dollars, with interest from, etc.

Wherefore the plaintiffs demand judgment that said bond be reformed by striking out therefrom the name of said O. P., and inserting in the place thereof the name of the defendant, Y. Z., as the obligor therein; and that the said defendant pay to the plaintiffs the sum of _____ dollars, with interest from, etc. 1 Abb. Forms 279.

N. Complaint on Administration Bond.

I. That on the _____ day of _____, the defendants, together with (the administrators), made and deliv-

ered to the surrogate of ———, their bond in writing, under their hands and seals, and thereby bound themselves to the people of this state, in the penal sum of ——— dollars, with a condition that if said (administrators) should faithfully execute the trust reposed in them, as administrators of all and singular the goods, chattels, and credits of M. N., late of ———, in the state of ———, deceased, and should obey all orders of the surrogate of the county of ——— touching the administration of the estate committed to them, then the obligation was to be void; otherwise in full force.

II. That after the execution of the bond, and on the same date, letters of administration were issued accordingly to said (administrators), by an order duly made by the surrogate of, etc.

III. That said administrators (or one of them), converted to their own use, assets of the estate of the intestate, which came to their hands as such administrators, to the amount of ——— dollars, in violation of the trust so reposed in them.

IV. For a further breach. That after the execution of the bond, and after the expiration of eighteen months, the said administrators were required to render an account of their proceedings by an order duly made on the ——— day of ———, by the surrogate of the county of ———; and that thereupon they did account before such surrogate, on, etc.

V. That such proceedings were had upon such accounting, that the surrogate adjudged and decreed, by an order duly made on the ——— day of ———, 18——, that Y. Z., one of the administrators, had in his hands, of the assets of the estate of M. N., a balance of ——— dollars, and by the same decree the said surrogate ordered said Y. Z. to pay one-third of such balance, being ——— dollars, to F. R., the widow of the intestate, as and for her distributive share of the estate; but that said Y. Z. has not obeyed the order, and no part of said sum has been paid.

VI. For a third breach the plaintiff alleges, that the surrogate, at the same date, duly made another decree, by which he ordered said Y. Z. to pay to J. R. two-thirds of the balance so decreed against him, being ——— dollars, as and for (etc.), but that he has

not obeyed said order, and no part of said sum has been paid.

VII. That said F. R. and J. R. were adults, and entitled to receive the same (except ———, who was a minor and had a guardian, who was entitled to receive the same).

VIII. That thereupon, on the ——— day of ———, 18——, the surrogate of the county of ———, by an order then duly made, directed the bond to be prosecuted; and according to the provisions of the statute, an action has accrued to the plaintiffs. 1 Abb. Forms 281.

Note.—Special regard must be had to the particular state statutes, for it is sometimes required that the decree must be docketed as a judgment and that execution be issued.

III. Plea of Non Est Factum.

And the said defendant, by ———, his attorney, says that the said supposed writing obligatory (or "indenture," or "articles of agreement," according to the subject of the action), is not his deed. And of this he puts himself upon the country. Steph. Pl. 156.

IV. Answers.

A. *Failure of Consideration.*

I. That he gave said bond (with a mortgage collateral thereto) to said (obligee) solely in consideration of the performance by said (obligee) of the covenants and conditions, upon his part, in an agreement then made between them, of which agreement a copy is annexed as a part of this answer.

II. That this defendant duly performed all the conditions thereof on his part.

III. That the said (obligee, here allege breach as in an action upon the contract). 2 Abb. Forms 88.

B. *Answer That Bond Was on Condition, and Defendant Has Fulfilled.*

I. That the bond mentioned in the complaint was, and is, subject to a condition thereunder written, to make void the same upon payment by the defendant to the plaintiff, on the ——— day of ———, of the sum of ——— dollars, with interest at the rate of ——— per cent. (or other condition).

II. That the defendant on that day (or after that day, and before the com-

commencement of this action) paid to the plaintiff the said sum of ——— dollars, with all interest due thereon. 2 Abb. Forms 88.

C. Answer, Failure of Consideration of Bond for Purchase Money.

I, II, III and IV. (Allege conveyance by the plaintiff to the defendant, with covenant, and breach thereof, in a similar manner as in a complaint in an action for breach of covenant.)

V. That at the same time when the said conveyance was executed by the plaintiff (and his said wife), to-wit, on the said ——— day of ———, 18—, at ———, the defendant, simultaneously with the execution of the said conveyance, executed and delivered to the plaintiff the bond mentioned in the complaint, as a security for the payment of the purchase money in the said conveyance mentioned, and for no other purpose or intent whatever; and the same, respectively, were so then and there accepted and received by the said plaintiff from the said defendant as such security as aforesaid. 2 Abb. Forms 89.

BREACH OF PROMISE.

I. Declaration on Promise of Marriage, 238

II. Complaint, 239

- A. *Refusal To Marry, 239*
- B. *Marriage With Another, 239*
- C. *Married at Time of Promise, 239*

III. Defenses, 239

- A. *Plaintiff of Bad Character, 239*
- B. *Denial of Promise, 239*
- C. *Denial of Plaintiff's Readiness, 240*
- D. *Denial of Breach, 240*

For other forms, see 4 STANDARD PROC. 549, 550.

CROSS-REFERENCE:

ARREST IN CIVIL CASES:

Capias, Promise of Marriage.

I. Declaration on Promise of Marriage.

For that whereas heretofore, to-wit, on, etc., at, etc., in consideration that the said plaintiff, being then and there sole and unmarried, at the special instance and request of the said defendant, had then and there undertaken, and faithfully promised the said defendant, to marry him, the said defendant, when she, the said plaintiff, should be

thereunto afterwards requested, he, the said defendant, undertook, and then and there faithfully promised the said plaintiff, to marry her, the said plaintiff, when he, the said defendant, should be thereunto afterwards requested. And the said plaintiff avers, that she, confiding in the said promise and undertaking of the said defendant, hath always from thence hitherto remained and continued, and still is, sole and unmarried, and hath been, for and during all the time aforesaid, and still is ready and willing to marry him, the said defendant, to-wit, at, etc., aforesaid. And although the said plaintiff, after the making of the said promise and undertaking of the said defendant, to-wit, on, etc., at, etc., aforesaid, requested the said defendant to marry her, the said plaintiff; yet the said defendant, not regarding his said promise and undertaking, did not, nor would, at the said time when he was so requested as aforesaid, or at any time before or afterwards, marry her, the said plaintiff, but hath hitherto wholly neglected and refused, and still doth neglect and refuse so to do.

(Second count for marrying another woman.) (If the defendant have married another woman, no request need be averred, but the count is as the last as far as the words, "and although he, the said plaintiff," except in the statement that the plaintiff "still is ready to marry the defendant," and then conclude with the following allegation): Yet the said defendant, not regarding, etc., after the making of his said promise and undertaking, to-wit, on, etc., at, etc., aforesaid, wrongfully and injuriously married a certain other person, to-wit, one M. N., contrary to his said last mentioned promise and undertaking, so by him made as aforesaid, to-wit, at, etc., aforesaid.

(Third count, to marry in a reasonable time.) And whereas also heretofore, to-wit, on, etc., aforesaid, at, etc., aforesaid, in consideration that the said plaintiff being then and there unmarried, at the like special instance and request of the said defendant, had then and there undertaken, and faithfully promised the said defendant to marry him, the said defendant, he, the said defendant, undertook, and then and there faithfully promised the said plaintiff, to marry her, the said plaintiff, in a reasonable time then next following. And the said plaintiff avers,

that she, confiding in the said last mentioned promise and undertaking of the said defendant, hath always hitherto remained and continued, and still is, sole and unmarried, and hath been, for and during all the time last aforesaid, and still is ready and willing to marry the said defendant, to-wit, at, etc., aforesaid; and although a reasonable time for the said defendant to marry her, the said plaintiff, hath elapsed since the making of the last mentioned promise and undertaking of the said defendant; yet the said defendant, not regarding his said last mentioned promise and undertaking, did not, nor would, within such reasonable time as aforesaid, or at any time afterwards, marry her, the said plaintiff, but hath hitherto wholly neglected and refused so to do, to-wit, at, etc., aforesaid, in the county aforesaid.

(Fourth count to marry generally.) And whereas also heretofore, to-wit, on, etc., at, etc., aforesaid, in consideration that the said plaintiff, being then and there sole and unmarried, at the like special instance, etc., had then and there undertaken, and faithfully promised the said defendant to marry him, the said defendant, he, the said defendant, undertook, and then and there faithfully promised the said plaintiff, to marry her, the said plaintiff. And the said plaintiff avers, that she, confiding in the said last mentioned promise and undertaking of the said defendant, hath always from thence hitherto remained and continued, and still is, sole and unmarried, and hath been, for and during all the time last aforesaid, and still is ready and willing to marry him, the said defendant, to-wit, at, etc., aforesaid; and although a reasonable time for the said defendant to marry the said plaintiff hath elapsed, since the making of the said last mentioned promise and undertaking of the said defendant; and although the said plaintiff, after the making of the said last mentioned promise and undertaking of the said defendant, to-wit, on, etc., at, etc., aforesaid, requested the said defendant to marry her, the said plaintiff; yet the said defendant, not regarding his said last mentioned promise and undertaking, did not, nor would, at the said time when he was so requested, as last aforesaid, or at any time before or afterwards, marry the said plaintiff, but on the contrary thereof, he, the said defendant, at the

said time when he was so requested as last aforesaid, wholly refused then or ever to marry her, the said plaintiff, to-wit, at, etc., aforesaid. To the damage, etc. Burr. App. 261, §524; 2 Chit. Pl. 321.

II. Complaints.

A. *Complaint for Refusal To Marry.*

I. That on the _____ day of _____, 18____, at _____ in consideration that the plaintiff, who was then unmarried, would, at the request of the defendant, marry him on request, the defendant promised to marry the plaintiff within a reasonable time (or, on the _____ day of _____; or, on request).

II. That the plaintiff, confiding in said promise, has always since remained, and now is ready and willing to marry the defendant.

III. That the defendant refuses to marry the plaintiff, although a reasonable time elapsed before this action (or, although she, on the _____ day of _____, 18____, requested him so to do), to her damage _____ dollars. 1 Abb. Forms 369.

B. *Complaint on Marriage With Another.*

(I and II as in preceding form.)

III. That the defendant afterwards married a certain other person, to-wit, one M. N., contrary to his said promise to the plaintiff. 1 Abb. Forms 370

C. *Complaint, Defendant Married at Time of Promise.*

III. That at the time of making said promise the defendant represented to the plaintiff that he was unmarried, whereas, in fact, he was then married to another person, of which fact the plaintiff had no notice. 1 Abb. Forms 370.

III. Defenses.

A. *Answer That Plaintiff Was of Bad Character.*

I. That at the time mentioned as the time of said supposed promise, the plaintiff was unchaste (or, habitually intemperate) and generally reputed among her neighbors so to be.

II. That defendant was wholly ignorant thereof at that time.

III. That upon being informed thereof, he refused to marry the plaintiff. 2 Abb. Forms 105.

B. *Answer, Denial of Promise.*

That he never promised to marry the plaintiff. 2 Abb. Forms 105.

C. Answer, Denial of Plaintiff's Readiness.

That the plaintiff has not been ready and willing to marry the defendant, nor did she ever offer to marry him, as alleged. 2 Abb. Forms 105.

D. Answer, Denial of Breach.

That the defendant has not refused to marry the plaintiff, but on the _____ day of _____, 18____, and ever since, has been ready and willing to marry her, which she well knew. 2 Abb. Forms 105.

BREACH OF THE PEACE.

- I. Indictment for Using Profane and Abusive Language, 240
- II. Indictment for Breach of the Peace by Noise and Disturbance, 240
- I. Indictment for Using Profane and Abusive Language.

"The Grand Jury of Izard county, etc., etc., accuse Robert Moser of the crime of using profane and abusive language, calculated to cause a breach of the peace, committed as follows, to-wit: The said Robert Moser, on the 20th day of September, 1877, in the county, etc., aforesaid, unlawfully and violently did make use of profane and abusive language toward and about and in the presence and hearing of one W. T. Moser, then and there being, by then and there saying to the said W. T. Moser, go to hell, God damn you, which language was then and there calculated to arouse to anger the said W. T. Moser and then and there cause a breach of peace; against the peace and dignity of the State," etc. *State v. Moser*, 33 Ark. 140.

- II. Indictment for Breach of Peace by Noise and Disturbance.

"That he, on the 24th of August, 1809, about the hour of ten of the clock in the night of the same day, with force and arms at Lurgan township, in the county aforesaid, the dwelling house of James Strain there situate, unlawfully, maliciously and secretly did break and enter, with intent to disturb the peace of the commonwealth; and so being in the said dwelling house, unlawfully, vehemently, and turbulently did make a great noise, in disturbance of the peace of the commonwealth, and greatly misbehaved himself, in the said dwelling house; and Elizabeth Strain, the wife of the said

James, greatly did frighten and alarm, by means of which said fright and alarm she the said Elizabeth, being then and there pregnant, did on the 7th day of September, in the year aforesaid, at the county aforesaid miscarry, and other wrongs to the said Elizabeth then and there did, to the evil example, etc." *Com. v. Taylor*, 5 Binn. (Pa.) 277.

BRIBERY.

- I. Indictments, 240

- A. *Attempting To Bribe*, 240
- B. *Giving Bribe*, 241
- C. *Accepting Bribe*, 241
- D. *Agreement To Bribe*, 242

- I. Indictments.

- A. *Indictment for Attempting To Bribe*.

That heretofore, to-wit, on, etc., at, etc., W. P. and R. B. being then and there officers of the customs of our said lord the king, did in due manner take and seize as forfeited, certain goods and merchandises (to-wit), divers, etc., which said goods and merchandises might then and there lawfully be seized by the said W. P. and R. B. as such officers as aforesaid, and were then and there proceeding to secure the same as forfeited as aforesaid: and the said attorney-general, etc., that W. M., late of, etc., linen draper, well knowing the premises, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully devising, contriving and intending to cheat and defraud our said lord the king in his said revenue of the customs, afterwards and whilst the said goods and merchandizes remained in the custody and possession of the said W. P. and R. B. as such officers as aforesaid (that is to say); on the said, etc., at, etc., did unlawfully and corruptly offer to the said W. P. and R. B. being then and there such officers of the customs as aforesaid, a bribe, recompence, and reward, of a sum of money (to-wit) the sum of, etc., for them the said W. P. and R. B. unlawfully, unjustly, and contrary to the duty of their said several and respective offices, to-wit, relinquish, and give up the possession of the said, etc., so seized as aforesaid, in order that the same might not be secured as forfeited as aforesaid, where-

by our said lord the king might and would be then and there defrauded in his said revenue of the customs, in contempt of,, etc., to the evil and pernicious example of, etc., and against the peace of, etc., and also against the form of the statute in such case made and provided. By reason whereof, and by force of the same statute, he the said W. M. hath forfeited and lost the sum of 50*l* of lawful, etc.

And the said attorney-general, of, etc., that heretofore (to-wit), on the said, etc., in, etc., at, etc., aforesaid, in London aforesaid, the said W. P. and R. B. being then and there such officers of the customs of our said lord the king as aforesaid, did in due manner take and seize as forfeited, certain other goods and merchandizes (to-wit), divers other, etc., which said last-mentioned, etc., might then and there lawfully be seized by the said W. P. and R. B. as such officers as aforesaid, and were then and there proceeding to secure the same as forfeited as aforesaid. And the said attorney-general of, etc., that the said W. M. well knowing the premises, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully contriving, devising, and intending to cheat and defraud our said lord the king, in his said revenue of the customs, afterwards and whilst the said last-mentioned goods and merchandizes remaining in the custody and possession of the said W. P. and R. B. as such officers as aforesaid (that is to say), on the said, etc., in, etc., at, etc., in London aforesaid, did unlawfully and corruptly offer to the said R. B. being then and there such officer of the customs as aforesaid, a bribe, recompence, and reward, of a sum of money (to-wit), the sum of, etc., for the use of himself and the said R. B. and of the said W. P. for them then the said R. B. and W. P. unlawfully, unjustly, and contrary to the duty of their said several and respective offices to quit, relinquish, and give up the possession of the said last-mentioned goods and merchandizes so seized as aforesaid, in order that the same might not be secured as forfeited as aforesaid, whereby our said lord the king might and would be then and there defrauded in his said revenue of the customs, in contempt, etc. 3 Chit. Cr. L. 695.

B. *Indictment for Giving Bribe at Election.*

“State of Me. Knox ss: At the supreme judicial court, begun and holden at Rockland, within and for the county of Knox, on the second Tuesday of March, in the year of our Lord, one thousand eight hundred and eighty-one.

“The jurors for said state, upon their oath present, that a meeting of the inhabitants qualified to vote, of ward one, in Rockland, in the county of Knox, for the election of one alderman, three common councilmen, on the eighth day of March, in the year of our Lord one thousand eight hundred and eighty-one, at said Rockland, was then and there duly holden.

“And the jurors aforesaid, upon their oath aforesaid, do further present, that Charles A. Jackson, of Rockland, in said county of Knox, did then and there at the said election, unlawfully and wilfully attempt to influence the said Augustus Montgomery, so being a qualified voter in this state as aforesaid, to give his, the said Augustus Montgomery’s ballot, in said election then and there duly holden, by then and there offering and paying him, the said Augustus Montgomery, the sum of two dollars in lawful money, against the peace of said state.

“A true bill.

“Robert Long, foreman, pro tem.

“J. O. Robinson, county attorney.
State v. Jackson, 73 Me. 91.

C. *Indictment for Accepting Bribe.*

“That the said Roger C. Guthrie, in the city of Omaha,” etc., “being then and there a ministerial officer, to-wit, the city marshal of the city of Omaha, duly and legally appointed, confirmed, qualified, and sworn to discharge the duties of that office, it being an office of importance and trust concerning the administration of public justice, law, and order within said city, county and state, contriving and intending the powers and duties of his said office and the trust and confidence thereby reposed in him to violate, prosecute and betray, and contriving and intending then and there the powers and duties of his said office to discharge and perform with partiality and favor and contrary to law, and then and there with the intent aforesaid unlawfully, knowingly, corruptly, and feloniously take, accept, and receive from Charles Branch and others, whose names are

to the jurors unknown, the sum of three hundred dollars in money of the value of three hundred dollars, as a bribe and pecuniary reward, offered and given by the said Charles Branch and others, and by the said Roger C. Guthrie taken, accepted, and received, with the intent and purpose to induce him the said Roger C. Guthrie, in his office aforesaid, to permit, authorize, and allow certain gamblers, to-wit, Chas. S. Higgins, Seth C. Baldwin, Hiram B. Kennedy, Goodley Brocker, James Morrison, William Spiderstron, Chas. Branch, and others to the grand jurors unknown, to keep, use, and occupy buildings and rooms for the purpose of and devoted to gambling, to exhibit gaming tables, gaming establishments, gaming devices, and other apparatus to win and gain money and to carry on, conduct, and prosecute the habit, practice, and profession of gambling, and in the corporate limits of the city of Omaha, and to induce and influence him the said Roger C. Guthrie, then and there and thereafter not to arrest nor cause to be arrested the said gamblers, and to keep and protect them from arrest and punishment, and free, clear, and exempt from municipal or police molestation, interference, or attack while engaged in the business, practice and profession of gambling as aforesaid, in violation of law," etc. *Guthrie v. State*, 16 Neb. 667, 21 N. W. 455.

D. Indictment for Agreement To Bribe.

That before and at the time of the committing the offense hereinafter next mentioned, one W. W., since deceased, was an officer and person duly appointed and authorized by our sovereign lord the now king, to manage the duties on stamped vellum, parchment, and paper, in a certain office, to-wit, in a certain office relating to the revenue of our said lord the king, that is to say, as a distributor of such stamped vellum, parchment, and paper, in and for the county of D., and a receiver of the revenue of our said lord the king, arising from his the said W. W.'s distributing such stamps as aforesaid, to-wit, for certain reward to him the said W. W. in that behalf, at, etc. And the jurors, etc., do further present, that heretofore, to-wit, on, etc., it was corruptly, and against the form of the statute in such, etc., agreed by and

between the said W. W., since deceased, and J. W., late of, etc., yeoman, as follows, that is to say, that the said W. W. should, for the considerations hereinafter next mentioned, resign and relinquish his said office and employment in favor of the said J. W., and should cause and procure the said W. W. to be retained and employed by the said commissioners, appointed and authorized by his majesty to manage the duties on stamped vellum, for parchment and paper, in and for the said county of D., and as such received as aforesaid, in lieu and stead of him the said W. W., and that the said J. W. should, for and in consideration of the premises, permit and suffer the said W. W. for and during his natural life, notwithstanding such his relinquishment of such his said office as aforesaid, and such retainer and employment of the said J. W., in the same, in lieu and stead of the said W. W. as aforesaid, to continue to exercise the same, and to receive and take to his own proper use and benefit all the emoluments and reward which should and might arise therefrom. And the jurors, etc., do further present, that in pursuance of the said corrupt and unlawful agreement, and on the terms, and in pursuance thereof, afterwards, to-wit, on, etc., aforesaid, at, etc., aforesaid, the said W. W., at the special, etc., of the said J. W., did resign and relinquish his said office and employment in favor of the said J. W., and did then and there at the like special instance and request of the said J. W., cause and procure him the said J. W. to be duly retained and employed, and the said J. W. was accordingly duly retained and employed by certain then commissioners, appointed and authorized by his majesty to manage the duties on stamped vellum, parchment and paper, in the said office of such distributor of such stamped vellum, parchment and paper as aforesaid, in and for the said county of D., and as such receiver as aforesaid, in lieu and stead of him the said W. W., and that the said J. W., in further pursuance of the said corrupt and unlawful agreement, and in consideration of the premises, afterwards, and for and during the natural life of him the said W. W., to-wit, from the day and year aforesaid, until afterwards, to-wit, on, etc., when the said W. W. died, to-wit, at, etc., aforesaid, did permit and

suffer the said W. W., notwithstanding his said relinquishment of his said office as aforesaid, and the said retainer and employment of the said J. W. in the same, in lieu and stead of the said W. W. as aforesaid, to continue to exercise the same, and to receive and take to his own proper use and benefit, and the said W. W. did accordingly, during that time, continue to exercise the said office, and to take to his own proper use and benefit all the emoluments and reward which did during that time arise therefrom, to-wit, at, etc., aforesaid, in contempt, etc., to the evil and pernicious example, etc., and against the form of the statute, etc. 3 Chit. Cr. L. 682.

BURGLARY.

I. Indictment, 243

A. *With Intent To Steal*, 243

B. *Actual Stealing*, 243

C. *With Intent, and Actual Stealing*, 243

D. *Breaking Out*, 243

II. Information for Burglary, 244

I. Indictment.

A. *Indictment for Burglary With Intent To Steal.*

That J. V., late of, etc., and J. A., late of, etc., on, etc., about the hour of six in the night of the same day, with force and arms, at, etc., aforesaid, the dwelling house of M. N., spinster, and A. N., spinster, there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said M. N. and A. N., in the said dwelling house then and there being found, then and there feloniously and burglariously to steal, take and carry away, against the peace, etc. 3 Chit. Cr. L. 1118.

B. *Indictment for Burglary and Actual Stealing.*

That A. B., late of, etc., on, etc., about the hour of twelve in the night of the same day, with force and arms, at, etc., aforesaid, the dwelling house of one C. D. there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said C. D. in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, and then and there, with force and arms, one silver watch, of the value of forty shillings, of the goods and chattels of the said

C. D. in the same dwelling house then and there being found, then and there feloniously and burglariously did steal, take and carry away against the peace of our said lord the king, his crown and dignity. 3 Chit. Cr. L. 1119.

C. *Indictment for Burglary With Intent, and Actual Stealing.*

"The grand jurors of the state of West Virginia in and for the body of the county of Clay, and now attending the said court, upon their oaths present that Frank McClung, alias Frank McAllister, alias Frank McClintock, on the — day of — 1890—, about the hour — o'clock, in the night-time of that day, feloniously and burglariously did break and enter into the dwelling house of one Lewis Kyer, situated in said county, with intent the goods and chattels of him the said Lewis Kyer, in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, and one pair of pants or pantaloons, and other goods and chattels, of the value of \$24.00, of the goods and chattels of the said Lewis Kyer, in the said dwelling house in the county aforesaid, then and there being found, then and there feloniously and burglariously did steal, take and carry away. And the grand jurors aforesaid, upon their oaths aforesaid, present that the said Frank McClung, alias Frank McAllister, alias Frank McClintock, on the — day of —, 1890, in the county aforesaid, did feloniously and burglariously take, steal, and carry away the goods and chattels belonging to one Lewis Kyer of the value of \$24.00, and one pair of pants of the value of \$5.00, and he the said McClung, alias McAllister, alias McClintock, did then and there break and enter the dwelling house of the said Lewis Kyer in the night-time, with intent to commit larceny and burglary, and did then and there feloniously and burglariously take, steal and carry away household goods of the value of \$24.00 against the peace and dignity of the state." State v. McClung, 14 Crim. L. Mag. 84, 85.

D. *Indictment for Breaking Out of a House.*

That A. B., late of, etc., on, etc., about the hour of three in the night of the same day, at, etc., aforesaid, being in the dwelling house of C. D., esquire, there situate, one silk purse,

of the value of sixpence, and forty pounds in monies numbered, of the goods, chattels and monies of the said C. D., in the said dwelling house then and there being, with force and arms, feloniously did steal, take and carry away; and that the said A. B. being so as aforesaid in the said dwelling house, and having committed the felony aforesaid, in manner and form aforesaid, he the said A. B. afterwards, to-wit, on the same day and year aforesaid, about the hour of three in the night of the same day, with force and arms, at, etc., aforesaid, the same dwelling house of the said C. D. then and there feloniously and burglariously did break to get out of the same, and then and there feloniously did break and get out of the same, against the form of the statute, etc., and against the peace, etc. 3 Chit. Cr. L. 1120.

II. Information for Burglary.

"I, George P. Rossman, district attorney for said county, hereby inform the court that on the 16th day of January, in the year 1889, at said county, R. G. Martin, at the store building of R. W. French, situated in the city of Ashland, in said county, in the nighttime of the same day, then and there unlawfully, feloniously, and burglariously did break and enter, with intent then and there the goods, chattels, and property of said R. W. French, then and there in said store building being found, then and there feloniously and burglariously to steal, take and carry away, against the peace and dignity of the state of Wisconsin." *Martin v. State*, 79 Wis. 165, 48 N. W. 119.

CALENDARS.—See TRIAL.

CANCELLATION OF INSTRUMENTS.

See EQUITY JURISDICTION AND PROCEDURE; RESCISSION AND CANCELLATION.

CASE (THE ACTION OF TRESPASS ON THE).

For other forms, see 4 STANDARD PROC. 628, 633, 637, 641, 642, 644, 648, 650-652, 655.

CROSS-REFERENCES:

ACCORD AND SATISFACTION:

Plea of Accord and Satisfaction in Case.

ANIMALS:

Declaration for Keeping Dog Accustomed To Bite Mankind;

Declaration for Keeping Dog Accustomed To Bite Sheep and Other Animals.

ATTORNEYS:

Declaration Against Attorney for Negligence.

CRIMINAL CONVERSATION:

Declaration for Criminal Conversation.

GENERAL ISSUE AND GENERAL DENIAL:

Plea of Not Guilty in Case and Trover;

Plea of Not Guilty in Case and Trover, Several Defendants.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias for Plaintiff in Case;

Fieri Facias, Testatum in Case;

Fieri Facias on Case as of Nonsuit;

Capias Ad Satisfaciendum in Case;

Capias Ad Satisfaciendum on Judgment as in Case of Nonsuit.

NEGLIGENCE:

Declaration Against Owner of Coach for Negligence of Servant in Driving Against Chaise;

Declaration Against Bailee for Negligence;

Declaration Against Common Carrier for Losing Box.

PARENT AND CHILD:

Declaration for Debauching Daughter.

SCIRE FACIAS:

Scire Facias To Revive Judgment in Case.

SHIPS AND SHIPPING:

Declaration Against Owner of Steamboat for Negligence;

Declaration Against Owner of Vessel for Negligence in Navigation.

TROVER AND CONVERSION:

Declaration in Case in Trover for Goods, Etc.;

Declaration in Case in Trover for Promissory Note.

VERDICT:

Postea for Defendant on a Plea of Not Guilty in Case.

WARRANTY:

Declaration for False Warranty of Horse.

Declaration Against Occupier of House For Laying Rubbish in Street, Whereby Carriage Was Overturned.

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea of trespass on the case: For that whereas the said defendant before and at the time of the committing of the grievance hereinafter

See "How To Use This Volume," Introduction, page v.

next mentioned, was possessed of a certain message with the appurtenances, situate and being in a certain street called _____, in the town (or "city") of _____, in the county of _____ aforesaid, which said street, at the time of the committing of such grievance, and from thence hitherto hath been, and still is, a common public street and highway, for all persons to go, return, pass, and repass, in, by, and with coaches, chariots, and other carriages, at their free will and pleasure, to-wit, at, etc. (the venue), yet the said defendant, well knowing the premises, whilst he was so possessed of the said message with the appurtenances, as aforesaid, to-wit, on the _____ day of _____, in the year one thousand eight hundred and _____ (the day of the injury, or about it), at the town (or "city") of _____, in the county of _____ aforesaid, wrongfully and unjustly put and placed divers large quantities of materials, dirt and rubbish in the said street, near to the said message, and wrongfully and injuriously kept, and continued the same therein, and during the night-time of that day, without fixing or placing, or causing to be fixed or placed, any light, or signal at or near such dirt or rubbish, to denote or show that the same were so there as aforesaid; by means, and in consequence of which said negligence and improper conduct of the said defendant, in that respect, afterwards, to-wit, in the night-time of the said _____ day of _____, in the year aforesaid, to-wit, at, etc. (the venue), aforesaid, a certain carriage of the said plaintiff, of great value, to-wit, of the value of _____ dollars, with the said plaintiff therein, then and there going and passing in and through the said street, was accidentally driven upon and against the said dirt and rubbish, and was thereby, then and there, overturned; by means whereof the said plaintiff then and there became, and was, greatly hurt, bruised, cut and wounded, and sick, sore, lame and disordered, and so remained and continued, for a long space of time, to-wit, for the space of (six) months thence next following, during all of which time he the said plaintiff thereby suffered and underwent great pain, and was thereby, then and there, hindered and prevented from performing and transacting his law-

ful affairs and business, by him during that time, to be performed and transacted; and also, by means of the premises, he the said plaintiff was thereby then and there put to great expense, costs and charges, in the whole amounting to a large sum of money, to-wit, the sum of _____ dollars, in and about endeavoring to be cured of the said wounds, sickness, lameness and disorder, so occasioned as aforesaid (and also, by means of the premises, he the said plaintiff hath been put to great expense, costs and charges, in the whole amounting to a large sum of money, to-wit, the sum of _____ dollars, in and about the repairing of the said carriage, so damaged as aforesaid), to-wit, at, etc. (the venue), aforesaid. To the damage of the said plaintiff of _____ dollars (enough to cover the real damage), and therefore he brings his suit, etc. Burr. App. 308, §578; 2 Chit. Pl. 598; Till. Forms 409.

CASE AND QUESTION CERTIFIED, RESERVED OR REPORTED.

I. Question of Jurisdiction Certified, 245

II. Several Questions Certified, 246

For other forms, see 4 STANDARD PROC. 707, 712, 714.

I. Question of Jurisdiction Certified.

"The plaintiff, considering itself aggrieved by the rulings of said court in the said case, in which final judgment was rendered at the May term, 1894, to-wit, on May 30, 1894, of said circuit court held at this place, dismissing the said case because the said court, in its opinion, did not have jurisdiction thereof, and having on the thirtieth day of May, 1894, filed its bill of exceptions, and having on this day filed its assignment of errors and its petition praying for a writ of error to said judgment and proceedings to the Supreme Court of the United States upon the said question of jurisdiction, and praying that said writ of error be allowed it to the said Supreme Court of the United States, and that a full transcript of the record and proceedings in said cause, duly authenticated, be sent to said Supreme Court.

Now on this day, to-wit, May 30, 1894, it is ordered and considered by this court that said writ of error be allowed and awarded as prayed for," *In re Lehigh Min. & Man.*

Col. 156 U. S. 322, 15 Sup. Ct. 375, 39 L. ed. 438.

II. Several Questions Certified.

First. Whether the second count in said indictment, in manner and form as therein stated, is in itself repugnant.

Second. Whether the 6th section of the said Act of Congress, entitled "An Act To Authorize the Issue of United States Notes, and for the Redemption or Funding Thereof, and for Funding the Floating Debt of the United States," approved Feb. 25, 1862, is repugnant; and whether any person could, under said act, be legally convicted of and punished for any offense whatever, other than that of altering, and causing and procuring to be altered, and willingly aiding and assisting in altering a note, bond, coupon, or other security issued under authority of said act.

Third. Whether the 4th paragraph or clause of said 6th section of the act aforesaid, which is in the words following, to-wit: "Or shall pass, utter, publish or sell, or attempt to pass, utter, publish or sell, or bring into the United States from any foreign place with intent to pass, utter, publish or sell, or shall have or keep in possession or conceal, with intent to utter, publish or sell, any such false, forged, counterfeited or altered note, bond, coupon, or other security with intent to defraud, etc., is repugnant.

Fourth. Whether the defendant could, under said 4th paragraph or clause of said section, be legally convicted of and punished for uttering or passing a forged or counterfeit note, purporting to be a United States treasury note, issued under authority of said act.

Fifth. Whether the defendant could, under said 4th paragraph or clause of said 6th section be legally convicted of and punished for any offense whatever, other than passing, uttering, publishing or selling, etc., an "altered note, bond, coupon or other security," etc. *United States v. Howell*, 11 Wall. (U. S.) 432, 20 L. ed. 195.

CASE ON APPEAL.

I. Case, 246

A. *Setting Out Evidence*, 246

B. *Indorsement on*, 247

C. *Containing Exceptions*, 247

1. *Trial by Jury*, 247

2. *Trial by Court or Referee*, 248

II. *Amendments Proposed*, 248

III. *Notice of Settlement*, 249

IV. *Certificate of Judge*, 249

V. *Order for Time To Prepare*, 249

VI. *Transcript of Record Under Florida Rules*, 249

VII. *Caption of Transcript, Texas Rules*, 251

VIII. *Caption and Commencement of Transcript, Nebraska*, 251

IX. *Certificate of Clerk, California*, 251

X. *Certificate of Justice of Peace to Record, Mississippi*, 252

CROSS-REFERENCE:

FINDINGS AND CONCLUSIONS:

Findings in an Action on a Promissory Note;

Findings in an Action Upon an Innkeeper's Liability;

Notice of Exceptions to Conclusions of Court or Referee;

Notice of Exceptions to Findings of Fact.

I. Case.

A. *Case Setting Out Evidence.*

1. The issues in this action came
2. on for trial before the Hon. M.
3. N., one of the justices of this
4. court, at a circuit court held at
5. ———, in and for the county
6. of ———, on the ——— day
7. of ———, 18——.

8. A jury was called and sworn,
9. and the plaintiff by his counsel
10. opened the case.

11. The plaintiff then, to maintain
12. the issues upon his part, called
13. as a witness J. K., who testified
14. as follows (give direct examination in full).

15. Being cross-examined, he testi-
16. fied (give cross-examination in
17. full).

18. On a further direct examina-
19. tion he testified (give re-direct ex-
20. amination in full).

21. The plaintiff then called as a
22. witness L. M., who testified (give
23. the testimony of the second wit-
24. ness, as above indicated).

25. The plaintiff then read in evi-
26. dence the following writing, mark-
27. ed Exhibit A (insert the exhibit).
28. And the plaintiff then rested.

29. The defendant, by his counsel,
30. then opened his case to the jury

31. The defendant then, to main

See "How To Use This Volume," Introduction, page v.

tain the issues upon his part, called as a witness N. O., who testified (give the testimony of defendants's witnesses, as above indicated).

The defendant then read in evidence the deposition of P. Q., taken conditionally before Hon. M. N., justice at the city of New York, on the _____ day of _____, 18—, which was as follows (insert the deposition).

The cause was then summed up by the respective counsel, and submitted to the jury under the charge of the court.

The jury found a verdict (here state the verdict). 2 Abb. Forms 51. 483.

Statement That Case Contains All the Evidence.

The foregoing is all the evidence received at the trial of said action.

Note.—The foregoing should be embodied in case or bill of exceptions, or in some jurisdictions, in the certificate of the trial judge.

B. Indorsement on Case or Bill of Exceptions.

Take notice, that the within is a copy of the case (or, exceptions, or, case containing exceptions) proposed on behalf of the plaintiff (or defendant) herein. 2 Abb. Forms 484.

C. Containing Exceptions.

1. Case Containing Exceptions on Trial by Jury.

(Page 1.)

1. The issues in said action came on for trial before the Hon. M. N., one of the justices of this court, at a circuit court (or special term of this court), on the _____ day of _____, 18—.

A jury was called and sworn. The plaintiff, by his counsel, opened the case to the jury.

The plaintiff, then, to maintain the issues upon his part, called as a witness J. K., who testified: (insert the testimony in full, as in I, A).

The plaintiff then called L. M., who testified (insert the testimony).

On his cross-examination the witness testified: "I am not unfriendly to the plaintiff;" "I did not say at any time that the de-

fendant should be beaten if swearing could do it, and that I hoped to see him a beggar; I did not say so in presence of my family in my own house on last new year's day."

The plaintiff here rested, and the defendant moved for a nonsuit on the grounds:

1. That the plaintiff was not the real party in interest.

2. That the contract relied on by the plaintiff was invalid, as not, being in writing, subscribed by the party to be charged.

The court denied the nonsuit, and the defendant excepted.

The defendant, to maintain the issues on his part, then offered himself as a witness, and testified as follows: (insert his testimony).

The defendant then offered to show, that on the first day of January last, the witness L. M. stated in his own house, in the presence of his family, that the defendant was to be beaten if swearing could do it; and that he hoped to see the defendant a beggar.

The plaintiff objected that this matter was merely collateral; the court held the objection well taken, and excluded the evidence; to which the defendant excepted.

(Page 2.)

1. The court charged the jury (state the substance of the whole charge, indicating exceptions taken to any portions, as follows): that the testimony of the defendant as a party to action was liable to suspicion from his interest in the result; to which the defendant excepted.

The court further charged that if they believed the statement of the witness J. K., the plaintiff was entitled to a verdict; to which the defendant excepted.

The court further charged that the measure of damages in case the plaintiff was entitled to recover, was the profits he might have reasonably calculated upon receiving, if the defendant had performed the alleged contract; to which the defendant excepted.

The jury found a verdict for the plaintiff for _____. (Indorsement as I, B.) 2 Abb. Forms 486.

2. *Case Containing Exceptions on Trial by Court or Referee.*

(Title of the cause.)

(Page 1.)

1. This action came on for trial
2. before the court at a special term
3. (or, circuit court), held in and for
4. the county of _____, at the
5. court house in _____ (or be-
6. fore M. N., the referee appointed
7. by this court to hear and deter-
8. mine the same, at his office at the
9. city of _____), on the _____
10. day of _____, 18____.

11. The plaintiff, by his counsel,
12. having opened his case, read in
13. evidence the note mentioned in
14. the pleadings, which was marked
15. Exhibit A, and is as follows: (in-
16. sert the exhibit), and then called
17. as a witness J. K., who testified
18. (here insert the testimony).

19. The plaintiff then rested.
20. The defendant then called as a
21. witness L. M., who testified, "I
22. am the maker of the note, Exhibit
23. A. On the day the same matured
24. I handed to plaintiff a new note."

25. The defendant then called on
26. plaintiff to produce this note, no-
27. tice to produce it having been
28. given; the plaintiff declined to
29. produce it.

30. Q. State the contents of this
31. new note?

32. This question was objected to
33. by the plaintiff as immaterial and
(Page 2.)

1. irrelevant. The objection was
2. overruled, and the plaintiff ex-
3. cepted.

4. A. The new note was made by
5. me to the order of the plaintiff, was
6. dated on the day of the maturity
7. of the previous note, and was pay-
8. able ten days after date, for
9. _____ dollars.

10. The witness further testified:

11. The plaintiff agreed to withdraw
12. the previous note from the bank,
13. and wait for the money till the
14. second note came due.

15. Being cross-examined he testi-
16. fied (insert testimony).

17. The court (or referee) made
18. and filed the following find-
19. ings of fact and conclusions of
20. law:

Finding of Fact.

21. 1. The defendant indorsed the

22. note referred to in the pleadings.

23. 2. At maturity the said note
24. was duly protested, and notice duly
25. given to the defendant.

26. 3. The plaintiff, by agreement
27. with the maker of said note, ex-
28. tended the time for payment by
29. the maker, thirteen days, includ-
30. ing grace.

Conclusions of Law.

31. 1. The defendant is liable to
32. plaintiff for the amount of said
33. note, unless the plaintiff by his
34. dealing with the maker has dis-
35. charged the defendant as in-
36. dorser.

37. 2. The extension of time given
38. by the plaintiff to the maker, for
39. the payment of note, discharged
40. the defendant as indorser.

41. To these conclusions the plaintiff
42. excepted.

43. Judgment was directed for the
44. defendant, with costs. (Indorse-
45. ment as I. B.) 2 Abb. Forms 487.

Note.—In some jurisdictions it is
necessary to except to findings of fact
specifically.

II. Amendments Proposed to Case, Etc.

Take notice, that the (plaintiff) pro-
poses the following amendments to the
case (or exceptions, or, case containing
exceptions) proposed on behalf of the
(defendant):

First amendment. On the first page,
seventh line, strike out the words, "I
never asked for the money."

Second amendment. On the third
page, twenty-fourth line, after the word
"Rochester," insert "where the de-
fendant then resided."

Third amendment. On the fifth page,
strike out the tenth, eleventh, and
twelfth lines, and substitute as fol-
lows:

"The defendant offered to show that
in a letter received from plaintiff, the
latter had extended the time of per-
formance; and that the original letter
was lost. The plaintiff objected that
no notice to produce had been given.
The court overruled the objection, and
plaintiff excepted."

Fourth amendment. On the seventh
page, at the end of the eleventh line,
insert: "I have never seen him write."

Fifth amendment. On the tenth
page, fourteenth line, insert, "defend-
ant's counsel asserted that the said
note was entirely without considera-

tion, and plaintiff's counsel admitted this fact."

Sixth amendment. On twelfth page, nineteenth line, strike out the words "Defendant excepted."

Seventh amendment. On fifteenth page, sixth line, insert "plaintiff's Exhibit B."

Eighth amendment. On fifteenth page, twenty-second line, after the words "was read," insert "by consent of parties." 2 Abb. Forms 488.

III. Notice of Settlement of Case, Etc.

Take notice, that the proposed case (or exceptions, or case containing exceptions) in this action, together with the proposed amendments, will be presented for settlement to the Hon. M. N., the judge (or referee) before whom this cause was tried, at chambers (or, at his office at _____), on the _____ day of _____, 18____, at _____ o'clock. 2 Abb. Forms 490.

IV. Certificate of Judge to Case on Appeal.

(The foregoing case contains all the evidence given and received at the trial of said action.) And inasmuch as the several matters so produced and given in evidence and objected to and insisted on as aforesaid do not appear by the record, the undersigned, the circuit judge, before whom said action was tried, upon due notice, at the request of the said counsel for the said defendant (plaintiff), has settled and signed this case to the end that the same may be made a part of the record herein this _____ day of _____, 19____.

(Signature of judge.)

Adapted from Burr. App. 48, §91.

V. Order for Time To Prepare Case or Exceptions, With Stay.

(On reading and filing the affidavit of J. K., and) on motion of Q. R., plaintiff's attorney:

Ordered, that the defendant have _____ from the date of this order to make and serve a case or exceptions, and serve a notice of motion for a new trial herein; and that in the meantime, and until the settlement of such case or exceptions, if served, and until the hearing and determination of such motion, if made, the entry of judgment herein be stayed. 2 Abb. Forms 482.

VI. Transcript of Record Under Florida Rules.

Transcript of record of proceedings in the circuit court of _____ county, Florida, in the suit of A. B., plaintiff, vs. C. D., defendant, therein pending.

On the _____ day of _____, 189____, the plaintiff filed his praecipe for summons ad respondendum to defendant.

Note.—Praecipe to be omitted unless some assignment of error in appellate court is based thereon.

On the _____ day of _____, 189____, summons ad respondendum issued.

Note.—Summons to be omitted unless some error in appellate court is assigned thereon.

On the _____ day of _____, 189____, service of summons was made on defendant.

Note.—Endorsements on summons to be omitted unless called in question by some assignment of error in appellate court.

On the _____ day of _____, 189____, defendant appeared.

On the _____ day of _____, 189____, plaintiff filed his declaration in the words and figures following:

(Here insert the declaration in full, including cause of action, omitting endorsements thereon.)

On the _____ day of _____, 189____, defendant filed the following demurrer to the declaration:

(Here insert demurrer in full if any assignment of error for the appellate court is based upon the ruling of the court thereon; and if not, omit the same.)

On the _____ day of _____, 189____, the plaintiff joined issue upon the demurrer of defendant.

On the _____ day of _____, 189____, the court, after due notice given of the hearing, made the following ruling upon said demurrer:

(Here insert the ruling in full if any assignment of error for the appellate court is based thereon; and if not, the ruling to be omitted.)

On the _____ day of _____, 189____, the plaintiff by leave of the court, filed the following amended declaration:

(Here insert amended declaration in full, omitting endorsements thereon.)

On the _____ day of _____, 189____, defendant filed the following plea (or pleas):

(Here insert plea or pleas in full, omitting endorsements thereon.)

On the _____ day of _____, 189—, plaintiff filed the following demurrer to defendant's plea (or pleas):

(Here insert the demurrer in full if any assignment of error for the appellate court is based thereon; and if not, the same to be omitted.)

On the _____ day of _____, 189—, defendant joined issue upon the plaintiff's demurrer to his plea (or pleas).

On the _____ day of _____, 189—, the court, after due notice given, made the following ruling upon the plaintiff's demurrer to defendant's plea (or pleas):

(Here insert ruling in full if any assignment of error for the appellate court is based on such ruling; and if not, the same to be omitted.)

On the _____ day of _____, 189—, defendant, by leave of the court, filed the following amended plea:

(Here insert the amended plea in full.)

On the _____ day of _____, 189—, plaintiff filed the following replication to defendant's plea (or pleas):

(Here insert the replication in full, omitting endorsements thereon.)

On the _____ day of _____, 189—, the defendant filed the following demurrer to plaintiff's replication:

(Here insert the demurrer in full if any assignment of error for the appellate court is based thereon; and if not, the same is to be omitted.)

On the _____ day of _____, 189—, plaintiff joined issue upon the defendant's demurrer to his replication.

On the _____ day of _____, 189—, the court, after due notice given, made the following ruling on such demurrer:

(Here insert the ruling in full if any assignment of error for the appellate court is based thereon; and if not, the same to be omitted.)

On the _____ day of _____, 189—, defendant joined issue upon the replication of plaintiff.

Note.—In making up the transcript, the foregoing forms should be varied to conform to the pleadings and proceedings had thereon in each particular case, guided by the assignments of error filed for the appellate court; and

all pleadings that have been abandoned or eliminated by demurrer or motion, upon which no error is assigned for the appellate court, must be omitted from the transcript of the record.

On the _____ day of _____, 189—, at a term of said court, came the respective parties by their attorneys and submitted said cause, on the issues joined between them, to a jury, who were duly sworn according to law, and who, having heard the evidence, the charge of the court and argument of counsel, returned the following verdict:

(Here insert verdict in full.)

On the _____ day of _____, 189—, the defendant by his attorney made the following motion in arrest of judgment:

(Here insert motion in full if any assignment of error for the appellate court is based thereon; and if not, to be omitted.)

On the _____ day of _____, 189—, the court made the following ruling on such motion:

(Here insert ruling of court if any assignment of error for the appellate court is based thereon; and if not, the same to be omitted.)

On the _____ day of _____, 189—, the following judgment upon the verdict of the jury was entered by the court:

(Here insert judgment in full.)

Note.—Here insert all charges that may have been given to the jury in writing and made a part of the record in accordance with section 1089 R. S., as amended by chapter 4388, laws of 1895, and that have been directed by either plaintiff or defendant in the written demands filed with the clerk to be inserted in the transcript of the record.

On the _____ day of _____, 189—, during the same term (or on the _____ day of _____, 189—, after the adjournment of said term, by virtue of a special order to that effect, as the case may be), the defendant made up and tendered his bill of exceptions, which, after due notice, was settled and signed by the judge; which said bill of exceptions is in the words and figures following, to-wit:

(Here insert bill of exception.) See Bills of Exceptions.

On the _____ day of _____, 189—, the defendant filed his praecipe with the clerk of the circuit court for

_____ county, for writ of error and seire facias ad audiendum errores, in the words and figures following:

(Here insert praeceipe for writ of error and seire facias ad audiendum errores in common law actions.)

On the _____ day of _____, 189—, writ of error and seire facias ad audiendum errores issued.

On the _____ day of _____, 189—, the defendant filed his bond, which, with the approval thereof, is in the words and figures following:

(Here insert bond and approval.)

Note.—A complete assignment of errors filed with the clerk at the time of applying for the transcript of the record for the appellate court, together with the written demands of the parties for making up the transcript, shall be inserted here.

Certificate of Clerk.

I, _____, clerk of the circuit court in and for the county of _____, state of Florida, do hereby certify that the foregoing pages numbered from one to _____, inclusive, contain a correct transcript of the record of the judgment in the case of _____, plaintiff, against _____, defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears upon the records and files of my office, that have been directed to be included in said transcript by the written demands of the said parties.

In testimony whereof I have hereto set my hand and affixed the seal of said circuit court, this _____ day of _____, 189—.

Clerk of the circuit court for the county of _____.

Rules of Supreme Court, 38 Fla. 21.

VII. Caption of Transcript, Texas Rules.

The state of Texas, county of _____.

At a term of the district court, begun and holden at _____, within and for the county of _____, before the Hon. _____, and ending on the _____ day of _____, A. D. 189—, the following case came on for trial, to-wit:

A. B., plaintiff, v. C. D., defendant.

Rules for District Court, 2 Tex. App. 672.

VIII. Caption and Commencement of Transcript on Appeal, Nebraska.

Pleas before the district court of the

_____ judicial district of Nebraska, in and for the county of _____ at a term thereof begun and holden in the city of _____ in said county and state, on the _____ day of _____, one thousand eight hundred and ninety _____.

Present, Honorable _____, judge.
_____, clerk.

Be it remembered, that heretofore, to-wit, on the _____ day of _____, 18—, a petition was filed in the office of the clerk of said court in the words and figures following, to-wit:

And afterwards, on the _____ day of _____, 18—, there was filed or entered of record in the office of said clerk a certain _____ in words and figures following, to-wit:

Instructions for Transcripts, 46 Neb. X.

IX. Certificate of Clerk, California.

"I, William Harney, County Clerk of the City and County of San Francisco, and ex-officio Clerk of the Twelfth District Court in and for said city and county, do hereby certify as follows, viz: That judgment and dismissal were rendered and entered in this action in favor of defendants, together with defendants' costs and disbursements incurred in said cause, amounting to the sum of nineteen dollars and seventy-five cents, on the 28th day of July, A. D. 1870. That on the 19th day of January, A. D. 1871, plaintiffs filed a notice of appeal in said cause, wherein they appealed to the Supreme Court of the State of California, from the said judgment therein made and entered on the 28th day of July, A. D. 1870, in favor of defendants and against plaintiffs, and from the whole thereof, and that said notice of appeal was served upon the respondent on the 19th day of January, 1871, as appears from the indorsement thereon in the following words and figures: 'Service of within made on plaintiff this 19th day of January, 1871. Pringle & Pringle, attorneys for plaintiff.' That an undertaking on appeal, in due form of law, was filed in said cause on the 19th day of January, A. D. 1871. That no statement on appeal has been filed in said cause. That the appellants have not requested the Clerk of said Court to make, or to certify to, a correct transcript of the record in said cause. In witness whereof," etc. Gross v. Cassin, 43 Cal. 27.

X. Certificate of Justice of the Peace to Record, Mississippi.

State of _____ county:

I, _____, a justice of the peace of the said county, certify that the foregoing is a copy of the record of the proceedings before me in the case stated therein, as appears on my docket.

Given under my hand, this _____ day of _____, A. D. _____.

_____, J. P.
Mississippi Code (1906), §84.

CERTAINTY IN PLEADING.**I. Notice of Motion, 252****II. Order, 252****III. Demurrer, 252****I. Notice of Motion To Make Pleadings More Definite and Certain.**

Please take notice that upon (the affidavit herewith served, and upon) the pleadings in this action, the undersigned will move the court, at a special term thereof to be held at _____, on _____, etc., to require the complaint (or answer) herein to be made more definite and certain (state in what respects, e. g., thus): by stating at what time the agreement mentioned therein was made (or by describing particularly, by metes and bounds, the premises mentioned therein); and for such other or further relief as may be just (and for the costs of this motion). 2 Abb. Forms 210.

II. Order To Make Pleadings More Definite and Certain.

On reading and filing (describe motion papers), and on motion of Q. R. for the defendant, after hearing S. T. (or no one appearing) in opposition:

Ordered, that within _____ days after service of a copy of this order upon the plaintiff's attorney, the (plaintiff) serve upon the (defendant's) attorney a copy of the complaint, amended (here state in what respect, e. g., thus): in the third and fourth paragraphs, by showing the time and place at which every occurrence therein stated took place, and pay to the defendant's attorney _____ dollars costs of motion. And that in default of such service and payment the complaint be stricken out, with _____ dollars costs of motion to the defendant. (And meanwhile let all further proceedings by the plaintiff be stayed.) 2 Abb. Forms 211.

III. Demurrer to Declaration for Matter of Form.

And the said defendant, by _____, his attorney, says that the declaration is not sufficient in law. And the said defendant, according to the form of the statute in such case made and provided, shows to the court here the following causes of demurrer to the said declaration; that is to say, that no day or time is alleged in the said declaration, at which the said causes of action, or any of them, are supposed to have accrued. And also that the said declaration is in other respects uncertain, informal and insufficient, etc. Steph. Pl. 45.

CERTIFICATE OF PROBABLE CAUSE AND OF REASONABLE DOUBT.

See 4 STANDARD PROC. 870, 871, 880.

CERTIORARI.**I. Application, 253**

A. *Affidavit*, 253

B. *Notice of Motion*, 253

C. *Petition*, 253

II. Bill for Certiorari, 254**III. Writs of Certiorari, 254**

A. *To Remove Cause From Inferior Court*, 254

B. *To Review Criminal Proceedings*, 254

C. *On Appeal From Commissioners of Highways*, 255

D. *To Review Removal of Officer*, 255

E. *On Allegation of Diminution*, 256

IV. Indorsements, 256

A. *Of Allowance*, 256

B. *Of Allowance on Allegation of Diminution*, 256

V. Errors, 256

A. *Assignment*, 256

B. *Joinder*, 256

VI. Return, 256**VII. Notice of Filing, 257****VIII. Judgment Record, 257****IX. Procedendo, 257**

For other forms, see 4 STANDARD PROC. 890.

CROSS-REFERENCE:

WRIT OF ERROR:

Allegation of Diminution.

I. Application.

A. *Affidavit To Move for Certiorari.*

M. N., being duly sworn, says (here set forth the facts showing the ground of the application, e. g., thus):

I. (That a writ of habeas corpus, and also a writ of certiorari, were issued on or about the _____ day of _____, 18—, by Honorable J. J., one of the justices of the supreme court of the state of New York, returnable before him, directed respectively to _____ and _____, requiring them to produce before said justice the body of M. N., detained by him the said _____, with the time and cause of his imprisonment, and to certify fully and at large the records and proceedings had and taken in and about such imprisonment.)

II. That returns were duly made to said writs by which it appeared that (etc., stating briefly their substance); and that such returns were traversed, and such proceedings thereupon had that said justice remanded said M. N.

III. That the order and direction of said justice (remanding said prisoner, was, as deponent believes, erroneous, and said prisoner should have been discharged, inasmuch as (specifying error), and that his commitment was wholly without jurisdiction and void). 2 Abb. Forms 712.

B. *Notice of Motion for Certiorari.*

Take notice that on an affidavit of which the within is a copy (or of which a copy is annexed), the undersigned will move the supreme court of New York, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____-noon, or as soon thereafter as counsel can be heard, for the allowance of a writ of certiorari (here state the object, e. g., thus): requiring you, the mayor, aldermen and commonalty of the city of _____, to certify and return all papers, petitions, documents and proceedings under your control, concerning the construction of a suspension bridge across the _____ river, or relating to any assessment for the construction of such bridge upon which any action has been had by you. 2 Abb. Forms 713.

C. *Petition for Certiorari in Aid of Writ of Error, Alleging Diminution of Record.*

To the honorable the judges of the

supreme court for the county of _____:

The petition of A. B., the plaintiff above and defendant below, respectfully shows and represents to the said court:

That he was indicted and convicted in the court of oyer and terminer, of the county of _____, for the murder of one S. S., and was sentenced by the said court to be executed on the _____ day of _____, instant, in the said city.

That an application was made on his behalf to Honorable J. J., one of the justices of the supreme court of the state of New York, for the allowance of a writ of error, to review the record and proceedings of the said court of oyer and terminer, which were had in his case, also for a stay of execution under the provisions of the statutes of the state in such case made and provided, and that the said judge did stay the said execution, and allow said writ of error, and made it returnable to the supreme court for the county of _____, in the _____ judicial district, on the _____ day of _____, instant, on which day a return was made to the same by H. V., clerk of the said court of oyer and terminer, and said writ and return was filed in the office of the clerk of said supreme court.

(And your petitioner represents that, before said return was made, his counsel served a notice upon H. V., clerk of the said court of oyer and terminer, a copy of which is hereunto annexed, marked A, and which he prays may be considered as part of his petition, in which he requested and required the clerk of said court of oyer and terminer to return, in obedience to said writ of error, and as part of the proceeding in the said court, the docket, entries and minutes of the said court, so far as they contained entries in the cause of your petitioner, and also the reasons in arrest of judgment, and for a new trial, and all the affidavits which were filed with the clerk of the said court of oyer and terminer during the progress of the proceedings in the said court.)

And your petitioner further states (that none of the matters specified in the said notice have been returned with the said writ of error, and) that there is a diminution and defect in the return made to the said writ of error,

of the following matters and things, all of which constitute a part of the record of the said court of oyer and terminer, in the case of your petitioner, and which he is advised should be returned according to law, and the return of which are essential and necessary to enable this court to correct and redress the errors which it is alleged have happened in the said court of oyer and terminer, in the trial and proceedings had in the case of your petitioner.

And your petitioner specifies the diminution in the matters returned in obedience to the requirements of the said writ of error, to be as follows (designating each matter).

Your petitioner, therefore, asks that a writ of certiorari may be issued by this court, directed to the said clerk of the said court of oyer and terminer, requiring him to certify to the said supreme court the diminution in the record and proceedings of all the matters specified and enumerated in this petition, and that the said clerk be directed to return the same to this court, according to the command of the writ. (Verification in usual form.) 2 Abb. Forms 719.

II. Bill for Writ of Certiorari To Remove Proceedings.

Humbly complaining, sheweth unto your lordship your orator A. B., of _____, that, etc. (stating the proceedings in the lord mayor's court). And your orator further sheweth unto your lordship that one E. F., a material witness for your orator concerning the premises, did at the commencement of the said suit live and reside and still lives and resides at W., out of the jurisdiction of the said lord mayor and his brethren, the aldermen of the said city of L., whereby your orator has no remedy to compel the said E. F. to be examined or to give his testimony in the said cause in the said city of L. concerning the premises. In consideration whereof and forasmuch as for want of jurisdiction in the said lord mayor and his brethren the aldermen of the said city of L. over your orator's witnesses your orator is remediless there. May it please your lordship therefore to grant unto your orator a writ of certiorari to be directed to the said lord mayor of the said city of L. and his brethren, the aldermen of the said city, thereby com-

manding them to certify and remove the record of the said bill or plaint with the process and all proceedings thereon into this honorable court; and to stand to observe and perform such order and decree therein as to your lordship shall seem meet and the circumstances of the case may require. And your orator shall ever pray, etc. Van Heyth. Eq. Dr. 109.

III. Writs of Certiorari.

A. *Certiorari To Remove Cause From Inferior Court, Before Judgment.*

The people of the state of New York, to the (judges of the court of common pleas for the city and county of New York), greeting:

We being willing for certain causes to be certified of a certain plaint in our said court before you, against C. D., at the suit of A. B., in a plea of (trespass on the case), as also of all the pleadings and proceedings in the said plea, remaining before you between the parties aforesaid, do command you that without delay you certify and distinctly and openly send to our justices of our supreme court of judicature, at, etc., on, etc. (the return), the said' plaint with the said pleadings, proceedings and all other things touching the same, as fully and amply as the same remain before you, by whatsoever names the said parties may be therein called or known; so that our said court may cause to be further done thereupon, what of right ought to be done. And have you then there this writ. Witness, etc. (teste and signatures as in III, C). Burr. App. 515, §1034.

B. *Certiorari To Review Criminal Proceedings.*

The people of the state of New York, to Richard Kelly, James R. Steers and James H. Welsh, esquires, police justices of the city and county of New York, greeting:

We having been informed that John Riley, of said city, was lately in a court of special sessions of the peace, held before you, convicted of petit larceny, and being willing for certain causes to be certified of said conviction, and of the complaint, proceedings and judgment against said John Riley, do command you that the original complaint, the proceedings, testimony and judgment, with all things touching the same, by whatsoever name the party

may be called therein, you send to the justices of our supreme court in and for the city and county of New York, distinctly and plainly, under your hands and seals; and that you cause this writ, and the affidavit delivered to you therewith, and your return thereto, to be filed in the office of our supreme court of judicature, at the city hall, in the city of New York, on the first Monday of September, 1863.

Witness, Honorable George G. Barnard, one of the justices of our supreme court, at the city hall, in the city of New York, this 1st day of August, 1863.

(Seal.) H. W. Genet, clerk.

W. F. Howe, attorney.

(Indorsed.) "I hereby allow the within writ. 1st August, 1863.

George Gould."

People v. Riley, 5 Park. Cr. (N. Y.) 401.

C. Certiorari To County Judges, on Appeal From Commissioners of Highways.

The people of the state of New York, to A. F., I. W. and N. H., esquires, three of the judges of the court of common pleas, of the county of (Washington), greeting:

We being willing, for certain causes, to be certified of a certain decision made by you on a certain appeal of J. M. and W. M., from the determination and decision of the commissioners of highways of the town of (Salem), in the county of (Washington) aforesaid, in refusing to lay out a road in said town, and also in refusing to discontinue a certain road in the same town, under and by virtue of the provisions of the fourth article of title I, chapter XVI, part I, of the revised statutes, entitled "Of highways and bridges:" Do command you that the said appeal, together with the testimony given, and offered to be given on the hearing thereof, with your decision thereon, with all things touching and concerning the same, by whatever names the parties thereto are called, before our justices of our supreme court of judicature, at the (city hall of the city of New York), on the (first Monday of May) next, you send, under your seals, together with this writ; that our said court may further thereupon cause to be done therein what of right ought to be done. Witness, Greene C. Bronson, esquire, our chief justice of our supreme court of judica-

ture, at the (capitol in the city of Albany, the seventeenth day of January), in the year one thousand eight hundred and forty-six.

_____, _____, clerks.

C. & M., attorneys.

Burr. App. 514, §1034; 1 Cow. 23.

D. Certiorari To Review Removal of Officer.

The people of the state of New York, to the board of police of the metropolitan police district:

Whereas, we have understood that lately before you, or a majority of you, composing at the time a board of police of the metropolitan police district, pursuant to an act entitled "An act to establish a metropolitan police district, and to provide for the government thereof," passed April 15, 1857, such proceedings have been had that you, or a majority of you, have irregularly and without authority or jurisdiction in the premises, discharged, dismissed, and removed from office R. G., a policeman duly appointed and holding office in the 16th patrol district or precinct, in the city of New York; and whereas, it is alleged by said G. that your proceedings have been irregular, without authority, and in violation of the provisions of the act aforesaid, and expressly in violation of the seventh section thereof, and of the 6th and 7th rules, entitled rules and regulations for the government of the board of police, adopted and established by said board of police, pursuant to the provisions of said act, and in force and being at the time of said removal of said R. G., of which the following are copies, namely (copies of rules).

And we being willing for certain reasons that all the proceedings concerning said dismissal, discharge, and removal from office of said R. G. before you remaining, with all the proceedings thereto appertaining, should be certified and returned by you, into our supreme court, before our justices thereof, at a general term of said court, to be held at _____, in _____, on the _____ day of _____ next: Do command you that you certify and return into our said supreme court, before our said justices thereof, at a general term of said court, to be held at the place, and on the day last aforesaid, at the opening of the court on that day, all the proceedings concerning the said dismissal, discharge, and removal from office of the said R. G.,

had, and taken by, and remaining before you, so that our said court may further act thereon as of right and according to law ought to be done; and have you then there this writ.

Witness, J. J., Esq., chief justice of our said supreme court, at _____ in _____, the _____ day of _____, 18—.

By the court.

(Signature of clerk.)

(Signature of attorney.)

2 Abb. Forms 714.

E. Certiorari on Allegation of Diminution.

The people of the state of New York, to our justices of the superior court of the city of New York (the court below), greeting:

We being willing, for certain causes, to be certified whether any (here describe the process, pleading or record intended to be certified), be filed in your custody of _____ term, in the year, etc., do command you, that having searched the rolls, files and other remembrances in your custody, of the aforesaid term, you do certify, without delay, what you shall find therein, concerning the said (pleading, etc.), to our justices of our supreme court of judicature, at the capitol in the city of Albany, on, etc., together with this writ.

Witness, etc. (teste in the usual form.) Burr. App. 70, §139; Yates? Forms 618; Till. Forms 31.

IV. Indorsements.

A. Indorsement of Allowance of Writ of Certiorari.

On the application of M. N., attorney for A. B., and upon his affidavit, dated the _____ day of _____, 18—, I allow the within writ of certiorari to issue.

(Signature of judge.)

2 Abb. Forms 715.

B. Indorsement of Allowance of Writ of Certiorari in Aid of Writ of Error, Issued on Allegation of Diminution.

The foregoing writ of certiorari is allowed according to its terms, but without prejudice to any questions, and we direct that the same be sealed and signed by the clerk of the supreme court.

(Signature of judge.)

2 Abb. Forms 722.

V. Errors.

A. Assignment of Errors.

Supreme court, county of _____.
The people on the relation of A. B. and C. D. against M. N.

At a general term of the said court, held at _____, county of _____, on the _____ day of _____, 18—. Present (naming the judges), come the said A. B. and C. D., by O. P., their attorney, and say that in the record and proceedings aforesaid, and also in giving the judgment, and granting the discharge aforesaid, there are manifest errors, in this, to-wit, that by the record aforesaid no notice of said order to show cause was ever published in (etc., specifying in order the various errors relied on).

Wherefore the said A. B. and C. D. pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid may be reversed, annulled and altogether held for naught, and said discharge in insolvency granted, as aforesaid, be vacated and declared void; and that they may be restored to all things which they have lost, by occasion of said judgment and discharge.

(Signature of attorney for relators.)

2 Abb. Forms 717.

B. Joinder in Error.

And hereupon the said M. N., by Q. R., his attorney, freely here in court comes, and says that there is no error, either in the record and proceedings aforesaid, or in giving the judgment or granting the discharge aforesaid. And he prays that the court may proceed to examine, as well the record and proceedings aforesaid as the matters aforesaid above assigned for error; and that the judgment and discharge aforesaid, in form aforesaid given and granted, may be in all things affirmed.

(Signature of attorney for defendant.)

2 Abb. Forms 717.

VI. Return To Indorsement of Allowance of writ of Certiorari in Aid of Writ of Error, Issued on Allegation of Diminution.

Pursuant to the writ of certiorari hereunto annexed, the undersigned, clerk of the court of oyer and terminer, hereby returns to the supreme court of the _____ judicial district of the state of New York (here designate the papers annexed).

Given under my hand, and attested by the seal of the court, this _____ day of _____, 18—.

(Seal.) (Signature of clerk.)

2 Abb. Forms 722.

VII. Notice of Filing Certiorari To Remove Cause.

Sir: Please to take notice that a writ of certiorari, issuing out of the supreme court of judicature of the people of the state of New York, tested the _____ day of _____, etc., and returnable on the _____ day of _____, etc. (inserting the teste and return day), has been allowed by (give the officer's name and title), directed to the judges of the court of common pleas of the county of _____; and by which said writ the plaintiff, and all proceedings and pleadings thereon, depending in the said court of common pleas, between A. B., plaintiff, and C. D., defendant, in a plea of (trespass on the case) are removed to the said supreme court; and that such writ of certiorari has been duly filed this day with the clerk of the said court of common pleas. Dated, etc.

Yours, etc.,

G. H., attorney for said C. D.

To E. F., esq., attorney for said A. B.

Burr. App. 536, §1061; Yates' Forms 755.

VIII. Judgment Record on Certiorari.

Pleas before the justices of the supreme court of judicature, etc. (placita in the usual form, of the term in which the certiorari is returnable). State of New York, ss.:

The people of the state of New York sent to the judges (or to J. L., one of the judges) of the court of common pleas of the county of _____ (or to A. B., esquire, one of the justices of the peace in and for the county of _____, according to the direction of the writ), their writ of certiorari close, in these words, to-wit:

The people of the state of New York, to, etc. (here insert the writ of certiorari, including the signatures, and then proceed as follows): At which day and place, in the return of the said writ mentioned, before the justices aforesaid, comes the said C. D. (the party suing out the writ), by G. H., his attorney, and the said judges of the said court of common pleas (or the said A. B., esquire, the justice aforesaid), now here, make (or makes) return to the said writ in the words

and figures following, that is to say (here copy the return verbatim).

Whereupon all and singular the premises being seen, and by the aforesaid justices of the said supreme court now here, being fully understood and mature deliberation being thereupon had, it seemeth to the said court now here, before the said justices, that the aforesaid decision of the said court of common pleas is (or that the order, adjudication and warrant of removal of the said J. L., esquire, judge, etc., are) manifestly erroneous and void in law (or is manifestly good and valid in the law).

Therefore it is considered that the decision (or order, adjudication and removal) aforesaid (or whatever the proceedings may have been) be, and the same is (or are) hereby reversed, annulled and altogether held for naught (or quashed, as the case may be). And it is further considered, etc. (add such other judgment as may have been given), and that the said C. D. (the party suing out the writ), recover against the said (the other party)

_____ dollars for his costs and charges by him laid out and expended, in and about the prosecution of the aforesaid writ of certiorari by the court now here adjudged to the said C. D., with his assent; and that the said C. D. have execution thereof, etc. (If the decision, order, etc., be affirmed, the entry of judgment is as follows): Therefore it is considered that the said decision (or order, adjudication, or whatever the proceeding may have been) be, and the same hereby is (or are) in all things affirmed (the said writ of certiorari to the contrary thereof in any wise notwithstanding). And it is further considered, etc. (judgment for costs). Burr. App. 526, §1048a; Yates' Forms 762, 769, 797.

IX. Procedendo (on Certiorari).

The people of the state of New York, to the judges of the court of common pleas, in and for the county of _____, greeting:

Whereas, we being willing for certain causes, to be certified of a plaintiff in our court before you, levied or affirmed against C. D., at the suit of A. B., of a plea of debt on demand (or as the action is), for _____ dollars, lately by our writ commanded you, that you should send the said plaintiff, with all things touching the

same, as fully and entirely as they remained in our court before you, by whatsoever names the said A. B. and C. D. might be called in the same, before our justices of our supreme court of judicature, at the _____, in the city of _____, on the _____ Monday of _____ then next, together with that writ, that we might further cause to be done what of right should be fit to be done: Nevertheless, for certain causes, now specially moving us in our said supreme court, before our aforesaid justices thereof, we command you, that in the plaint aforesaid, in our said court before you, levied or affirmed against the said C. D., at the suit of the said A. B., in the plea aforesaid, you proceed with what speed you can, in such manner, according to the law and custom of our state, and the usage of our said court of common pleas, as you shall see proper, our writ of certiorari aforesaid, to you thereupon before directed, to the contrary thereof, in any wise notwithstanding.

Witness, etc. (teste in usual form).
Burr. App. 573, §1123; Till. Forms 35.

CHANGE OF VENUE.

I. Demand for Change, 258

II. Affidavits, 258

- A. *For, and of Service of Demand*, 258
- B. *Convenience of Witnesses*, 258
- C. *Impartial Trial Cannot Be Had*, 259
- D. *To Oppose Change of Venue*, 259

III. Notices of Motion, 259

- A. *Pursuant to Demand*, 259
- B. *By Defendant*, 259
- C. *By Plaintiff*, 259

IV. Orders, 259

- A. *To Show Cause, With Stay*, 259
- B. *Revoking Stay*, 260
- C. *Granting Change*, 260
- D. *Denying Change*, 260

For other forms, see 4 STANDARD PROC. 987; 5 STANDARD PROC. 28.

I. Demand for Change.

I hereby demand that the place of trial of this cause be changed to the proper county, viz., the county of _____ (designating it). 2 Abb. Forms 243.

II. Affidavits.

- A. *Affidavit for Change of Venue, and Service of Demand.*

Y. Z., the defendant above named

(or attorney for defendants above named), being duly sworn, says:

I. That the summons and complaint in this action were served on this defendant on the _____ day of _____, 18—; that on the _____ day of _____, 18—,* and before answering, this deponent caused the annexed demand in writing to be served on the attorneys for the plaintiffs, and that the plaintiffs' attorneys have not consented to change the place of trial.

II. Deponent further says (here state the ground for requiring the change, e. g.), that all the parties to this action reside in the county of _____.

III. Deponent further says that deponent has fully and fairly stated the case to Q. R., his counsel, who resides at No. _____, in _____ street, in the city of _____, and that he has a good and substantial defense on the merits to the action, as he is advised by his said counsel, and verily believes to be true. 2 Abb. Forms 244.

B. *Affidavit for Change of Venue on Account of Convenience of Witnesses.*

Y. Z., the defendant above named, being duly sworn, says:

I. That the summons and complaint in this action were served on this defendant on the _____ day of _____, 18—; and that issue was joined herein by the service of this defendant's answer (or by the service of the plaintiff's reply), on the _____ day of _____, 18—.

II. That (insert oath to merits as in II, A, to the *). That this defendant has fully and fairly stated to his said counsel the facts which he expects to prove by each and every of the following witnesses, viz., E. F., G. H. and J. K.; that each and every one of them are material and necessary witnesses for his defense on the trial of this cause, as he is advised by his said counsel, and verily believes; and that without the testimony of each and every one of the said witnesses this defendant cannot safely proceed to the trial of this cause, as he is also advised by his said counsel, and verily believes; and that each and every one of said witnesses reside in the county of _____, viz., E. F. in the town of _____, G. H. in the town of _____, and J. K. in the town of _____, in said county.

III. That the facts which he expects to prove by said witnesses are as follows: By E. F. the fact that the note mentioned in the complaint was made by this defendant without consideration, and for the accommodation of the payee therein named, and that that fact was known to the plaintiff at the time he received said note. By G. H. that the plaintiff discounted said note at a usurious rate of interest, as alleged in the answer herein. (And so on.) 2 Abb. Forms 248.

C. Affidavit for Change of Venue Because Impartial Trial Cannot Be Had in County.

(As in II, B, to the *.)

III. That the action is brought to recover (here state the nature of the cause of action, e. g.) damages for an alleged libel upon the plaintiff, published in the _____, and at _____, in the county of M., and which the defendant is charged with being the author of.

IV. That an impartial trial cannot be had in the county of M., the county designated in the complaint as the place of trial of this action, as this deponent verily believes, the grounds of which belief are as follows (setting forth the circumstances). 2 Abb. Forms 247.

D. Affidavit by Plaintiff To Oppose Change of Venue.

A. B., plaintiff above named, being duly sworn, says:

I. That he has fully and fairly stated to M. N., his counsel in this cause, who resides at _____, in the county of _____, the facts which he expects to prove by each and every one of the following witnesses, viz., C. D., of the town of _____, E. F., of the town of _____, G. H., of the town of _____; all of whom reside in said county of _____; and that they are, each and every one of them, material and necessary witnesses for this plaintiff on the trial of this cause, as he is advised by his said counsel, and verily believes; and that without the testimony of each and every one of said witnesses, this plaintiff cannot safely proceed to the trial of this cause, as he is also advised by his said counsel, and verily believes.

II. That the facts which this plaintiff expects to prove by said witnesses are as follows (state in detail the facts and circumstances which the

plaintiff expects to prove by each witness, naming him, and showing their materiality, as in II, B). 2 Abb. Forms 250.

III. Notices of Motion.

A. Notice of Motion To Change Venue Pursuant To Demand.

Please take notice that on an affidavit of which a copy is herewith served on you, and upon the complaint in this action, and the demand to change the place of trial heretofore served on you, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock, that the place of trial in this action be changed from the county of _____ to the proper county, viz., the county of _____ (designating it). 2 Abb. Forms 246.

B. Notice of Motion by Defendant To Change Venue.

Sir: Please to take notice that upon the affidavit, with a copy whereof you are herewith served, this court will be moved at the next special term, to be held at the capitol in the city of Albany, on the first Tuesday of (April) next, for an order,* changing the venue in this cause from the county of (Westchester) to the county of (Sullivan), or for such other or further order as the court may deem proper to grant. Burr. App. 208, §409.

C. Notice of Motion by Plaintiff To Change Venue.

(As in III, B, to the *, and then as follows): that the plaintiff in this cause may be allowed to amend his declaration by changing the venue from the county of _____ to the county of _____. Burr. App. 209, §410.

IV. Orders.

A. Order To Show Cause, With Stay of Proceedings.

On the foregoing affidavit, and on the pleadings, and demand therein mentioned, let the plaintiff show cause at a special term to be held at _____ on the _____ day of _____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, why the place of trial of this action should not be changed from the county of _____ to the county of _____; and why the defendant should not have the costs of this motion, and such other relief as may be just. And until the determination of

this motion, let all proceedings on the part of the plaintiff be stayed, and particularly the entry of judgment, and (stating any other proceedings desired to be stayed). 2 Abb. Forms 245.

B. Order Revoking Stay of Proceedings.

The plaintiff in the above cause having presented and filed with me an affidavit showing such facts as will entitle him to retain the venue in cause; I hereby revoke the order to stay proceedings granted by me on the (insert the date of the order). 2 Abb. Forms 251.

C. Order Granting Change of Venue.

On reading and filing the affidavits in this cause, and on motion of Mr. H., of counsel for the defendant, after hearing counsel in opposition thereto (or no one appearing to oppose), ordered, that the venue in this cause be, and the same hereby is changed from the county of (Westchester) to the county of (Sullivan). Burr. App. 457, §913.

D. Order Denying Motion To Change Venue.

A motion having been made on the part of the defendant, to change the venue in this cause, and after hearing counsel for the respective parties, ordered, that the motion be denied, that the motion (with _____ dollars costs). Burr. App. 458, §914.

Note.—Reference to the statute is essential in the preparation of the affidavit, these forms being in no sense intended to cover anything but the general outline.

CHATTEL MORTGAGES.

CROSS-REFERENCES:

PAYMENT:

Answer, That Plaintiff Took Mortgaged Property.

SHERIFFS AND CONSTABLES:

Complaint by Mortgagee of Chattels Against Sheriff for Selling on Execution Against Third Person.

SPECIFIC PERFORMANCE:

Complaint by Creditor for Performance of Agreement To Give a Chattel Mortgage.

Petition (Complaint) for Foreclosure.

"Plaintiff states that on the _____ day of August, 1892, defendants were justly indebted to plaintiff in the sum of \$6,000, being the amount of purchase price of the northeast quarter of

section 30 and the northwest quarter of section 29, in township 40, range number 4, in Jefferson county and state of Missouri, which said real estate was by the plaintiff conveyed to one Owens, of Lyon county, state of Kansas, at the instance and request of the defendants, and for their use and benefit; and said defendants then and there agreed to pay said sum of money on or before the first day of May, 1893, and secured the plaintiff by executing and delivering to plaintiff a chattel mortgage on certain standard bred horses, mares and colts, by them purchased from said Owens, and by them received from said Owens in exchange for said land; and that afterwards, on the _____ day of August, 1892, the defendants, in pursuance of said agreement to secure said indebtedness, executed and delivered to plaintiff their certain contract, herewith filed, by which they acknowledged this indebtedness to plaintiff in said sum of \$6,000, and agreed to pay the same on or before May 1, 1893, by which they agreed that plaintiff should have a lien on all of the personal property, consisting of standard bred horses, mares and colts, so received by them from said Owens, to secure the payment of the said sum of \$6,000, together with interest thereon, by which said writing and lien was created in favor of plaintiff on said stock of horses to secure said sum, which said stock of horses are now on the farm of E. Siple, in Vernon county, Missouri, and specifically described as follows, to-wit: * * *

Plaintiff alleges and charges that the said sum of \$6,000 became due and payable, together with six per cent. interest thereon from the _____ day of August, 1892, on the first day of May, 1893. The defendants have each of them failed and refused, and still fail and refuse, to pay said sum of money or any part thereof, and the same, together with the interest thereon, remains due and unpaid.

"Wherefore plaintiff prays that plaintiff have and recover of and from the defendants the said sum of \$6,000, together with six per cent. interest from the _____ day of August, 1892; and that plaintiff's said lien on above described personal property be enforced, and that the said judgment be decreed and declared by the court to be a lien on all of said property, and defendants'

equity of redemption in and to all said property be foreclosed, and that the same be ordered sold and the proceeds thereof be applied in satisfaction of plaintiff's debt and the costs herein, and for all other and further relief, and for costs." Robinson v. Siple, 129 Mo. 208, 31 S. W. 788.

CHOICE AND ELECTION OF REMEDIES.

- I. Affidavit To Put Complainant to Election, 261
- II. Notice of Motion That Complainant Elect, 261
- III. Order That Complainant Elect Between Law and Equity, 261
- IV. Order To Elect Between Several Actions, 261

I. Affidavit To Put Complainant to His Election.

C. D., the defendant in this cause, being duly sworn, deposeth and saith, that the complainant is prosecuting this deponent both at law and in this court, in the above entitled cause, for the same matter and cause of action; whereby this deponent is doubly vexed. And this deponent further saith, that he caused his answer in this suit to be filed and served on the _____ day of _____ last. 2 Barb. Ch. Pr. 434.

Note.—5 STANDARD PROC. 119.

II. Notice of Motion for Order That Complainant Elect.

Sir: Take notice, that I intend to move this honorable court on the _____ day of _____ next at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the capitol in the city of Albany, for an order that the complainant in this cause may elect whether he will proceed in this court, in the above entitled suit, or in the suit commenced against the defendant in the supreme court; and that if he shall elect to proceed in this court, then that his proceedings in the said suit in the supreme court may be stayed by injunction; but that in default of such election, within the time limited by the court, or if the complainant shall elect to proceed at law, then that the bill in this cause stand dismissed with costs. And for such other order or relief as the court may think proper to grant; which motion will be founded on the

affidavits, copies whereof are hereto annexed, and on the pleadings in the causes above mentioned respectively. 2 Barb. Ch. Pr. 434.

III. Order That Complainant Elect Between Law and Equity.

On reading and filing affidavits, etc. (and due proof of service of notice of this motion) and on motion of W. N., solicitor for the defendant C. D., and on hearing Mr. J. E., solicitor for the complainant, in opposition thereto, it is ordered that the complainant in this cause do within eight days from the date of this order, elect whether he will proceed in the present suit in this court, or in the suit commenced against the defendant in the supreme court; and that if he shall elect to proceed in this court, then that his proceedings in the said suit in the supreme court may be stayed by injunction; but that in default of such election, within the time limited by the court, or if the complainant shall elect to proceed at law, then that the bill in this cause stand dismissed with costs. 2 Barb. Ch. Pr. 435.

IV. Order To Elect Between Several Actions.

Upon reading and filing the affidavit of M. N. that the plaintiff is suing the defendant in another action in the _____ court, and in this action, for one and the same matter, and on motion of said M. N., of counsel for defendant, and after hearing O. P., of counsel for plaintiff:

Ordered, that the plaintiff do, within _____ days after service of this order on his attorney, make his election in which action he will proceed, and notify the same in writing to the defendant; and if he shall elect to proceed in this action, then his proceedings in said other action are stayed by injunction; but if he shall elect to proceed in said other action, or in default of such election within the time aforesaid, then this action is from thenceforth to stand absolutely dismissed out of this court, with costs. 2 Abb. Forms 504.

CIVIL RIGHTS.

- I. Complaint, 261
- II. Indictment, 262
- I. Complaint for Refusing Accommodation to Colored Person.

That the defendants are the pro-

prietors of a certain inn (to-wit, a restaurant), in the city of _____, county of _____, and state of _____; that on the _____ day of _____ month, 18—, the plaintiff, a colored person, and a citizen of the United States, was refused food and refreshments there by orders of the defendants on account of his race and color, etc. *Lewis v. Hitchcock*, 10 Fed. 4.

Note.—Adapted to meet the objections raised in said cause. Held that the words in parentheses did not make the complaint insufficient.

II. Indictment for Refusing Accommodations Under State Law.

"Be it remembered that R. D. Stearns, county attorney in and for Lancaster county, and in the 2d judicial district of the state of Nebraska, comes here in person into court at this, the May term, A. D. 1888, thereof, and for the state of Nebraska gives the court to understand and be informed that George Messenger, late of the county aforesaid, on the 3d day of May, A. D. 1888, in the county of Lancaster, and the state of Nebraska, then and there being one of the proprietors of the place of business known as the Commercial barber shop, in the city of Lincoln and county aforesaid, unlawfully and wilfully refused to shave one Arthur L. Warwick, or allow him to be shaved in said Commercial barber shop, on account of his said Arthur L. Warwick color, said Warwick being a colored man; he said Warwick being then and there entitled to the full and equal enjoyment of all the accommodations, facilities and privileges of said barber shop extended by its said proprietors to any of the customers and patrons of said shop, and said refusal to shave said Warwick on account of his said color being contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Nebraska." *Messenger v. State*, 25 Neb. 674, 41 N. W. 638.

CLATM AND DELIVERY.—See REPLEVIN.

COGNOVIT.—See JUDGMENT RECORDS; JUDGMENTS.

COLLISION.

CROSS-REFERENCE:

ADMIRALTY:

Libel In Rem for Collision.

COMBINATIONS.—See MONOPOLIES.

COMMENCEMENT OF ACTION.—See LIMITATION OF ACTIONS.

COMMERCE.—See INTERSTATE COMMERCE COMMISSION.

COMMITMENT.—See PRELIMINARY EXAMINATION.

COMMON COUNTS.—See ASSUMPSIT.

COMPLAINT AND PETITION.—See DECLARATION AND COMPLAINT.

COMPOSITION WITH CREDITORS.

CROSS-REFERENCE:

BANKRUPTCY:

Petition for Meeting To Consider Composition;

Application for Confirmation of Composition;

Order of Distribution on Composition.

Answer, Composition Deed.

I. The defendant admits that on the _____ day of _____, 18—, he was indebted to the plaintiff as alleged in the complaint.

II. The defendant further says that afterwards, and on or about the _____ day of _____, 18—, the plaintiffs, by their deed under seal, agreed with the defendant that the plaintiffs would accept _____ dollars, then and there paid them by the defendant, in full satisfaction of said indebtedness, and that they would not sue the defendant on account thereof, and then and there did accept the same; and divers other creditors of the defendant then and there also, by the same deed, agreed to accept, and did accept, the sum currently with the said plaintiffs, in full satisfaction of the several debts to such creditors respectively due and owing from the defendant, and covenanted with the defendant not to sue the defendant for such respective debts. 2 Abb. Forms 55.

COMPOUNDING CRIME.

CROSS-REFERENCE:

ILLEGALITY, HOW PLEADED:

Answer, That Note Was Given To Compound Felony.

Indictment for Compounding Crime.

That heretofore, to-wit, on, etc., at, etc., one A. B., with force and arms, feloniously did steal, take and carry away one lamp, of the value of twenty

shillings, of the goods and chattels of one C. D., late of, etc., against the peace of our lord the king, his crown and dignity. And that the said C. D., well knowing the premises, and the said felony to have been by the said A. B. so as aforesaid done and committed, but contriving and intending unlawfully and unjustly to pervert the due course of law, in this behalf, and to cause and procure the said A. B. for the felony aforesaid, to escape with impunity, afterwards, to-wit, on, etc., with force and arms, at, etc., unlawfully, and for wicked gain's sake, did compound the said felony with the said A. B. and did then and there exact, receive, and have of the said A. B. the sum of eighteen shillings, in monies numbered, for and as a reward for compounding the said felony, and desisting from all further prosecution against the said A. B. for the said felony; and that the said C. D., on, etc., last aforesaid, at, etc., aforesaid, did thereupon desist, and from that time hitherto hath desisted, from all further prosecution of the said A. B. for the said felony; to the great hindrance of justice, in contempt, etc., and against the peace, etc. (Add a count omitting the statement as to the party having desisted from prosecuting.) 2 Chit. Cr. L. 221.

COMPROMISE AND SETTLEMENT.

I. Complaint, 263

A. *On Compromise of Suit*, 263

B. *On Compromise of Opposition to Probate of Will*, 263

II. Answer, Compromise and Payment, 263

CROSS-REFERENCES:

RECEIVERS:

Order of Court on Request by Receiver for Authority to Compromise Notes and Accounts.

SPECIFIC PERFORMANCE:

Bill for Specific Performance of Agreement of Compromise.

I. Complaint.

A. *Complaint Upon Compromise of Suit*.

I. That on the _____ day of _____, an action was pending between the parties to this action, brought by the plaintiff to recover from the defendant the sum of _____ dollars, which the defendant owed the plaintiff, but which he disputed.

II. That in consideration that the plaintiff would discontinue his said action, and would accept _____ dollars in satisfaction of said disputed claim, the defendant promised to pay the plaintiff the sum of _____ dollars (on the _____ day of _____).

III. That the defendant accordingly did discontinue said action.

(Or, III. That the plaintiff has duly performed all the conditions thereof on his part.)

IV. That no part of said sum has been paid (except the sum of, etc.). 1 Abb. Forms 209.

B. *Complaint Upon Compromise of Suit for Withdrawing Opposition to Probate of Will*.

I. That heretofore one M. N. died, leaving him surviving A. B., this plaintiff, one of his heirs-at-law (or next of kin).

II. That after his death the defendant (and others) produced and propounded for probate, in the court of the surrogate of _____, an instrument purporting to be the will of said M. N., whereby (a part of) the estate to which the plaintiff would have succeeded if said M. N. had died intestate was devised and bequeathed to the defendant.

III. That there were doubts as to the validity of said devises and bequests (or of the execution of said will, or both), and that the plaintiff threatened to oppose its probate on that account.

IV. That in consideration that the plaintiff would withhold all opposition to the proving of the will, the defendant, on the _____ day of _____, promised that he would pay to the plaintiff the sum of _____ dollars (on, etc.).

V. That the plaintiff accordingly withdrew all opposition to the probate of the will, and it was thereupon duly proved before said surrogate.

(Or, V. That the plaintiff has duly performed all the conditions thereof on his part.)

VI. That no part of said sum has been paid (except the sum of, etc.). 1 Abb. Forms 210.

II. Answer, Compromise and Payment.

I. That before this action, the plaintiff having demanded said sum (or said goods, or otherwise) from the defendant, the defendant refused to pay the same, because (here state facts show-

ing the claim a doubtful one).

II. That the parties thereupon agreed to compromise said claim, and that the defendant should pay, and the plaintiff accept, _____ dollars in satisfaction thereof.

III. That on the _____ day of _____, 18____, the defendant did pay, and the plaintiff so accepted said sum. 2 Abb. Forms 55.

CONDEMNATION PROCEEDINGS.—
See EMINENT DOMAIN.

CONFESSION AND AVOIDANCE.

I. Plea in Justification, 264

II. Plea of Release, 264

I. Plea in Confession and Avoidance, Justification.

And for further plea in this behalf, the said defendant by leave, etc., says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he the said defendant at the several times when, etc., by the leave and license of the said plaintiff to him for that purpose first given and granted, to-wit, at, etc. (venue), aforesaid, committed the several supposed trespasses in said declaration mentioned: as he lawfully might for the cause aforesaid. And this the said defendant is ready to verify, wherefore he prays judgment, if the said defendant ought to have or maintain his aforesaid action thereof against him, etc. 3 Chit. Pl. 1106.

II. Plea in Confession and Avoidance, Release.

And the said defendant, by _____, his attorney (or in person), says that, after the said breach of covenant, and before the commencement of this suit, to-wit, on the _____ day of _____, in the year of our Lord _____, the said plaintiff, by his certain deed of release, sealed with his seal, and now shown to the court here (the date whereof is the day and year last aforesaid), did remise, release and forever quitclaim to the said defendant, his heirs, executors and administrators, all damages, cause and causes of action, breaches of covenant, debts and demands whatsoever, which had then accrued to the said plaintiff, or which the said plaintiff then had against the said defendant; as by the said deed of release, reference being thereto had, will fully appear. And this the said de-

fendant is ready to verify. Steph. Pl. 53.

CONFESSION OF JUDGMENT.—See JUDGMENTS.

CONSOLIDATION OF ACTIONS.

I. Notice of Motion, 264

II. Order, 264

I. Notice of Motion To Consolidate Actions.

(Title of all the causes.)

Sir: Please to take notice, that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol in the city of Albany, on the first Tuesday of (April) next, that all the above entitled actions be consolidated into one, upon such terms and conditions as the said court shall direct. Dated, March 16th, 1846. Burr. App. 208, §408; Yates' Forms 346.

II. Order Consolidating Actions on Policy.

(Titles of all the causes.)

On reading and filing the affidavits in these causes, and after hearing Mr. J., of counsel for the defendant, and Mr. S., of counsel for the plaintiff, ordered that all the proceedings, on the part of the plaintiff in these causes respectively (except the first), be, and the same are hereby stayed, the said defendants hereby undertaking to be bound by the verdict in the said first suit, and to pay the amount of their several subscriptions to the said paper instrument (or "policy of insurance") in case the said plaintiff shall recover in the said first suit, together with the costs of that recovery and of the other suits (adding such other terms as the court may impose). Burr. App. 457, §912; Yates' Forms 346.

CONSPIRACY.

I. Indictment, 264

A. *General Form*, 264

B. *To Defraud Bank*, 265

C. *To Charge With Receiving Stolen Goods*, 265

For other forms, see 5 STANDARD PROC. 302.

I. Indictment.

A. *Indictment, General Form*.

The jurors for our lord the king, upon their oath present, that A. B., late of,

etc. (here state the names and additions of all the defendants), being persons of evil minds and dispositions, on, etc., with force and arms, at, etc. (the venue), unlawfully and wickedly (or if the conspiracy be malicious, say "falsely and maliciously"), did conspire, combine, confederate and agree together to (here state the object of the conspiracy, as in the following precedents). And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B., etc., in pursuance of and according to the said conspiracy, combination, confederacy and agreement, between them the said A. B., etc., as aforesaid had, did, on, etc., at, etc. (the place where the overt act took place), (here set out the overt acts of conspiracy as in the following precedents), to the great damage of, etc. (the party immediately injured), to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. 3 Chit. Cr. L. 1145.

B. Indictment for Conspiring To Defraud a Bank.

The indictment in the first count averred that the defendants "falsely, unlawfully and wickedly did conspire, combine, confederate and agree together to defraud the Bank of the Northern Liberties of its moneys, etc., and that in pursuance of, and according to the said conspiracy, combination, confederacy and agreement between them the said defendants as aforesaid did wickedly devise and agree together that the said Frederick Foering would and should from time to time draw certain checks upon the said bank, without having any funds or moneys therein, and that the said Benjamin Williams, then and there being the bookkeeper of the said bank, and having as such the care and custody of the ledger of the said bank, would falsely and deceitfully so arrange the entries in the said ledger, as to cause it to appear that the said Frederick Foering was a creditor of the said bank, and had a balance of moneys therein, and the said Frederick Foering in pursuance of, and according to the said conspiracy, combination, confederacy and agreement between them the said Frederick Foering and Benjamin Williams, had as aforesaid, did draw a check on the said bank for the sum of 300 dollars." *Com. v. Foering*, 4 Clark (Pa.) 281.

C. Indictment for Conspiring To Charge With Receiving Stolen Goods.

That W. G., late of, etc., and W. B., late of, etc., being evil-disposed persons, and wickedly devising and intending one A. L., not only of his credit and good reputation unjustly to deprive, but also to obtain and acquire to themselves of and from the said A. L., divers large sums of money, on, etc., with force and arms, at, etc., aforesaid, did amongst themselves conspire, combine, confederate and agree falsely to charge and accuse the said A. L. with having lately before received stolen goods. And the jurors, etc., do further present that the said W. G., and W. B., afterwards, to-wit, on the said, etc., at, etc., aforesaid, according to the said conspiracy, combination, confederacy and agreement between themselves before had as aforesaid, falsely, wickedly and for the sake of unjust lucre and gain, did, in the presence and hearing of divers persons, charge and accuse him the said A. L., that he the said A. L. had bought hats that were stolen, knowing them to be stolen, and that they the said W. G. and W. B. did then and there falsely pretend and affirm to the said A. L., that a bill of indictment was then found at the general session of the peace, holden at the New Sessions House on Clerkenwell Green, in and for the said county of M., on, etc., then last past, against him the said A. L., for receiving stolen goods, knowing the same to have been stolen, whereas in truth and in fact, there was not, at the time of such charge and accusation, nor at any time before or since, any bill or bills of indictment whatsoever in any manner found against the said A. L., for the said supposed offense so falsely charged on him, or for any such like crime, and whereas in truth and in fact the said A. L. was never guilty of the said supposed offense or any other offense of that kind, and the jurors, etc., do further present, that by the said false accusation and by divers threats, menaces and allegations of them the said W. G. and W. B., that he the said A. L. should be transported into parts beyond the seas for the said pretended offense, they the said W. G. and W. B. did afterwards, to-wit, on the said, etc., at, etc., aforesaid, demand, receive and take of the said A. L. one

piece of gold coin of the proper coin of this realm, called a guinea, for and as a composition of the said pretended offense, and to discharge the said A. L. from all further prosecution for the same, and they the said W. G. and W. B. did also then and there by the false and wicked pretenses aforesaid, unlawfully cause and procure the said A. L. to expend and lay out, and the said A. L. did then and there expend and lay out twenty-three shillings of lawful money of Great Britain, at the dwelling house of the said W. B., in wine and other liquors in the company and for the entertainment of them the said W. G. and W. B., to the great damage, infamy and disgrace of the said A. L., to the evil and pernicious example, etc., and against the peace, etc. 3 Chit. Cr. L. 1182.

CONSTABLES. — See SHERIFFS AND CONSTABLES.

CONTEMPT.

I. Judgments, 266

- A. *In the Presence of Court*, 266
- B. *In the Immediate Vicinity of Court*, 267

II. Proceedings for Contempt for Disobedience, 268

- A. *Notice of Motion for Attachment*, 268
- B. *Writ of Attachment*, 268
- C. *Order To Turn Over Into Prison*, 268
- D. *Affidavit of Tender of Performance*, 269

For other forms, see 5 STANDARD PROC. 432-437.

CROSS-REFERENCES:

DEPOSITIONS:

Commitment for Contempt, Refusal To Testify on Letters Rogatory.

HABEAS CORPUS:

Attachment for Not Returning Habeas Corpus;
Commitment for Disobedience to Writ.

INJUNCTIONS:

Committal for Breach of Injunction.

SEQUESTRATION:

Order for Sequestration; Corporations;
Order for Sequestration for Not Answering;
Order for Sequestration on Return of Attachment (English);
Writ of Sequestration.

SERVICE OF PROCESS AND PAPERS:

Affidavit, Where the Service Is the

Foundation for Proceeding for Contempt.

SHERIFFS AND CONSTABLES:

Notice To Return Capias Ad Respondendum;
Notice To Return Fieri Facias;
Notice To Return Capias Ad Satisfaciendum;
Affidavit of Service of Notice That Sheriff Return Capias or Execution;
Order on Sheriff's Default for Not Returning;
Order on Appearance on Attachment;
Attachment Against Sheriff for Contempt;
Interrogatories on Attachment Against Sheriff for Not Returning Capias;
Interrogatories on Attachment Against Sheriff for Not Returning Fieri Facias;
Order of the Court Imposing Fine on Sheriff for Contempt;
Order Discharging Attachment Against Sheriff for Contempt;
Order on Default of Sheriff To Appear on Attachment.

SUPPLEMENTARY PROCEEDINGS:

Notice of Motion for an Attachment in Supplementary Proceedings;
Affidavit of Non-attendance by Judgment Debtor;
Order To Show Cause in Supplementary Proceedings on Contempt;
Attachment Against Judgment Debtor or Third Person for Disobedience of Order;
Order for Interrogatories After the Return of the Attachment Where the Contempt Is Denied;
Order Adjudging Offender Guilty of Contempt in Supplementary Proceedings;
Commitment for Contempt for Disobedience of an Order in Supplementary Proceedings.

WITNESSES:

Warrant To Apprehend Witnesses;
Interrogatories on Attachment of Witness for Disobeying Subpoena.

I. Judgments.

A. *Judgment for Contempt in Presence of Court.*

"In the Circuit Court of the United States of America for the Northern District of California. In the Matter of Contempt of David S. Terry. In open court.

"Whereas, on this third day of Sep-

tember, 1888, in open court, and in the presence of the judges thereof, to-wit, Hon. Stephen J. Field, Circuit Justice, presiding; Hon. Lorenzo Sawyer, Circuit Judge, and Hon. George M. Sabin, District Judge, during the session of said court, and while said court was engaged in its regular business, hearing and determining causes pending before it, one Sarah Althea Terry was guilty of misbehavior in the presence and hearing of said court;

"And whereas, said court thereupon duly and lawfully ordered the United States Marshal, J. C. Franks, who was then present, to remove the said Sarah Althea Terry from the court room;

"And whereas, the said United States Marshal then and there attempted to enforce said order, and then and there was resisted by one David S. Terry, an attorney of this court, who, while the said marshal was attempting to execute said order in the presence of the court, assaulted the said United States Marshal, and then and there beat him, the said marshal, and then and there wrongfully and unlawfully assaulted said marshal with a deadly weapon, with intent to obstruct the administration of justice, and to resist such United States Marshal and the execution of the said order;

"And whereas, the said David S. Terry was guilty of a contempt of this court, by misbehavior in its presence, and by a forcible resistance in the presence of the court to a lawful order thereof, in the manner aforesaid:

"Now, therefore, be it ordered and adjudged by this court, That the said David S. Terry, by reason of said acts, was, and is, guilty of contempt of the authority of this court, committed in its presence on this third day of September, 1888;

"And it is further ordered, That the said David S. Terry be punished for said contempt by imprisonment for the term of six months;

"And it is further ordered, That this judgment be executed by imprisonment of the said David S. Terry in the county jail of the County of Alameda, in the State of California, until the further order of this court, but not to exceed said term of six months;

"And it is further ordered, That a certified copy of this order, under the seal of the court, be process and warrant for executing this order." *Ex*

Parte Terry, 128 U. S. 289, 9 Sup. Ct. 77, 32 L. ed. 405.

Note.—"It is a special proceeding, criminal in character, in which the state is the real plaintiff or prosecutor; and is wrongly entitled in the civil action out of which it arose." *Haight v. Lucia*, 36 Wis. 355, 360.

Note.—"The proceedings on the attachment may be, and they usually are, entitled in the original suit. But it is strictly regular to entitle them, as in this case, in the name of the people on the relation of the person prosecuting attachment against the defendant." *People ex rel. Young v. Craft*, 7 Paige (N. Y.) 325.

Note.—"The authorities hold that before the attachment issues, the proceedings are entitled in the name of the parties; but afterward in the name of the state." *State ex rel. Mason v. Harper's Ferry Bridge Co.*, 16 W. Va. 864, 874.

Note.—"It cannot have escaped the attention of the reader, that this method of making the defendant answer upon oath to a criminal charge, is not agreeable to the genius of the common law in any other instance." 4 Bl. Com. *287.

Interrogatories to defendant, see *Sheriffs and Constables*, this volume.

B. *Judgment for Contempt in Immediate Vicinity of Court.*

"Whereas, during the progress of the trial of the action of the United States of America *v. H. Goujon*, in this court, on the 27th day of February, 1889, one Bartolo Flores, a witness on the part of the Government duly subpoenaed and in attendance upon the court, testified, in substance, that while in said attendance, on said 27th day of February, one Alejandro Savin, on two several occasions, once in the jury room of said court, temporarily used for witnesses, and within a few feet of the court room, and once in the hallway of said court building, immediately adjoining said court room, did approach said witness, and in said jury room did improperly endeavor to deter the said witness from testifying in behalf of the Government in said cause, and in the said hallway he offered the said witness money not to testify against the defendant in said action of the United States *v. Goujon*; and whereas, upon such testimony of said Flores, this court then and there made an order directing the said Savin

to show cause before this court, at 9:30 o'clock a. m. on the 28th day of February, 1889, at the court room thereof, why he should not be adjudged guilty of a contempt of this court; and whereas, on said 28th day of February, the said Savin appeared with counsel in response to said order; whereupon, the said matter was heard in open court, and witnesses for and against him were sworn, and their testimony given, and the same having been duly considered by the court, the court now finds the facts to be: That during the progress of the trial of the action of The United States of America v. H. Goujon, in this court, on the 27th day of February, 1889, one Bartolo Flores, a witness on behalf of the Government, duly subpoenaed and in attendance upon the court, while in such attendance, on the said 27th day of February, was on two several occasions, once in the jury room of said court, which was temporarily used for a witness room, and which is located within less than seven feet of the court room, and once in the hallway of said court building, immediately adjoining the court room, was approached by the respondent, Alejandro Savin, and said Savin did then and there, in said jury room, unlawfully attempt and endeavor to deter said witness, Flores, from testifying for the Government in the aforesaid action, and in said hallway the said Savin did at the time stated unlawfully offer the said witness, Flores, money not to testify against the defendant therein, the aforesaid Goujon; from which facts it is considered and adjudged by the court that the said respondent, Alejandro Savin, did thereby commit a contempt of this court, for which contempt it is by the court now ordered and adjudged that the said Alejandro Savin be imprisoned in the county jail of Los Angeles County, California, for the period of one year.

"The marshal will execute this judgment forthwith.

"February 28, 1889.

"Ross, District Judge."

Ex Parte Savin, 131 U. S. 267, 9 Sup. Ct. 699, 32 L. ed. 150.

II. Proceeding for Contempt for Disobedience.

A. *Notice of Motion for Attachment for Contempt.*

Take notice, etc., etc., that an attachment as for a contempt be issued

against the above defendant, for violating the injunction issued in this cause. Dated, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2154.

B. *Writ of Attachment for Contempt (a).*

The people of the state of New York, to the sheriff (or coroner) of the (city and) county of _____, greeting:

We command you that you attach C. D. so that you may have him before our justices of our supreme court of judicature, at the (capitol) in the city of _____, on the (first Monday of January) next, to answer to our said justices for certain trespasses and contempts done and committed in our court before our justices aforesaid. And have you then there this writ.

Witness, _____, esquire, our chief justice, at the (court house) in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred and _____.

Hallett, and others, clerks.

E. F., attorney.

Burr. App. 506, §1020a.

Writ of Attachment for Contempt (b).

State of Maine.

To the sheriffs of our counties and their deputies.

We command you to attach the body of A. B., of _____, in our county of _____, so that you have him before our supreme judicial court, next to be holden at _____, within and for our county of _____, on the _____ Tuesday of _____ next, to answer for an alleged contempt in not (here assert the cause), and you may take a bond with sufficient sureties, to C. D., the party injured, in the sum of _____, conditioned, that he then and there appear and abide the order of the court. Hereof fail not and make due return thereof and of your proceedings, at the time and place aforesaid. Witness E. S., justice of our said court, the _____ day of _____, in the year of our Lord, 18____.

_____, clerk.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2169.

C. *Order To Turn Over to Prison Party Brought up on Attachment, or by Habeas.*

The defendant A. being this day brought to the bar of this court by the, etc., attending this court (or if

brought up by habeas, say, by virtue of a writ of habeas corpus cum causis, directed to the sheriff of ———, or the keeper of the ——— prison), to answer his contempt in not, etc. (state the default in respect of which the process issued), and still persisting in his said contempt. It is upon motion, etc., ordered, that the said defendant A. be turned over to the, etc., prison, and do remain there until he shall, etc. (state what he is required to do) clear his contempt, and this court make other order to the contrary. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2357; 2 Seton Dec. (Eng. ed. 1862) 1223.

D. Affidavit of Tender of Performance Where Defendant Taken Under Attachment.

1. That by an order made in this cause, bearing date the ——— day of ———, it was ordered that the said defendant T. M., upon his paying or tendering the costs of his contempt in, etc., be discharged out of the custody of the sheriff of ——— (or the messenger), as to his said contempt.

2. I did, on the ——— day of ———, instant, pursuant to such order, tender to Mr. ———, who is plaintiff's solicitor in this cause, the sum of \$———, for the costs of such contempt, but the said Mr. ——— refused to accept the same or any other sum of money for such costs as aforesaid.

3. I did, on the ——— day of ———, serve the said Mr. ——— with the said order by delivering to or leaving with his clerk, at the office of the said ———, situate at ———, a true copy of such order duly passed and entered. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2178.

CONTINUANCES.

I. Affidavits, 269

A. *Absence or Sickness of Witness*, 269

B. *Absence of Plaintiff*, 271

C. *Absence of Defendant, by Act of Plaintiff*, 271

II. Order Postponing Trial, 271

III. Judgment Records, 271

A. *Continuance Before Trial*, 271

B. *Continuance After Argument*, 271

C. *Continuance After Trial*, 272

CROSS REFERENCE:

JUDGMENT RECORDS:

Continuance Before Suggestion, or Special Entry on the Record.

I. Affidavits.

A. Affidavit To Move for Postponement on Account of Absence or Sickness of Witness (a.)

A. B., of ———, being duly sworn, says:

I. That he is the plaintiff (or defendant) in this action.

(II. If the affidavit is by defendant: That deponent has fully and fairly stated the case to Q. R., his counsel, who resides at ———, in the county of ——— (or at No. ——— in ——— street, in the city of ———), and that he has a good and substantial defense on the merits to the action, as he is advised by his said counsel, and verily believes to be true.)

III. That L. R. is a material witness for deponent, without the benefit of whose testimony deponent cannot safely proceed to the trial of said action, as he is advised by his counsel, after fully and fairly stating to him what he expects to prove by said witness, and as deponent verily believes.

IV. That the said witness is not in attendance, and that, two weeks before the first day of the present circuit, deponent went to the residence of said witness, in the town of Berlin, in the county of Rensselaer, for the purpose of subpoenaing him to attend as a witness in said action, at said circuit; that he there learned that said witness had unexpectedly left home the day before, in order to go to the state of Ohio, and intended to remain there about two months; and deponent further says he had no knowledge that said witness was going to be absent from home until he learned it when he went to subpoena said witness, as aforesaid; and deponent further says he expects to be able, and intends to procure the attendance of said L. R. as a witness in this action at the next circuit court, appointed to be held at, etc.

(Or, IV. That the said witness, who resides at ———, was, on the 10th day of March last past, duly subpoenaed to attend the trial of this action; but that since the service of the said subpoena he has become seriously ill, and is now wholly unable to attend this court, or be present at the trial of this action in its order on the calendar. But deponent has been informed by R. S., the physician attending the said witness, and verily be-

lieves, that the said witness will be able to attend this court by the time of the next circuit, appointed to be held at, etc. 2 Abb. Forms 455.

Affidavit for Continuance, Absence of Witnesses (b).

And now at this day comes the defendant by James A. Beal, his attorney appointed by the court, and presents his affidavit for a continuance of the above cause as follows: Burt McKay being duly sworn, upon his oath says, that he cannot safely proceed to trial in the above suit, for the want of four material witnesses; that he has used due diligence to procure the attendance of said witnesses, but that they are absent without the consent of the affiant; that he caused subpoenas to be issued for said witnesses in time, and as soon as he could; that said subpoenas have not been returned; the subpoenas were sent to Saint Louis county, where the witnesses reside. This case was continued by the State at last term, and all of this affiant's witnesses were not present; and James Carns, a material witness for defendant, has gone out of the state since the cause was continued, and has not returned, and consequently did not know of this adjourned term, and could not be subpoenaed by defendant. This affiant considers all of aforesaid witnesses material to his defense, without whose testimony he cannot safely proceed to trial, and he knows of no other witnesses by whom he can prove the same facts; that he has a good defense, and this application for a continuance is not made for delay or vexation, but that justice may be done, and if a continuance be allowed, he will be able to procure the attendance of said witnesses in time for his trial.

B. McKay.

Sworn to and subscribed in open court, December 19th, 1848.

J. H. Adams, clerk.

McKay v. State, 12 Mo. 492.

Affidavit for Continuance, Absence of Witnesses (c).

"That W. J. O'Dell is a witness in behalf of defendant and is absent; that he has been subpoenaed; that he resides in the county where the above case is pending; that his testimony is material; that such witness is not absent by the permission, directly or indirectly, of this applicant; that he

expects that he will be able to procure the testimony of such witness at the next term of the court; that the application for a continuance is not made for the purpose of delay, but to enable him to procure the testimony of such absent witness; that there is no other witness by whom he can prove the same facts; and that deponent expects to prove by said absent witness that deponent did not keep, maintain or carry on a scheme for the hazarding of money or other valuable thing, called a policy-lottery. Deponent further says, that he is informed and believes that the reason of the absence of said witness is on account of illness, and appends, as part of this affidavit, the certificate of Dr. R. J. Nunn. Deponent does swear that said witness was sick, and that he is absent from the city." (Defendant amended his affidavit as follows): "That the said witness has been tried and found guilty for carrying on the self-same scheme or device for which this defendant has been indicted or accused; that said O'Dell has full knowledge of the fact and all attending circumstances; that he knows that the said scheme is not kept, maintained or carried on by this defendant; that said O'Dell has full knowledge of the fact and all attending circumstances; that he knows that the said scheme is not kept, maintained or carried on by this defendant; that said O'Dell is expected to testify that this defendant has no connection with the keeping, carrying on or maintaining said scheme or device." *Cunneen v. State*, 95 Ga. 330, 22 S. E. 538.

Order for Continuance and Remand (d).

Tuesday, November 28, 1848.

State of Missouri v. Burt McKay and Hugh Gillespie.

And now upon the motion of the attorney for the state, this cause is continued to the next term of this court, and upon the motion of the attorney for said defendants, it is ordered by the court, that said defendants, Burt McKay and Hugh Gillespie be remanded to the common jail of St. Louis county, and that the sheriff of Jefferson county, convey the bodies of the said defendants to the said county of St. Louis, and there deliver them to the keeper of said common jail of said county of St. Louis. *McKay v. State*, 12 Mo. 492.

B. Affidavit To Move for a Postponement on Account of Absence of Plaintiff.

(Commencement as in I, A.)

I. That the plaintiff is a resident of this state, and is master of the ship "Ocean Queen," and has been absent from this state since _____ last, on a voyage to New Orleans, from which he will probably return about the _____ day of _____ next.

II. That, in the opinion of this deponent, he cannot safely proceed with the trial of this action in the absence of said plaintiff, who is thoroughly acquainted with all the facts in controversy in this action, and without whose aid and assistance it will be impracticable for deponent to properly prepare for trial herein.

III. That before said plaintiff's departure from this state, as aforesaid, he had not time fully to apprise deponent of the facts of the case and the names and residence of his witnesses. 2 Abb. Forms 456.

C. Affidavit by Defendant To His Expected Absence in Consequence of Acts of the Plaintiff.

(I and II as in I, A.)

III. That deponent further says that since the said plaintiff noticed this action for trial, and while this deponent was preparing for the trial thereof, the plaintiff in this action, being also plaintiff in another action, in which the place of trial is the county of _____, has subpoenaed this deponent, and paid him his fees to attend the trial of said last mentioned action; that said last mentioned action is noticed for the same time as this action, and that it is absolutely necessary that this deponent should be present at the trial of this action; but that he will be unable to be present at the circuit court to be held at _____, and also obey the said subpoena requiring his presence in the county of _____. 2 Abb. Forms 457.

Public Prejudice, Criminal Cause.—*Jones v. State* (Tex. Civ. App.), 35 S. W. 975.

II. Order Postponing Trial.

On reading and filing the affidavit of _____, and on motion of _____, of counsel for _____, and _____, of counsel for _____ (or no one appearing), in opposition:

Ordered that the trial of this action

be postponed until the _____ instant, on the payment of ten dollars costs (or to the _____ circuit, on payment of costs of the present circuit, and, here state other terms, if any, imposed, such as, on the defendant's consenting that the testimony of M. N. be taken conditionally before S. T., referee, on _____ days' notice). 2 Abb. Forms 457.

III. Judgment Records.

A. Judgment Record on Continuance Before Trial.

(After the usual order for trial, proceed as follows):

A day is given to the parties aforesaid, before the justices aforesaid, at the (capitol in the city of Albany on the Third Monday of October), next (the term following the circuit).

At which day, before the justices aforesaid, at the capitol aforesaid, come the parties aforesaid, by their respective attorneys aforesaid. And because the aforesaid issue so as above joined in this cause between the parties aforesaid was not tried at the said circuit court, held at the time and place last aforesaid, in and for the said (city and) county of (New York), therefore the process between the parties aforesaid is continued until the circuit court, appointed to be held at the (city hall), in the (city of New York), in and for the said (city and) county of (New York), on the (second Monday of November) next (or "in the year of our lord one thousand eight hundred and forty-six"). *Burr. App.* 85, §162; *Grah. Pr.* 271.

B. Judgment Record, Continuance After Argument.

And because the said court, before the aforesaid justices thereof now here, are not yet advised what judgment to give of and upon the premises, a day is given to the parties aforesaid, before the said justices of the supreme court of judicature aforesaid, on the (third Monday of October) next, at the (capitol in the city of Albany), to hear judgment thereon, for that the said court, before the aforesaid justices thereof, now here, are not yet advised thereof, etc. At which day, before the justices aforesaid, at the (capitol) aforesaid, come the parties aforesaid, by their respective attorneys aforesaid. And hereupon, etc. (proceed to enter judgment). *Burr. App.* 86, §163a.

C. Judgment Record on Continuance After Trial.

(After entering the postea, proceed as follows): And because the said court of the people, before the aforesaid justices thereof, now here, are not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the justices thereof, until the (first Monday of July) of the term of (July), in the year one thousand eight hundred and (forty-six), at the (academy in the city of Utica); and the same day is given to the parties aforesaid at the same place, to hear the judgment of the said court thereupon. At which said last mentioned day, before the justices aforesaid, at the place last aforesaid, come the parties aforesaid, by their respective attorneys aforesaid. And hereupon, etc. (proceed to enter judgment, or make such other entry as the case may require). Burr. App. 85, §163.

CONTRIBUTION.

- I. Bill for Contribution, 272
- II. Complaint by Co-surety, 273
- III. Decrees, 274
 - A. *Reference, Plaintiff as Surety*, 274
 - B. *Between Co-sureties and Principal*, 274
 - C. *Between Co-defendants*, 274
 - D. *One Co-surety Unable To Pay*, 274

I. Bill for Contribution on General Average.

To the judges of the circuit court of the United States for the district of Massachusetts:

L. L. S., G. M. C. and G. B., of the city, county and state of New York, and W. B., of S., in the state of C., merchants and citizens of the said states, and of the United States; the Sun Mutual Ins. Co., the N. Y. Mut. Ins. Co., and the General Mut. Ins. Co., corporations established within and by the authority of the state of N. Y., and doing business in the city of N. Y., bring this their bill of complaint against T. G. C., G. H., O. E., P. C., W. A. and against D. G. and J. P., copartners; S. A. E., C. H. M., I. K. M. and P. T. J., copartners, under the firm

of C. H. M. & Co., all of B., in the commonwealth of Mass., and citizens of the United States and of the said commonwealth of Massachusetts.

And thereupon your orators complain and say, that on the ——— day of ———, the said S. C., G. B. and W. B. were owners of a certain vessel—a barque called the Vernon—and that the said several corporations were insurers thereon, to the full amount of her value, against the perils of the seas, and other perils in the policies of insurance mentioned; that on the ——— day of ———, said vessel was laden with a cargo of cotton and merchandise, owned by, and consigned to, the said several defendants, as appears by the said several bills of lading, here in court produced, and made part of this bill; that on said ——— day of ———, said vessel set sail and departed from ———, in the state of ———, bound for Boston aforesaid; that on the night of the ——— day of ———, then next ensuing, said vessel was in Massachusetts bay, in a heavy gale, and, etc. (Here describe the circumstances of a voluntary stranding for the safety of the ship, cargo, and lives of those on board.)

Your orators further show that, afterwards, the cargo on board said vessel was safely landed and delivered to the said defendants respectively, and that the said vessel was afterwards got off, and the damages occasioned by her being so voluntarily stranded repaired.

Your orators further show that said vessel, her freight and cargo, were in imminent danger, and would in all probability have been totally lost, if the cables had not been slipped, and said vessel run ashore as aforesaid; and that by the said voluntary stranding the same were saved and preserved to the respective owners thereof.

Your orators further allege that by the said voluntary stranding great damage was done to said vessel, and heavy expenses incurred in consequence thereof, and in getting her off and repairing said damages; and that the owners of said vessel are entitled to demand and receive of the owners of her cargo their respective proportions of the damage, loss and expenses so incurred, the same being a sacrifice made and incurred by the owners of said vessel, for the common benefit of

the vessel, cargo and freight, and all interested therein.

Your orators further show that, in consequence of the damage suffered by the said vessel as aforesaid, the owners thereof abandoned the same to the said corporations, the insurers thereon, and the said corporations accepted said abandonment, and paid the sums by them respectively insured, and thereby became assignees of, and subrogated to, all the rights of the owners of said vessel, to demand and receive a contribution from the owners of the said cargo for the damages, losses and expenses incurred for the general benefit.

Your orators further show that on the _____ day of _____, they caused to be prepared a general average adjustment, showing the amount of the losses, damages and expenses incurred by reason of the said voluntary stranding, and of the apportionment thereof upon the said vessel, her cargo and freight, and the several owners thereof, and that by said adjustment it appeared that the said T. G. C ought to pay the sum of \$_____ ; the said P. C., the sum of \$_____ ; the said G. M. P., the sum of \$_____ ; the said C. H. M. & Co., the sum of \$_____ ; the said O. E. & Co., the sum of \$_____ , etc., etc.; and that the said W. A. is entitled to receive the sum of \$_____ , as will appear by reference to said adjustment, here in court to be produced, and said several defendants were then respectively requested to pay the sums from them due as aforesaid.

And your orators well hoped that said defendants would have paid the sums so due from them as requested.

But now so it is, may it please your honors that the said defendants refuse to pay the sum from them respectively due as aforesaid, and pretend that the said vessel was not voluntarily stranded, and that the owners thereof, and their insurers, are not entitled to demand and receive any contribution for the damage sustained by the stranding, and expense of getting off and repairing said vessel, the contrary whereof your orators charged to be true.

Pray subpoena to the said, etc. (the defendants), and that they may be ordered and decreed to pay to your orators the sums so due from them respectively, or such other sums as may be found due to your orators, and to stand by, etc. 3 Dan. Ch. Pl. & Pr.

(Perkins' ed.) 1946; *Sturgess v. Cary*, 2 Curtis C. C. 59.

II. Complaint for Contribution by Co-Surety.

William M. Stallworth v. Holden Preslar.

The plaintiff claims of the defendant the sum of five hundred dollars, being one-half the sum of one thousand dollars, paid by said plaintiff in satisfaction of a certain judgment rendered in the county court of Monroe county, Alabama, at its January term, 1842, for the sum of three thousand four hundred and sixty-six 31/100 dollars, together with the costs, in favor of Halsey, Utter & Co., against Thomas R. Watts and said plaintiff; said judgment being founded on a promissory note for the sum of two thousand six hundred and forty-six 04/100 dollars, made at Sparta, Alabama, on the 11th of July, 1837, negotiable and payable at the Branch Bank at Mobile, due on the 1st day of March next after the date thereof, signed by said Thomas R. Watts, said defendant and plaintiff, and in favor of Halsey, Utter & Co. And said plaintiff avers, that he, together with said defendant, signed said note as the sureties of said Watts; that suit was brought on said note by Halsey, Utter & Co., against said Watts, plaintiff and defendant; that said suit was discontinued as to said defendant, because the writ was not served on him; that the judgment hereinabove mentioned was rendered against said Watts, who then was, and continued thereafter to be insolvent, and died insolvent, without having paid said judgment, which was also rendered against plaintiff; which said judgment being unreversed and in full force, plaintiff has paid and satisfied the same by the payment of one thousand dollars, to-wit, on the 15th of April, 1854. By means whereof, the defendant became liable to pay and reimburse to plaintiff the said sum of five hundred dollars, with interest thereon, being one-half of the said sum of one thousand dollars. The plaintiff claims of the defendant, also, the further sum of five hundred dollars, for moneys paid, laid out and expended, by said plaintiff, for said defendant, at his request, to-wit, on the 15th of April, 1854. Said sums of money, with the interest thereon, remain unpaid." *Stallworth v. Preslar*, 24 Ala. 505.

III. Decrees.

A. *Decree, Reference for Account of Payments by Plaintiff as Surety.*

This court doth order and decree that it be referred to A. B., esq., one of, etc., to take the account and make the inquiry following, that is to say: 1. An account of all and every sum and sums of money which hath or have been paid by the plaintiff, as one of the sureties of the defendant W. G., as collector of taxes for the town of _____, in the county of _____, as in the bill mentioned. 2. An inquiry whether the defendant J., another of such sureties, is in such pecuniary circumstances that he can contribute towards the payment of the sums, if any, which have been paid by, or may be payable to, the sureties of the said defendant W. G., or either (any) of them; but the said inquiry is to be without prejudice to any question between the plaintiff and the defendant J., or between the said defendant and all or any of his co-defendants; and the defendants S. and T. not desiring any inquiry whether the defendant F. G. can contribute towards the payment of the said sums, the court doth not think fit to direct such inquiry. Adjourn, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2253; 1 Seton Dec. 562, 563.

B. *Decree for Contribution Between Co-Sureties and Principal.*

This court doth order and decree that it be referred to A. B., esq., one of, etc., to take an account of all sums of money paid by T. W., the testator in the pleadings named, and the plaintiffs, his executors, or either of them, agreeably to the undertaking in the pleadings mentioned, dated, etc., and compute interest on such sums of money, at the rate of, etc., from the times the several payments were made, and tax the plaintiffs' costs of this suit (cause); and it is further ordered that the defendant G. Wright pay to the plaintiffs one moiety of what shall be found due for principal and interest as aforesaid, together with their costs of this suit (cause) when so taxed (within, etc.). And it is further ordered that the defendant G. Watson (within, etc.) pay to the plaintiffs the other moiety of what shall be found due for principal and interest as aforesaid, and also pay to the defendant G. Wright the

principal and interest before directed to be paid by him to the plaintiffs, together with the costs of the said defendant G. Wright, to be taxed, etc., and also the costs which he shall pay to the plaintiffs under the direction before given. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2253; 1 Seton Dec. (Eng. ed., 1862) 562.

C. *Decree Between Co-Defendants in Suit by Creditor.*

It appearing to the court that the defendants W. and his wife have paid to the plaintiffs what was reported due to the plaintiffs by the master's report, dated, etc., for their demands and costs of this suit, the court doth declare that the defendant G. ought to indemnify the said defendants W. and wife, in respect of such payment, and to reimburse them what they have so paid; and the court doth order that the said defendants W. and wife be at liberty to prosecute the said decree against the said defendant G., in the names of the plaintiffs, in order to recover against the said defendant G. what they have so paid to the plaintiffs; and the defendants W. and wife are to be at liberty to make use of the names of the plaintiffs for that purpose, the said defendants W. and wife indemnifying the plaintiffs against any costs or damages they may be liable to on that account. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2255; 1 Seton Dec. 563, 564.

D. *Decree, One Co-Surety Unable To Pay His Full Share.*

This court doth order and decree that "the defendants S. and P., as executors of F. S., one of the co-sureties with the late plaintiff H., for the defendant W. G., as the collector, etc., under the several bond, dated, etc., on or before the _____ day of _____, pay to the plaintiffs T. and W., as executors of the said H., the sum of \$_____, being one-fourth part of \$_____, which is the aggregate amount of the sums amounting to \$_____, paid by the said late plaintiff in satisfaction of the said bonds, and for the costs in the, etc., mentioned, and of \$_____ agreed upon as the amount of the interest on the same at the rate of, etc., from the respective times when the several principal sums were paid by the said H.; and that the defendant Suter, another of such co-sureties, within the time

aforesaid, pay to the said plaintiffs T. and W. the sum of \$——, being one other fourth part of the said sum of \$——, and that the defendant J., another of such co-sureties, within the time aforesaid, pay to the plaintiffs T. and W. the sum of \$——, agreed to be paid by him; and that the defendants S. and P., within the time aforesaid, pay to the plaintiffs T. and W. the sum of \$——, agreed to be paid by them in respect of the one-fourth share that ought to have been contributed by the defendant J. Like direction as to the defendant Suter. And the court doth further order "that the defendant W. G., within the time aforesaid, repay to the plaintiffs T. and W. the sum of \$——, being the difference between the said sum of \$—— and the sum of \$——, the amount of the several sums so to be paid to them as aforesaid, and also repay to the defendants S. P., Suter and J., respectively, the several amounts that shall be paid by them to the plaintiffs, under the directions hereinbefore contained; and the plaintiffs and the last named defendants not asking any directions for contribution against the defendant F. G., another of such co-sureties, this court does not think fit to direct such contribution. And this court doth further order that the defendants S. and P. and Suter pay to the said plaintiffs T. and W. so much of the costs of these suits (causes) up to this time as have been occasioned by their insisting that they were not liable to contribute anything towards payment of the said sum of \$——; but this court does not think fit, under the circumstances of this case, to give any other costs on either side." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2254.

CONTRIBUTORY NEGLIGENCE. —
See NEGLIGENCE.

CONVERSION.—See TROVER AND CONVERSION.

COPYRIGHT PROCEEDINGS.

- I. Bill To Restrain Infringement, 275
- II. Order for Reference as to Infringement, 276
- III. Order for Injunction Staying Partial Infringement, 277
- IV. Decree for Perpetual Injunction, 277

CROSS-REFERENCE:

INJUNCTIONS:

Injunction Against Publishing.

I. Bill To Restrain Infringement of Copyright, and for Accounting.

The bill of complaint of C. F., T. G. W., L. T., and J. S., all of C., in the county of M., in said district, against B. M., N. C., G. P. L., and T. H. W., and C. W. U.

Respectfully show your orators C. F., T. G. W., and L. T., printers and publishers and copartners, doing business under the name and style of F., W. & T., and J. S., gentleman, all of C., in the county of M., in said district of Massachusetts, and all being citizens of the United States, that the said J. S. is, and heretofore at the time of the infringement hereinafterwards mentioned was, proprietor of the copyright of a work of which the said J. S. is the author and compiler, entitled, "The Writings of George Washington, being his Correspondence, Addresses, Messages, and other Papers, official and private, selected and published from the original Manuscripts, with a Life of the Author, Notes and Illustrations, by J. S.," consisting of twelve volumes, of all which volumes respectively the copyright was taken out by said J. S., previous to the publication thereof respectively, and secured according to law, the said J. S., at the time of taking out and securing said copyrights respectively, and still being a citizen of the United States, and the term of each and all of which copyrights has still more than eight years to run; and that said F., W. & T., before the infringement hereinafterwards complained of, had, by an agreement with said J. S., undertaken and become interested in and assumed a part of the risk and responsibility of the publication of said work, and that ever since the first publication of the several volumes of said work, the public has been supplied with copies of the same by said J. S. and the publishers of the same at reasonable prices; and that said J. S. and said F., W. & T., have incurred very large expenses upon said publication, and have been and are in the receipt of large amounts, the proceeds of the sale of said work, to reimburse their expenses, and remunerate their labor and care bestowed on the same. And your orators further show that they,

your orators, being in the receipt of large sums, the proceeds of the sale of said work as aforesaid, under said copyrights, B. M., N. C., and T. H. W., all of B., in the county of S., in said district of Massachusetts, and G. P. L. of C., in the county of M., in the district of N. H., booksellers, being co-partners under the name, style, and firm of M., C., L. & W. and also C. W. U. of S., in the county of E., in said district of Massachusetts, clerk, all of them well knowing that said J. S. held such copyrights and said F., W. & T. were interested in the said publication, and deliberately after due notice, intending to infringe said copyright at said B. on the fifth day of August, in the year of our Lord eighteen hundred and forty, and at divers times before and since the said fifth day of August, without the allowance and consent of your orators, or either of them, published and exposed to sale and sold a work in two volumes entitled "The Life of Washington," in the form of an autobiography, the narrative being, to a great extent, conducted by himself in extracts and selections from his own writings, with portraits and other engravings, consisting of ——— pages in the whole, which they still continue to expose to sale, having had due notice, and well knowing that the same is a copy from, and an infringement and piracy of, said "Writings of George Washington, etc., with a Life of the Author," so published by your orators as aforesaid. And your orators aver that three hundred and eighty-eight pages of said piratical work are copied *verbatim et literatim* from the said work so edited and compiled by said J. S., as aforesaid, and so published by your orators as aforesaid, consisting of matter which was published originally by said J. S. under his said copyright, and which had never before been published or printed, and which he, the said J. S. and his assigns, had the exclusive right and privilege to print, publish, and sell, and expose to sale; and that many other parts of said piratical work published by said parties complained of, besides three hundred and eighty-eight pages, are infringements upon said J. S.'s said copyrights, whereby your orators hath sustained great damage, detriment, and injury. And your orators further show, that said M., C., L. & W. and U. still con-

tinue and threaten hereafter to continue to print, publish, and expose to sale and sell copies of the said piratical work, the protests, expostulations, and warnings of your orators to them to the contrary notwithstanding. All which actings, doings, and pretences are contrary to equity and good conscience, and tend to the wrong and injury of your orators in the premises. In consideration whereof and forasmuch as your orators are remediless in the premises at law, and cannot have adequate relief, save in a Court of Equity, where matters of this and the like nature are properly cognizable and relievable, and to the end that said M., C., L. & W. and U. may appear and answer all and singular the matters and things hereinbefore set forth and complained of, particularly how many copies of said piratical work they have sold, what number they have on hand, and that they may be restrained by injunction issuing from this court from selling or exposing to sale or causing or being in any way concerned in the selling or exposing to sale, or otherwise disposing of any copies of said piratical work, and that they be ordered and decreed to render an account of the copies of the same that they have sold, and to pay over the profits of such sales to the plaintiffs, and that they be ordered to surrender and deliver up the copies on hand and the stereotype plates of said piratical work to an officer of this court to be canceled and destroyed, and be ordered to pay the plaintiffs their costs; and that your orators may have such other and further relief as to this honorable court may seem meet, or as equity may require. May it please this honorable court to grant to your orators a writ of subpoena directed to the said M., C., L. & W. and U., commanding them at a day certain, and under a certain penalty to be therein inserted, personally to be and appear before this honorable court, then and there to answer the premises, and to stand and abide such order and decree therein as to this honorable court shall seem agreeable to equity and good conscience. 3 Dan. Ch. Pl. & Pr. (Perkins' ed. 1997-1999; Folsom v. Marsh, 2 Story C. C. 100, 9 Fed. Cas. No. 4,901.

II. Order for Reference as to Infringement.

(By consent.) It is ordered that

See "How To Use This Volume," Introduction, page v.

it be referred to, etc., to inquire and report, whether the copper-plate published by the defendant, entitled, etc., is of the same size and scale, and has the same marginal notes and directions or instructions, and is in all respects the same as the first plate published by the plaintiff, entitled, etc., save an affected variation in the historical and geographical anecdotes in the margin, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2316; 2 Seton Dec. (Eng. ed. 1862) 905.

III. Order for Injunction Staying Partial Infringement.

This court doth order that an injunction be awarded to restrain the defendant, his servants, agents, or workmen, from printing, publishing, selling, or otherwise disposing of, such parts of the book in the bill mentioned to have been published by the defendant as hereinafter specified, viz., that part of said book of the defendant which is entitled, etc., and also that part thereof which is entitled, etc.; until, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2315; 2 Seton Dec. (Eng. ed. 1862) 905.

IV. Decree for Perpetual Injunction Upon Printing, Publishing, Etc.

"This cause came on to be heard, at this term, upon the bill and answer, and the master's report, and was argued by counsel, on consideration whereof, it is ordered, adjudged, and decreed, that the master's report be, and the same hereby is, approved and confirmed; And thereupon it is further ordered, adjudged, and decreed by the court, that said defendants be, and they hereby are, severally and perpetually restrained and enjoined from printing, publishing, selling or exposing to sale, or causing or being in any way concerned in the printing, publishing, selling, or exposing to sale, of any copy or copies of the whole or any part of the three hundred and fifty-three pages copied, as reported by the master in said Life of Washington, mentioned in the bill and answer, published by the defendants, from the Life and Writings of Washington, mentioned in the bill and answer, published by the plaintiffs; and that the plaintiffs recover their costs against the defendants; the plaintiffs waiving the account prayed for in the bill, the court does not order such account." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2315;

Folsom v. Marsh, 2 Story C. C. 100, 9 Fed. Cas. No. 4,901.

CORAM NOBIS.—See WRIT OF ERROR.

CORONER'S INQUEST.

I. Subpoena for Witness, 277

II. Jury, 277

A. *Oath to Foreman*, 277

B. *Oath to Jurors*, 278

III. Oath to Witness, 278

IV. Inquisitions, 278

A. *Of Murder*, 278

B. *Where Natural Death*, 279

V. Examination of Accused, 279

VI. Warrant for Arrest, 279

VII. Warrant of Commitment, 279

VIII. Recognizances, 280

A. *By Witness*, 280

B. *By Witness With Surety*, 280

For other forms, see 5 STANDARD PROC. 533.

I. Subpoena for Witness.

The people of the state of New York, to _____:

We command you and each of you, that all business and excuses being laid aside, you be and appear before the undersigned, one of the coroners of the county of _____, at _____, on the _____, at _____, in the forenoon (or forthwith), to testify upon an inquest then and there to be had upon the body of _____, deceased (or upon the body of a person whose name is unknown), and hereof fail not at your peril.

Witness the hand of said coroner this _____ day of _____, 187—.

A. B., coroner.

Crocker on Sheriffs (2d ed.) 616.

II. Jury.

A. *Oath to Foreman of Jury*.

You do swear that you will well and truly inquire how and in what manner and when and where the person lying here (or whose body you have just viewed, as the case may be) came to his death (or was wounded), and who such person was, and into all the circumstances attending such death (or wounding), and by whom the same was produced; and that you will make a true inquisition thereof, according to the evidence offered to you, or arising from the investigation of the body: so help you God. Crocker on Sheriffs (2d ed.) 617.

B. Oath to the Jurors.

The same oath which A. B., the foreman of this inquest, hath on his part taken, you and each of you do now take, and shall well and truly observe and keep on your part: so help you God. Crocker on Sheriffs (2d ed.) 617.

III. Oath to Witness.

The evidence you shall give upon the inquest touching the death (or wounding) of ——— (or of the person whose body has been viewed) shall be the truth, the whole truth, and nothing but the truth: so help you God. Crocker on Sheriffs (2d ed.) 617.

IV. Inquisitions.**A. Inquisition of Murder Against Principal, and Aiders, and Abettors.**

Middlesex. An inquisition indented, taken for our sovereign lord the king, at the parish of ———, in the county of ———, the ——— day of ———, in the ——— year of the reign of ———, before A. B., gentleman, one of the coroners of our said lord the king, for the county aforesaid, upon the view of the body of C. D., then and there lying dead, upon the oaths of E. F., G. H., I. K., etc. (stating all the names), good and lawful men of the county aforesaid, duly chosen, and who being then and there duly sworn, and charged to inquire for our said lord the king, when, where, how, and after what manner, the said C. D. came to his death, do say upon their oath that one L. M., late of ———, aforesaid, gentleman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the, etc., with force and arms, at, etc., in and upon the aforesaid C. D., in the peace of God and of the said lord the king, then and there being feloniously, wilfully, and of his malice aforethought, did make an assault, and that the aforesaid L. M., then and there, with a certain drawn sword, made of iron and steel, of the value of 5s., which he the said L. M. then and there had, and held in his right hand; the aforesaid C. D., in and upon the left part of the belly of the said C. D., a little above the navel of the said C. D., then and there violently, feloniously, wilfully and of his malice aforethought, thrust, stab and penetrate, and that the said C. D., with the sword aforesaid, by the thrusting, stabbing and

penetrating aforesaid, did then and there give unto him the said C. D., in and upon the aforesaid left part of the belly of the said C. D., a little above the navel of the said C. D., one mortal wound, of the breadth of half an inch, and of the depth of three inches, of which said mortal wound the aforesaid C. D., then and there instantly died and so the said L. M., then and there, in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder the said C. D., against the peace of our said lord the king, his crown and dignity. And the said jurors further say, upon their oath aforesaid, that N. O., of ———, yeoman, and P. Q., of ———, yeoman, were feloniously present with drawn swords, at the time of the felony and murder aforesaid, in form aforesaid committed, that is to say, on the said, etc., at ——— aforesaid, in the county aforesaid, then and there comforting, abetting and aiding the said L. M. to do and commit the felony and murder aforesaid, in manner aforesaid, against the peace of our said lord the king, his crown and dignity.

In witness whereof, as well the aforesaid coroner as the jurors aforesaid, have to this inquisition put their seals on the day and year and at the place first above mentioned.

A. B. Coroner.

C. D., etc., jurors.

2 Chit. Cr. L. 7.

Inquisition.

State of New York, county of ———, ss.:

Inquisition taken at, etc., on, etc., before ———, one of the coroners of said county, upon a view of the body of ——— (or person unknown), then and there lying dead (or wounded), upon the oath of E. F., G. H., J. K., etc., good and lawful men of the said county, who being duly summoned and sworn to inquire into all the circumstances attending the death (or wounding) of the said ——— (or person unknown), and by whom the same was produced, and in what manner, and when and where the said ——— came to his death (or was wounded), do say upon their oaths, aforesaid,* that the deceased came to his death from a wound in the left lung inflicted by one ——— with a knife (pistol shot, blow of a club, slung shot, etc., etc.), at, etc., on, etc.;

which wound was given by the said _____ with the premeditated design of effecting the death of the deceased, and so the said jurors say that the said killing of the deceased by the said _____ was murder (or manslaughter) in the _____ degree.*

In witness whereof, as well the said coroner as the jurors aforesaid, have to this inquisition set their hands and seals, on the day of the date hereof.

C. D. coroner (L. S.)

E. F., foreman (L. S.)

Jurors.

G. H., etc., etc. (L. S.)

Crocker on Sheriffs (2d ed.) 618.

B. Inquisition Where One Has Died a Natural Death.

Insert in preceding form in place of part between **.

The said _____, on, etc., at, etc., was found lying dead in the highway near the house of _____, and that he had no mark of violence appearing upon his body; and so the said jurors, upon their oaths aforesaid, say that the said _____ died by the visitation of God. Crocker on Sheriffs (2d ed.) 624.

V. Examination of Accused.

County of _____, ss.:

Examination of C. D. before the undersigned, one of the coroners of said county, who is charged upon inquest taken before me with the murder of E. F., of _____, at, etc., _____, on, etc., _____; the said C. D. having been arrested and brought before me to answer to said charge. And the said C. D., after having been first duly informed by me of the charge against him and that he was at liberty to refuse to answer any question that might be put to him, and after having been allowed a reasonable time to send for and advise with counsel, to the inquiry, What is your name? He answered C. D. Q. What is your age? Ans. Twenty-five years. Q. What is your occupation? Ans. A farmer. Q. Where do you reside? Ans. In _____. Q. Did you know E. F., the deceased? Ans. By the advice of my counsel I decline to answer any further questions.

The foregoing answers of C. D. to the several interrogatories put to him on such examination were reduced to writing by me and were read by me to the said C. D., and were corrected by

him and made conformable to what he declared to be the truth; and they contain all the answers so made by said prisoner.

A. B., coroner.

Crocker on Sheriffs (2d ed.) 626.

VI. Warrant of Coroner for Arrest of Party Charged by the Inquisition With the Crime.

To the sheriff, or any constable or marshal of the county of _____: Whereas, by the inquisition of _____, good and lawful men of said county, taken upon their several oaths before _____, one of the coroners of said county, at the dwelling house of _____ at C. D., is charged with having feloniously killed and murdered _____ on the _____, at _____; you are therefore hereby commanded, in the name of the people of the state of New York, forthwith to arrest the said C. D. and bring him before me at _____, to be dealt with according to law.

Given under my hand this _____ day of _____, 18____.

A. B., coroner.

Crocker on Sheriffs (2d ed.) 626.

VII. Warrant of Commitment of Prisoner.

To the sheriff, or any constable or marshal of the county of _____; and to the keeper of the common jail of said county:

Whereas, C. D. having been charged upon inquisition taken before me, one of the coroners of said county, on _____, on the oaths of _____, with having on _____ killed and murdered one _____, and the said C. D. having been brought before me as such coroner, to answer to the said charge (and having taken the examination of said C. D.).

These are therefore, to command you, the said sheriff, constable or marshal, that you forthwith convey and deliver to the said keeper of the said jail the body of the said C. D.; and you, the said keeper, are hereby required to receive the said C. D. into your custody in the said common jail, and him there safely keep until he shall be discharged by due course of law.

Given under my hand and seal at the _____ of the said county, the _____ day of _____, 18____.

A. B., coroner (L. S.)

Crocker on Sheriffs (2d ed.) 627.

VIII. Recognizances.

A. *Recognizance by Witness.*

County of _____, ss.:

Be it remembered, that on this _____ day of _____, 187—, A. B., C. D. and E. F., of the town of _____, in said county, personally came before me, G. H., one of the coroners of said county, and severally acknowledged themselves to be indebted to the people of the state of New York, each separately, in the sum of _____ dollars, to be made and levied of their goods and chattels, lands and tenements to the use of the said people, if default shall be made in the condition following:

The condition of this recognizance is such that if the above bounden A. B., C. D. and E. F., shall personally be and appear at the next court of sessions (or at the next court of oyer and terminer) to be held in and for the said county of _____, to give evidence on behalf of the said people against _____ for feloniously killing and murdering _____ as well to the grand jury, as the petit jury, and do not depart the said court, without leave, then this recognizance to be void and of no effect, otherwise to remain in full force. Subscribed and acknowledged the _____ day and year first above written.

G. H., coroner.

(Signed) A. B.

C. D.

E. F.

Crocker on Sheriffs (2d ed.) 627.

B. *Recognizance by Witness With Sureties.*

County of _____, ss.:

Be it remembered, that on this _____ day of _____, 187—, A. B. and C. D., all of the town of _____, in said county, personally came before me, G. H., one of the coroners of the said county, and severally acknowledged themselves to be indebted to the people of the state of New York, in the manner and form following, that is to say: the said A. B. in the sum of _____ and the said C. D. and L. M. in the sum of _____, each to be levied of their respective goods and chattels, lands and tenements to the use of the said people, if default shall be made in the condition following:

The condition of the above recognizance is such that if the above bounden

A. B. shall personally be and appear, etc. (same as preceding form).

If the witness is a married woman or an infant, the recognizance is like the last, but neither the female nor the infant should be parties to it, or sign it. Crocker on Sheriffs (2d ed.) 628.

CORPORATIONS.

I. Process for Appearance, 281

A. *Summons*, 281B. *Order for Distringas*, 282C. *Writ of Distringas*, 282D. *Order Permitting Appearance of Foreign Corporation*, 282

II. Declarations, 282

A. *By Domestic Corporation*, 282B. *By Foreign Corporation*, 282C. *Against Domestic Corporation*, 283D. *Against Foreign Corporation*, 283

III. Pleas, 283

A. *In Abatement, Misnomer*, 283B. *Nul Tiel Corporation*, 283

IV. Replication to Nul Tiel Corporation, 283

V. Complaints, 283

A. *Against Domestic Corporation Formed Under General Act*, 283B. *By or Against Foreign Corporation*, 283C. *By Corporation Formed Under General Act*, 283D. *By Corporation on Stock Subscription*, 284E. *Against Stockholder by Creditor*, 285

VI. Answers, 286

A. *Denial of Incorporation*, 286B. *Ultra Vires*, 286C. *Denial of Holding Stock*, 286

VII. Judgments, 286

A. *Order for Judgment*, 286B. *Judgment Record*, 286

VIII. Dissolution, 286

A. *Complaint by Attorney-General To Dissolve*, 286B. *Complaint Against Trustees of Dissolved Corporation*, 286C. *Complaint Against Trustees, Debt Judgment for Costs*, 287D. *Indebtedness Beyond Capital*, 287

For other forms, see 5 STANDARD PROC. 643.

CROSS-REFERENCES:

ABATEMENT, PLEAS OF:

Answer in Abatement, No Such Corporation.

ATTACHMENT:
Attachment Against Foreign Corporation.

BANKRUPTCY:
Proof of Debt Due Corporation.

BILLS AND ANSWERS:
Introductory Part of Bill by Corporation.

BILLS AND NOTES:
Answer, Unauthorized Acceptance in Name of Corporation.

CREDITORS' SUITS:
Bill Against a Corporation and Its Stockholders.

DECLARATION AND COMPLAINT:
Commencement of Declaration Where Corporation Is Plaintiff;
Commencement of Declaration, Where Corporation Is Defendant;
Commencement of Declaration Where Banking Association Is Plaintiff;
Commencement of Declaration Where Banking Association Is Defendant;
Commencement of Declaration Where Town Is Plaintiff;
Commencement of Declaration Where Town Is Defendant;
Commencement of Declaration Where County Is Plaintiff;
Commencement of Declaration Where County Is Defendant.

DECREES:
Usual Directions, Payment of Interest to Corporation Aggregate;
Usual Directions for Payment of Interest to Treasurer of a Corporation.

FRAUD AND DECEIT:
Complaint for Fraudulently Misrepresenting Value of Stock in Corporation Taken in Payment for Services.

INJUNCTIONS:
Injunction Against Reorganization of Corporation;
Decree Restraining Town and Its Officers;
Injunction Against Banking Corporation;
With Order To Show Cause Why Receiver Should Not Be Appointed;
Undertaking on Injunction Against Corporation.

INTERPLEADER:
Affidavit of Secretary to Public Company To Be Annexed to Bill of Interpleader.

JURISDICTION:
Answer, No Jurisdiction by Foreign Corporation;

Answer, No Jurisdiction by Domestic Corporation Sued in Local Court.

QUO WARRANTO:
Information in Nature of Quo Warranto Against Corporation;
Plea to an Information Against Corporation.

RECEIVERS:
Complaint by Receiver Alleging Appointment for Dissolved Corporation.

RETURNS:
Return of Summons Against Corporation.

REVIVOR:
Stipulation in Action Against Corporation, on Expiration of Charter, To Revive in Name of New Corporation.

SEQUESTRATION:
Order for Sequestration; Corporations;
Writ of Sequestration To Compel Appearance of a Corporation.

SERVICE OF PROCESS AND PAPERS:
Affidavit Where Defendant Is a Foreign Corporation;
Order of the Court for Publication of the Summons, Where the Defendant Is a Foreign Corporation.

VERIFICATION:
Verification by Officer of Corporation;
Verification by Attorney, Where Absent Defendant Is Corporation.

I. Process for Appearance.

A. Summons To Corporation.

The people of the state of New York, to the sheriff of the (city and) county of _____, greeting:

We command you that you summon the (here state the name and style of the corporation), to be and appear before our justices of our supreme court of judicature, at the (capitol in the city of Albany), on the (first Monday of January) next, to answer A. B., in a plea of (trespass on the case), to his damage of (one thousand) dollars. And have you then there this writ.

Witness, _____, esquire, our chief justice, at the (courthouse in the city of Rochester), the _____ day of (October), in the year one thousand eight hundred and (forty-six).

_____, clerk.
E. F., attorney.
Burr. App. 484, §985b.

B. Order for Distringas To Compel Appearance of Corporation.

On reading and filing an affidavit of E. F., proving the due service of the subpoena in this cause upon G. H., president of the Commercial Bank of Albany, on the _____ day of _____ instant, which subpoena was tested the _____ day of _____ last, and returnable on the _____ day of _____, instant, that such corporation is located in the city of Albany, and transacts its business there, and that the said G. H. resides in said city; and on reading and filing an affidavit of C. M. D., solicitor for the complainant, showing that no notice of an appearance by or on behalf of the said defendants has been received by him, and that no such appearance has been entered, to his knowledge or belief; on motion of Mr. N., of counsel for the complainant, it is ordered that a writ of distringas issue out of and under the seal of this court to compel the appearance of the defendants, the Commercial Bank of Albany, in this cause. 2 Barb. Ch. Pr. 385.

C. Distringas (Writ) To Compel Appearance of Corporation.

The people of the state of New York, to the sheriff of the county of Albany, greeting:

We command you that you make a distress upon the lands and tenements, goods and chattels of the Commercial Bank of Albany, within your bailiwick, so that neither the said Commercial Bank, nor any other person or persons for them, may possess them until our court of chancery shall make other order to the contrary; and that in the meantime you answer to us for what you so distrain, so that the said Commercial Bank of Albany may be compelled to appear before us in our court of chancery, to answer to us as well touching a contempt which they, as it is alleged, have committed against us, as also such other matters as shall be laid to their charge; and further to perform and abide such order as our court shall make in this behalf. And that you make return of your doings in the premises. Witness, _____, chancellor of our said state, at the town of _____, the _____ day of _____, in the year of our Lord one

thousand eight hundred and _____, _____, register (or clerk).
_____, solicitor.

Endorsed,
Distringas,

By the court, for the want of an appearance (or answer). 2 Barb. Ch. Pr. 386.

D. Order Permitting Appearance of Foreign Corporation.

On reading and filing a consent on the part of E. F., esq., attorney for the plaintiff, and on motion of G. H., attorney for defendants, ordered, that the said defendants be permitted to appear by their said attorney in this cause, and their appearance is accordingly hereby entered. Burr. App. 579, §1133.

II. Declarations.

A. Declaration by a Domestic Corporation (Commencement).

The A. B. Company (name of the corporation), plaintiffs in this suit, by E. F., their attorney, complain of C. D., defendant in this suit, being in custody, etc. (if the suit be by capias), of a plea of (trespass on the case upon promises): For that whereas, by an act of the legislature of the state of New York, passed the _____ day of _____, entitled an act to incorporate, etc. (here give the title of the act of incorporation), the plaintiffs were constituted a body corporate and politic, by the name and style of "the (name of the corporation): And whereas (stating the cause of action as in ordinary declarations to the end). Burr. App. 555, §1090.

B. Declarations by a Foreign Corporation (Commencement).

The A. B. Company (name of the corporation), plaintiffs in this suit, by E. F., their attorney, complain of C. D., defendant in this suit, being in custody, etc., of a plea of trespass on the case upon promises: For that whereas, by and under an act of the legislature of the state of (New Jersey), passed the _____ day of _____, etc., entitled (title of the act of incorporation), the said plaintiffs were created and constituted a body politic and corporate by the name and style of the (name of the corporation), and by that name were declared to have perpetual succession, and to be capable of suing and being sued, etc., and of purchasing, holding and conveying any estate, real or personal, etc. (setting forth the substance of the act of incorporation, or

such of its provisions as go to establish the right of action).

And whereas also (here set forth the cause of action as in ordinary declarations). Burr. App. 556, §1091.

C. Declaration Against a Domestic Corporation (Commencement).

The ——— Insurance Company (name of defendants) were summoned to answer A. B., of a plea of trespass on the case; and thereupon the said A. B., by E. F., his attorney, complains: For that whereas (stating the cause of action, as in ordinary declarations). Burr. App. 560, §1094.

D. Declaration Against a Foreign Corporation (Commencement).

D. L., plaintiff in this suit, by H. E. D., his attorney, complains of the president, directors and company of the Bank of the United States, a foreign corporation created by and under the laws of the state of Pennsylvania, defendants in the same suit, the said defendants having been attached according to the form of the statute in such case made and provided, and being now here present in court, of a plea of trespass on the case upon promises: For that whereas (stating cause of action as in ordinary declarations). Burr. App. 566, §1092.

III. Pleas.

A. Abatement, Plea in Abatement, Misnomer of Corporation.

Because he says that the said plaintiffs are named and called the (here set forth the proper style of the plaintiffs), and by the same name and title were always named and called, without this, that they are named and called the (the name in the suit), as by the said bill (or writ, etc.), is above supposed. And this he is ready, etc. Wherefore he prays judgment, etc. (usual conclusion and affidavit). Burr. App. 334, §603; Lill. Ent. 4.

B. Plea of Nul Tiel Corporation.

Because he says that there is not, nor on the day of the (commencement of this suit), nor ever since was there in existence any such corporation called The ——— Company of ——— as by the said (bill) is above supposed, and this he is ready to verify. Wherefore, etc. Burr. App. 336, §610a.

IV. Replication by Way of Traverse to Plea of Nul Tiel Corporation.

And the said plaintiff, as to the said

plea of the said defendant by him (secondly) above pleaded, says, that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, because they say, that in pursuance of an act of the legislature of this state, entitled "An act to incorporate the president, directors and company of the O. C. Bank," passed (April 15th, 1830), they, the said plaintiffs, became, and at the time of the commencement of this suit, were and still are a body politic and corporate, and have a right as such to commence and prosecute this suit. And this they are ready to verify. Wherefore they pray judgment, and their damages by them sustained, on occasion of the non-performance of the said several promises and undertakings in the said declaration mentioned, to be adjudged to them, etc. Burr. App. 378, §691a.

V. Complaints.

A. Complaint Against Domestic Corporation Formed Under General Act.

I. That the defendants are a corporation created by and under the laws of this state, organized pursuant to an act of the legislature, entitled (an act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes), passed February 17, 1848, and the acts amending the same.

II. (Allege cause of action.) 1 Abb. Forms 137.

B. Complaint by or Against Foreign Corporation.

I. That the plaintiffs (or defendants) are a corporation, duly chartered under and by the laws of the state of ———, and pursuant to an act of the legislature of said state, entitled (title of the act), passed (date of the enactment).

II. That said corporation, being entitled, by its charter and the laws of said state, to make the contract hereinafter mentioned (allege cause of action). 1 Abb. Forms 135.

C. Complaint by Corporation Formed Under General Act, Payee, Against Foreign Corporation, Maker.

I. That the plaintiffs are a corporation created by and under the laws of this state, organized pursuant to an act

of the legislature entitled (an act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes), passed February 17th, 1848, and the acts amending the same.

II. That the defendants are a corporation duly chartered by and under the laws of the state of New Jersey, and pursuant to an act of the legislature of said state entitled (title of the act), passed (date of enactment).

III. That on the _____ day of _____, 18____, at _____, the defendants, being such corporation, by their agent duly authorized thereto, made their promissory note in writing, dated on that day; and thereby promised to pay to the plaintiff (or their order) _____ dollars _____ months after said date (or, on the _____ day of _____), etc. 1 Abb. Forms 225.

D. Complaint by Corporation, on Stock Subscription. (a.)

I. (Averment of incorporation.)

II. That on the _____ day of _____, 18____, at _____, the said defendant and certain other persons, being desirous of associating themselves together for the purpose of constructing a plank-road from the village (now city) of P. to the village of S. P., in said county, and in consideration thereof, and of the mutual promises each to the other, and of the benefits to be derived from being members of said associations, made and subscribed a certain agreement in writing, as follows, to-wit:

(Copy of subscription paper, with defendants' names, and adding), and other persons whose names are here omitted.

III. That the said defendant did, at the time of subscribing said agreement, set opposite to his name thereto subscribed the number of ten shares, and that the amount of each share is fifty dollars, and that said defendant promised and agreed to take and pay for the same.

IV. That although notice was given in at least one newspaper printed in Dutchess county, of the time and places where books for such subscription to the stock of said road would be opened, and although after such stock to the amount of at least five hundred dollars for every mile of the road so intended to be built had been

in good faith subscribed, and five per cent on the amount had been paid in to the persons named in the articles of association as directors, and the subscribers had, upon due notice, elected directors for said company, and had thereupon severally subscribed articles of association, which had been duly filed in the office of the secretary of state of the state of New York; and although these plaintiffs, relying upon the said subscription of the said defendant and of other persons, did expend large sums of money in the construction of said road, and entered into contracts and personal liabilities to a large amount, to-wit, the sum of _____ dollars, and although the directors of said company, on the _____ day of _____, 18____, make a call for said stock, and require the said defendant and the other stock subscribers to pay upon the capital stock by him and them subscribed, to the treasurer of said company, at their office, No. _____, etc., five dollars per hundred upon each share of stock so subscribed, on the _____ day of _____, 18____; yet the defendant wholly neglected and refused to pay the said sum of five dollars per hundred upon each share of stock subscribed by him as aforesaid.

V. That although the directors of said company afterwards, to-wit, on the _____ day of _____, 18____, made another call for stock, requiring (continue as above).

VI. That although the said directors afterwards, to-wit, on the _____ day of _____, 18____, made a third call for stock, requiring (continue as above).

VII. That the defendant had due notice of the said three several calls for stock made by the directors of said company as aforesaid, and the same were duly published in at least one newspaper printed in Dutchess county, at least thirty days previous to the time specified for said payments.

VIII. That although the whole ten shares of stock subscribed by said defendant became due and payable to these plaintiffs in the sums and at the times specified in said calls; yet the defendant has not performed his agreement, and has wholly neglected and refused to pay the stock by him subscribed, or any part thereof; and is now justly indebted to these plaintiffs

thereon in the sum of, etc. 1 Abb. Forms 318-320.

Complaint by Corporation, on Stock Subscription (b).

I. (Averment of incorporation.)

II. That in contemplation of the incorporation of these plaintiffs, and for the purpose of constructing, owning, and maintaining the _____ railroad, then contemplated, the defendant (with several other persons) on the _____ day of _____, 18____, at _____, became a subscriber to the stock of the said railroad by (severally) signing and delivering an agreement in writing, of which the following is a copy (copy of the subscription paper with the defendants' names, adding, and other persons whose names are here omitted).

III. That among other persons the defendant signed and executed the said agreement, and set opposite to his name the sum of _____ dollars, which he thereby agreed to pay to said company; and said subscription of defendant was, immediately after the organization of said company, duly transferred to the regular books of the company.

IV. That after the defendant had thus subscribed, and on or about the _____ day of _____, 18____, he subscribed to the articles of association of said company, his name and his place of residence, to-wit, _____, and the number of shares of stock taken by him, to-wit, _____ shares, amounting to _____ dollars, the shares of stock being _____ dollars each.

V. That the plaintiffs by their directors, on the _____ day of _____, at _____, required the defendant to pay thereon the sum of _____, agreeably to said subscription and the charter and by-laws of the company.

VI. That the plaintiffs have duly performed all the conditions thereof on their part.

VII. That there is due to the plaintiffs thereon from the defendant the sum of, etc., and no part thereof has been paid. 1 Abb. Forms 321.

E. Complaint Against Stockholder by Creditor.

I. That at the times hereinafter mentioned, the _____ company was a corporation created by and under the laws of this state, organized pursuant

(to (here designate charter, *e. g.*, thus,) an act entitled (an act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes); passed February 17, 1848, and the acts amending the same.

II. That on the _____ day of _____, 18____, and before the whole amount of capital stock fixed and limited by said company had been paid in (or, before a certificate, etc., had been made and recorded as prescribed by law), said company, by their agent duly authorized thereto, made their promissory note in writing, dated on that day, and thereby promised to pay to the plaintiff, or order, _____ dollars, _____ months after said date, for value received; and delivered it to plaintiff, which remains unpaid (or state other cause of action on a debt incurred by the company before full payment of stock, or upon a contract made before full payment of stock, and show that it was to be paid within the year).

III. That on the _____ day of _____, 18____, in an action in the _____ court for the county of _____ (or, before M. N., a justice of the peace in and for the town of _____), brought by this plaintiff within one year after said debt became due, to recover the same from said company, this plaintiff recovered judgment, duly given by said court (or, justice) against said company, for _____ dollars, being _____ dollars, the amount due thereon with interest, besides _____ dollars costs.

IV. That execution thereon was thereafter duly issued against said company, and returned wholly unsatisfied (or, unsatisfied except as to, etc.)

V. That at the time said debt was contracted (or said contract was made), the defendant was a stockholder (or on the _____ day of _____, 18____, and before the whole amount of capital stock fixed and limited by said company had been paid in, or, before a certificate, etc., as above, the defendant became a stockholder) of said company, holding stock therein to the amount of _____ dollars, being _____ shares of the par value of _____ dollars each; and that he still is such stockholder therein [or and that he continued to be such stockholder until within (two years) before (this action)]. 1 Abb. Forms 526.

VI. Answers.**A. Answer, Denial of Incorporation.**

That the said company were not, and are not, a corporation, as alleged. 2 Abb. Forms 38.

B. Answer, Ultra Vires of Corporation.

I. That the plaintiff (or said company) was not authorized by law to take, hold, and convey real property, except for the following purposes, and in the following manner (here set forth the power of the corporation).

II. That the deed alleged in the complaint was executed (and accepted) on the part of said corporation for the purpose of (here state purposes and manner not within the power). 2 Abb. Forms 44.

C. Answer, Denial of Holding Stock.

That he never subscribed for any stock of the corporation mentioned in the complaint, and never became a stockholder in, or the owner or holder of any stock of the said corporation. 2 Abb. Forms 157.

VII. Judgments.**A. Order for Judgment Against Corporation.**

On reading and filing the summons in this cause, with the return of the sheriff thereon of due service thereof, and also an affidavit of the due service of a copy of the declaration and notice to plead thereto, and on filing the declaration, on motion of Mr. J., of counsel for the plaintiff, ordered, interlocutory judgment, and that the clerk assess the plaintiff's damages. Burr. App. 468, §954.

B. Judgment Record Against a Corporation.

The ——— company of the city of ——— (or as the style of the corporation may be), were summoned to answer A. B., of a plea of trespass on the case upon promises; and thereupon the said A. B., by E. F., his attorney, complains, etc. (setting out the declaration, after which the entries are the same as in ordinary cases). Burr. App. 191, §346.

VIII. Dissolution.**A. Complaint by Attorney-General To Dissolve Corporation for Exercising a Franchise Not Conferred by Law.**

I. (Aver incorporation of defendants.)

II. That said corporation for the

space of ——— months past has exercised, without any warrant, charter, or grant, the franchise of banking, and has issued notes, received deposits, made discounts, and transacted other banking business to which it was not authorized, and has exercised franchises not conferred upon it by law.

Wherefore, the plaintiffs demand judgment, that the defendants (corporation) be excluded from all corporate rights, privileges, and franchises, and that said corporation be dissolved; and for the costs of this action. 1 Abb. Forms 618.

B. Complaint Against Trustees of Dissolved Corporation.

The plaintiff complains, on behalf of himself and all other creditors of the ——— company who may come in and contribute to the expenses of this action, and alleges:

I. That the ——— company was duly incorporated on the ——— day of ———, 18——, under the "act relative to incorporations for manufacturing purposes," passed March 22, 1811, and the acts amending the same; and thereafter carried on business at the town (or, city) of ———, in ——— county.

II. State a cause of action against the company.

III. That on the ——— day of ———, 18——, the trustees of the said company passed a resolution, of which a copy is hereto annexed, pursuant to an act entitled "an act to facilitate the dissolution of manufacturing corporations in the county of Herkimer, and to secure the payment of their debts without preference," passed April 16, 1852 (or, allege other acts amounting to a dissolution which vests the assets in the officers as trustees).

IV. That the defendants were the trustees of the said company at the time of passing the said resolution.

V. That the defendants have received a large amount of money and other property belonging to the said company, but have refused to pay the claim of the plaintiff.

Wherefore, the plaintiff demands judgment:

1. That the defendants account, under the direction of the court, for the property received by them as aforesaid;

2. For the payment to him of

——— dollars, with interest from the ——— day of ———, 18—— (and costs), out of the funds in possession of the defendants, or which they may collect;

3. That the defendants proceed, without delay, to discharge the trusts devolved upon them in the premises. 1 Abb. Forms 530.

C. Complaint Against Trustees, Averment Where Debt Is Judgment for Costs.

That at the city of New York, on or about the ——— day of ———, 18——, the said company, by a resolution of its trustees, of whom the defendant was one, instituted an action in the ——— court of ———, against the plaintiff; and thereupon such proceedings were had, that the said court, on the ——— day of ———, in the year 18——, dismissed said complaint, with costs; and that said costs were afterwards, on the ——— day of ———, 18——, duly adjusted and taxed, at the sum of ——— dollars, and judgment was then entered therefor in the offices of the clerk of ——— county; which judgment remains unpaid. 1 Abb. Forms 531.

D. Complaint, Averment of Indebtedness Beyond Capital.

That the said company has become indebted to various persons to an amount exceeding the amount of the capital stock of said company, by ——— dollars, with the consent of said plaintiff, as a trustee of said company. 1 Abb. Forms 531.

COSTS.

- I. Statement of Costs, 288
- II. Affidavit of Disbursements, 288
- III. Notice of Taxation, 289
- IV. Affidavit to Payment of Witnesses' Fees, 289
- V. Affidavit of Disbursement in Supreme Court, 289
- VI. Motion in Supreme Court for Costs, 290
- VII. Order Allowing Costs in Supreme Court, 290
- VIII. Motion To Retax Costs, 290
- IX. Order Striking Item From Bill, 290

For other forms, see 5 STANDARD PROC. 855.

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Decree; Balance Found Due To Be Paid, Cost of Setting Aside Stated Account;
Direction, Rest of Costs Reserved.

ADMIRALTY:

Stipulation for Costs;
Stipulations for Costs and Damages;
Stipulation for Costs To Be Given by the Libelants on Filing Libel for Salvage.

APPEAL BONDS:

Complaint on Undertaking for Costs of Appeal.

APPEALS:

Undertaking for Costs Only on Appeal.

BONDS:

Declaration on Bond for Costs;
Complaint on Bond of Security for Costs.

DECREES:

Usual Directions, Reservation of Costs;
Usual Directions, Taxation and Payment of Costs;
Usual Directions, Costs Partly Dealt With By Decree;
Order That Petition Be Dismissed With Costs;
Order for Taxation and Payment of Costs, One Party to Another;
Order Allowing No Costs to Either Side;
Order Allowing No Costs to Either Side as to Part of Proceedings;
Order To Tax Costs Up to Particular Time;
Order That Plaintiff Pay One Defendant's Costs, and Recover Them With His Own From a Co-defendant;
Order That Costs of Application Be Costs in the Cause;
Order To Tax Costs, Except So Far as Increased by Particular Claim;
Order To Tax Costs and Set-Off Against Sum Due;
Order To Tax Costs for Plaintiff and Defendant Respectively for Certain Times and Set-Off;
Order Directing Master To Take Account of Any Unnecessary Length of Decree and To Deduct From Costs Therefor;
Order for Taxation of Costs of Application, Payment Out of Cash;
Taxation of Costs and Payment to Solicitors Out of Funds in Court (English Form);

have necessarily been incurred in the action. And further saith not.

"G. W. Beek.

"Sworn to and subscribed before me on the 26th of May, 1852.

H. Marshall, clerk."

Burnham v. Hays, 3 Cal. 115.

Note.—Held sufficient under statute.

III. Notice of Taxation.

Take notice, that the within bill of costs will be presented to the clerk of the county of _____ for adjustment (and to have the amount inserted in the judgment entered herein), at his office, in the city of _____, on the _____ day of _____ inst., at _____ o'clock in the _____ noon.

2 Abb. Forms 589.

Note.—Under statute in some jurisdictions a party objecting to any item in the bill must specify the same in writing, and each ground of objection must be separately specified. No special form is required, and the mode of stating objections is regulated so far as possible by the court within which such objections originate. Davidson v. Lamprey, 17 Minn. 32.

IV. Affidavit of Payment of Witness' Fees.

(Add at end of I): That the cause was brought to trial before said court (or referee) at _____, on _____. That each of the persons named in Schedule A*, hereto annexed, which is made a part hereto, attended the several circuits (or hearings) therein named pursuant to a subpoena, or upon special request of this deponent, as a witness for the plaintiff (or defendant) the number of days set opposite their respective names therein. That the residence of said witnesses respectively, the distance therefrom, according to

the usually traveled route, to the said courthouse (or, place of hearing), and the number of miles they severally traveled as such witnesses, according to the usually traveled route, for the purpose of going to the place of trial and returning therefrom, at said circuit court (or, place of hearing) respectively, are correctly stated and set forth in said Schedule A, opposite their respective names. That each and every of said persons named in said Schedule A was a necessary and material witness on the part of the plaintiff (or, defendant) on the trial of this action.

V. Affidavit of Disbursements in Supreme Court, United States.

State and Eastern district of Michigan, County of Wayne, ss.

Charles F. Burton, duly sworn, deposes and says, that he is the solicitor for Nichols, Shepard & Co., in the above entitled appeal and cross-appeal, and that in response to a request from the clerk of this court, he sent to said clerk, on the 16th day of November, 1887, the sum of two hundred and seventy-five dollars, which the said clerk notified him was the amount of money required to defray the portion of the expense properly to be borne in the first instance, by said Nichols, Shepard & Co., as one-half the cost of printing the record in said cases.

Charles F. Burton.

Subscribed and sworn to before me, this 21st day of January, 1889.

Charles H. Fisk,

Notary Public, Wayne County, Michigan.

Mr. Charles F. Burton for the motion. Mr. R. A. Parker opposing.

Nichols, Shepard & Co. v. Marsh, 131 U. S. 401.

*SCHEDULE A.

Circuit (or, hearing) commenced on the _____ day of _____, 18—.

Names of witnesses.	Residence.	Miles from court-house or hearing.	Miles traveled.	No. days attended.

2 Abb. Forms 590.

VI. Motion in Supreme Court for Costs.

And now comes the said defendant, Nichols, Shepard & Co., by Charles F. Burton, their solicitor, and moves the court now here, that they, the said Nichols, Shepard & Co., do recover against the said Elon A. Marsh, Minard Lefever and James Scott, as costs to be taxed in their favor, one-half of the amount required for printing the record and supervising the printing of the record in said causes, in addition to the amount, taxable and to be taxed in their favor, in the first above entitled cause.

This motion is based on the records in said causes and on the affidavit of Charles F. Burton, hereto attached, and will be brought on for hearing on Monday the 25th day of February, at the opening of said court.

To R. A. Parker, esq., solicitor for Marsh, Lefever & Scott.

Charles F. Burton, solicitor for Nichols, Shepard & Co.

Nichols, Shepard & Co. *v.* Marsh, 131 U. S. 401.

VII. Order Allowing Costs in Supreme Court, United States.

It is now here ordered by the court that the amount advanced by the appellants in this cause towards printing the record be recoverable by them from the appellees herein. Nichols, Shepard & Co. *v.* Marsh, 131 U. S. 401.

VIII. Motion To Retax Costs.

"Now comes the defendant, and moves the court to retax the costs in this case and tax them against the plaintiffs, instead of the defendant, and render judgment therefor against said plaintiffs, for the reason that this action is an appeal from the decision and award of the county commissioners of said county granting to the plaintiffs \$25 damages for the location and establishment of a public highway over and across the lands of said plaintiffs; that an award of said county, duly and legally made and executed by said county, was tendered to said plaintiffs, in the sum of \$25, in payment of said damages, before this action was appealed to the district court, and said warrant remained in the office of the county clerk of said county, subject to the order of said plaintiffs; that the said plaintiffs refused to accept the same and prosecuted their appeal to a final judgment in this court; that said

warrant was at all times subject to the order and disposition of said plaintiffs, from the time of its execution and tender to the plaintiffs up to the verdict and judgment upon appeal to this court; that the plaintiff, upon the trial of this case upon appeal to this court, recovered a judgment for \$20 and no more." *Teagarden v. Comrs. of Linn County*, 49 Kan. 146, 30 Pac. 171.

IX. Order Striking Item From Bill.

"(Title of court and cause.)

"It is ordered, that in the motion to tax costs, the item of eighty dollars and sixty-five cents for transcribing testimony be stricken out, and the costs fixed at seventy-one dollars and twenty cents." *Bank of Woodland v. Hiatt*, 59 Cal. 580.

COUNTERCLAIM.—See SET-OFF, COUNTERCLAIM AND RECOUPMENT.

COUNTERFEITING.

I. Indictments, 290

- A. *Counterfeiting Coin*, 290
- B. *Having in Possession Instruments*, 290
- C. *Passing Coins*, 291
- D. *Passing Bank Note*, 291
- E. *Having in Possession National Bank Note*, 291
- F. *Having in Possession Bank Note*, 291
- G. *Having in Possession United States Note*, 292

I. Indictments.

A. *Indictment for Counterfeiting Coins.*

In the first count it was alleged, that respondent, "with intent the good people of this state and of the United States to deceive and defraud, with force and arms, on the 10th day of April, A. D. 1845, ten pieces of false, forged and counterfeit coin and money, of pewter, lead, tin, and zinc, and other mixed metals, in the similitude of the good, legal and current money and silver coins of the United States, which are current by law and usage in this state, called 'half dollars,' then and there unlawfully and feloniously did forge, make and counterfeit, contrary," etc. *State v. Griffin*, 18 Vt. 198.

B. *Indictment for Having in Possession Instruments for Counterfeiting.*

The said William White, on the fourteenth day of February, A. D. 1866,

at the county of Sonoma, did knowingly procure and have in his possession a certain mould pattern, die, puncheon, tool instrument and apparatus, made of wood and iron, made use of in counterfeiting the gold and silver coin of the United States, now made current in this state, to-wit: a gold coin called a double eagle, of the value of twenty dollars, and a silver coin called half a dollar, contrary to the form of the statute, etc. *People v. White*, 34 Cal. 183.

C. Indictment for Passing Counterfeit Coin.

"The indictment charges that the plaintiff in error, unlawfully, feloniously, and with intent to defraud, did sell and dispose of to one George Miller a certain false, forged, and counterfeit coin, made in the likeness and similitude of a silver Mexican dollar, a coin currently passing as money in the state of Ohio, he, the said Leonard, then and there well knowing said false, forged and counterfeit coin to be false, forged, and counterfeit." *Leonard v. State*, 29 Ohio St. 408.

D. Indictment for Passing Counterfeit Bank Note.

"The grand jurors of the state of Indiana, good and lawful men of Porter county, impaneled, charged and sworn in the said circuit court at the term thereof aforesaid, to inquire within and for the body of said county, upon their oaths present, that Frank Wilkinson, late of said county, on the twentieth day of March, A. D. 1857, at Porter county, did unlawfully, falsely, fraudulently and feloniously, give, barter, sell, utter, publish, and put away to one Joseph Jones, a certain false, forged and counterfeit bank note, which said note was made in imitation of, and did then and there purport to be a bank note for the sum of five dollars, issued by the Farmers' Bank of Kentucky, made payable to bearer on demand at their bank in Princeton, which said note is of the tenor following, to-wit: (copy of note).

'With intent to defraud the said Joseph Jones, and with intent to have the same put in circulation; the said Frank Wilkinson then and there well knowing the said note to be false, forged and counterfeited: against the peace and dignity of the state of Indiana, and contrary to the form of the

statute in such cases made and provided.

Mark L. De Motte, Pros. Atty.'"
Wilkinson v. State, 10 Ind. 372.

E. Indictment, Having in Possession Counterfeit National Bank Note With Intent To Pass Same.

"The indictment charges that, on the 30th of October, 1868, in the district of Indiana, the prisoner 'unlawfully, feloniously, and knowingly did then and there have and keep in his possession, and conceal, with intent then and there to pass, utter, and publish as true to some person or persons to the grand jurors aforesaid unknown, one certain false, forged and counterfeit national bank note; which said false, forged, and counterfeit bank note is as follows, to-wit:

o	National Currency	A. 20
	This note	39,838

is secured by bonds of the
United States,
deposited with the United States Treasurer at Washington.

L. E. Chittenden, Register of the Treasury.

F. E. Spinner, Treasurer of the United States.

Philadelphia, Pa., March 7th, 1864.
The National Bank of Philadelphia will pay twenty dollars to Bearer on demand.

Samuel S. MacMattox, Cash'r.

Wm. P. Hamm, Presd't.
With intent then and there thereby to defraud some person or persons to the grand jurors aforesaid unknown, he, the said Charles Williams, then and there well knowing the said national bank note to be false, forged and counterfeited, contrary to the form of the statute," etc. *United States v. Williams*, 4 Biss. 302, 28 Fed. Cas. No. 16,706.

F. Indictment, Having in Possession Counterfeit Note With Intent To Pass the Same.

City and county of New York, ss.:
The jurors of the people of the state of New York, in and for the body of the city and county of New York, upon their oath, present:

That William Smith, late of the first ward of the city of New York, in the county of New York, aforesaid, and John Tomlinson, late of the same place, on the thirteenth day of August, in the year of our Lord one thousand eight hundred and sixty-one, with force

and arms at the ward, city and county aforesaid, feloniously had in their possession a certain forged and counterfeited negotiable promissory note, for the payment of money, to-wit, the sum of five dollars, commonly called a bank note, purporting to have been issued by a certain corporation or company, called the Judson Bank, duly authorized for that purpose by the laws of the state of New York, a further description of which said last mentioned forged and counterfeited negotiable promissory note, for the payment of money, is to the jurors aforesaid unknown, with intention to utter and pass the same as true, and to permit, cause, and procure the same to be so uttered and passed, with the intent to injure and defraud one Charles Meyer, and divers other persons, to the jurors aforesaid unknown, he, the said William Smith and John Tomlinson, then and there well knowing the said last mentioned forged and counterfeited promissory note, for the payment of money, to be forged and counterfeited as aforesaid, against the form of the statute in such case made and provided, and against the peace of the people of the state of New York and their dignity.

District Attorney.

Tomlinson & Smith v. People, 5 Park. Cr. (N. Y.) 313.

G. Indictment for Having in Possession Counterfeit United States Note, Excusing Particular Description.

"That Martin D. Howell . . . on the 25th day of February, 1892, at the city of Stockton, county of San Joaquin, . . . did then and there knowingly, wilfully, and fraudulently and feloniously keep and have in his possession three certain false, forged, and counterfeit notes and obligations of the United States of America, to-wit, three certain false, forged, and counterfeit United States notes, each of said false, forged, and counterfeit notes purporting to be a United States note of the denomination of five dollars, issued by and under the authority of the laws of the United States (a more particular description of which said false, forged, and counterfeit notes and obligations is to the grand jurors aforesaid unknown). . . . (The reasons for not setting out more particularly

a description of the notes are given as follows:

"And the grand jurors aforesaid, on their oath aforesaid, do further present and say that the said false, forged, and counterfeit notes and obligations so kept and had in the possession of the said Martin D. Howell as aforesaid are not, and each of them is not, more particularly described herein, and copies thereof, and the tenors thereof, respectively, and of each thereof, are and is not herein set forth, for the reason that the grand jurors aforesaid have no knowledge or information as to where, in whose possession, or under whose control the said false, forged, and counterfeit notes and obligations, and each thereof, now are and is, and have and has been since the same were and was so kept and had in the possession of the said Martin D. Howell, as aforesaid," etc. United States v. Howell, 64 Fed. 110.

Note.—"While it is a stringent rule of criminal pleading that forged and counterfeited instruments or writings, which form the gravamen of the offense, must be set out in an indictment or information according to their tenor, yet there are circumstances constituting exceptions which compel a relaxation of this general rule. The authorities and text-books segregate the exceptions into the following general classes: (1) Where the prosecution has not in its possession, and is unable to procure, the instrument or writing; (2) where it has been destroyed or lost; (3) where it is in the possession of the defendant." United States v. Howell, 64 Fed. 110.

COUNTIES.—See DECLARATION AND COMPLAINT; MUNICIPAL CORPORATIONS.

COURTS MARTIAL.

Forms for proceedings are furnished by the War and Navy Departments to the service.

COVENANT, ACTION OF.

I. Declaration for Not Repairing, 293

II. Pleas, 294

A. Premises Not Out of Repair, 294

B. Release, 294

For other forms, see 6 STANDARD PROC. 156, 157.

CROSS-REFERENCES:

ACCORD AND SATISFACTION:

Plea in Covenant.

GENERAL ISSUE AND GENERAL DENIAL:

Plea of Non Est Factum in Debt and Covenant.

JUDGMENTS:

Judgment on Verdict for Plaintiff in Assumpsit, Case, Covenant and Trespass.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias for Plaintiff in Covenant.

LANDLORD AND TENANT:

Declaration for Rent on Lease;

Declaration for Rent Due on Agreement To Let;

Plea That Defendant Did Repair;

Plea, Premises Not Out of Repair.

PAYMENT:

Plea of Payment in Covenant.

PERFORMANCE:

Plea of Performance in Covenant;

Plea in Excuse for Non-performance in Covenant, Apprentice Left Service.

SCIRE FACIAS:

Scire Facias To Revive Judgment in Covenant.

SHIPS AND SHIPPING:

Declaration on Charter Party for Failure To Furnish Cargo;

Declaration on Charter Party for Freight and Demurrage.

VERDICT:

Postea for Plaintiff, Plea of Non Est Factum in Covenant.

I. Declaration for Not Repairing, Against Lessee.

Supreme Court. Of (May) term, in the year one thousand eight hundred and (forty-six). (City and) county of (New York), ss.: A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea of breach of covenant: For that whereas, heretofore, to-wit, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____ (date of the lease), at (the city) and in the county of (New York) aforesaid, by a certain indenture then and there made between the said plaintiff of the one part, and the said defendant of the other part (one part of which said indenture, sealed with the seal of the said defendant, the said plaintiff now brings here into court, the date whereof is

the same day and year aforesaid), the said plaintiff, for the consideration therein mentioned, did demise, lease, and to farm let (as in the lease), unto the said defendant a certain messuage or tenement, and other premises, in the said indenture particularly specified: to hold the same, with the appurtenances, to the said defendant, his executors, administrators, and assigns, from the day of the date of the said indenture (or otherwise, as in the lease), for and during and unto the full end and term of (five) years, from thence next ensuing and fully to be complete and ended; at a certain rent payable by the said defendant to the said plaintiff; as in the said indenture is mentioned. And the said defendant did, in and by the said indenture, for himself, his executors, administrators and assigns, covenant, promise and agree to and with the said plaintiff, his heirs (executors, administrators), and assigns (among other things), that he the said defendant, his executors, administrators and assigns, should and would, at all times during the continuance of the said demise, at his and their own costs and charges, support, uphold, maintain and keep the said messuage or tenement, and premises, in good and tenantable repair, order, and condition; and the said messuage or tenement, and premises, and every part thereof, should and would leave in such good repair, order and condition, at the end or other sooner determination of the said term; as by the said indenture, reference being thereunto had, will, among other things, fully appear. By virtue of which said indenture the said defendant afterwards, to-wit, on the _____ day of _____, in the year aforesaid, entered into and upon the said demised premises, with the appurtenances, and became and was possessed thereof, and so continued until the end of the said term. And although the said plaintiff hath always from the time of the making of the said indenture, hitherto done, performed, fulfilled and kept all things in the said indenture contained on his part to be done, performed, fulfilled and kept, yet the said plaintiff saith that the said defendant did not, during the continuance of the said demise, support, uphold, maintain and keep the said messuage or tenement, and premises, in good and tenantable repair, order and condition (as in the

covenant), and leave the same in such repair, order and condition, at the end of the said term; but for a long time, to-wit, for the (last three years) of the said term, did permit (all the windows of the said messuage or tenement) to be, and the same during all that time were, in every part thereof, ruinous, in decay, and out of repair, for want of necessary reparation and amendment. And the said defendant left the same, being so ruinous, in decay, and out of repair as aforesaid, at the end of the said term, contrary to the form and effect of the said covenant, so made as aforesaid. And so the said plaintiff saith that the said defendant (although often requested) hath not kept the said covenant so made by him as aforesaid, but hath broken the same; and to keep the same with the said plaintiff, hath hitherto wholly refused, and still refuses; to the damage of the said plaintiff of (two hundred and fifty) dollars (enough to cover damages, etc.), and therefore he brings his suit, etc. Burr. App. 293, §559; Steph. Pl. 36; 2 Chit. Pl. 552.

II. Pleas.

A. *Plea That Premises Are Not Out of Repair.*

And the said defendant, by ———, his attorney (or in person), says that the windows of the said messuage or tenement were not in any part thereof ruinous, in decay, or out of repair, in manner and form as the said plaintiff hath above complained against him the said defendant. And of this he puts himself upon the country. Steph. Pl. 52.

B. *Plea of Release.*

And the said defendant, by ———, his attorney (or in person), says that, after the said breach of covenant, and before the commencement of this suit, to-wit, on the ——— day of ———, in the year of our Lord ———, the said plaintiff, by his certain deed of release, sealed with his seal, and now shown to the court here (the date whereof is the day and year last aforesaid), did remise, release, and forever quitclaim to the said defendant, his heirs, executors, and administrators, all damages, cause and causes of action, breaches of covenant, debts, and demands whatsoever, which had then accrued to the said plaintiff, or which the said plaintiff then had

against the said defendant; as by the said deed of release, reference being thereto had, will fully appear. And this the said defendant is ready to verify. Steph. Pl. 53.

COVERTURE.—See HUSBAND AND WIFE.

CREDITORS' SUITS.

I. Bills, 295

- A. *Against Corporation and Its Stockholders*, 295
- B. *By Creditors Against Executors*, 297
- C. *In Behalf of All Others*, 298

II. Complaints, 300

- A. *Commencement, Plaintiff on Behalf of Others*, 300
- B. *To Reach Demands Due From Third Person*, 300
- C. *To Set Aside Assignment Void on Its Face*, 302
- D. *Against Judgment Debtor, Assignee and Pretended Creditor*, 302
- E. *Against Debtor Who Transferred Assets for Note*, 303
- F. *Against Debtor and Trustee To Reach Trust Fund*, 304
- G. *By Assignee of Judgment*, 304
- H. *Against Debtor and One to Whom He Fraudulently Confessed Judgment*, 306

III. Answers, Code, 306

- A. *Denial of Judgment*, 306
- B. *Denial of Execution*, 306
- C. *No Residence Where Execution Issued*, 307
- D. *Defendant Has Assets*, 307
- E. *No Assets Belonging to Debtor*, 307
- F. *Denial That Conveyance Was Fraudulent*, 307

IV. Reference, 307

- A. *Order of Reference To Determine Priority*, 307
- B. *Referee's Report as to Priority*, 307
- C. *Order of Reference To Appoint Receiver*, 308
- D. *Referee's Order That Defendant Deliver and Convey*, 309

V. Order Appointing Receiver, 309

VI. Injunction Against Selling, Etc., 310

VII. Judgments and Decrees, 310

- A. *Decree Discharging One Defendant on Payment*, 310

- B. *Decree Setting Aside Conveyance, Etc.*, 311
- C. *Judgment Setting Aside Conveyance, Etc.*, 312
- D. *Judgment Avoiding Sale*, 312
- E. *Avoiding Sale and Assignment, and for Transfer to Receiver*, 313

CROSS-REFERENCES:

BILLS AND ANSWERS:

Introductory Part of Bill by Creditors, Legatees, Etc., on Behalf of Themselves and Others of Same Class.

DECLARATION AND COMPLAINT:

Complaint by One Creditor Suing on Behalf of All Others;

Complaint by One Creditor Suing on Behalf of All Others, Particular Class of Creditors.

DEMURRER:

Demurrer in Equity in Creditor's Suit.

FRAUDULENT CONVEYANCES:

Bill Requiring Grantee To Pay Over Balance of Purchase Price;

Complaint by Subsequent Creditor;

Decree, Conveyance in Contemplation of Insolvency Set Aside as Fraudulent.

I. Bills.

A. *Bill Against Corporation and Its Stockholders.*

To the honorable, the justices of the supreme judicial court, next to be holden at Boston, within and for the county of Suffolk, on the first Tuesday of April next.

Humbly complaining, show your orators, the Essex Company, a corporation duly established under the laws of this commonwealth, having its place of business at L., in the county of E., on behalf of themselves and all the other unsatisfied creditors of the defendant corporation hereinafter named, who shall come in and contribute to the expenses of this suit, that by an act of the legislature of this commonwealth, approved the twenty-sixth day of March, in the year eighteen hundred and fifty-two, J. W. E. and others, with their associates, were authorized to organize a corporation by the name of the Lawrence Machine Shop, for the purpose of manufacturing machinery in said L., with a capital stock not exceeding seven hundred and fifty thousand dollars; that thereupon on the ——— day of ———, under and

by virtue of said act, the said Lawrence Machine Shop was duly organized, and then became and was a manufacturing corporation under the laws of this commonwealth, having its works established at L. aforesaid.

And your orators further show, that the capital stock of said corporation was fixed and limited by said corporation at seven hundred and fifty thousand dollars; and that on the twenty-seventh day of January, in the year eighteen hundred and fifty-three, and before the whole amount of the capital stock fixed and limited by said corporation had been fully paid in, and before any certificate thereof had been made and recorded as prescribed by law, the said Lawrence Machine Shop, by G. McK., its treasurer duly authorized thereto, made and delivered to your orators three several promissory notes in writing, dated the said twenty-seventh day of January, one for the sum of fifty thousand dollars, the other two for fifteen thousand dollars each, and thereby, for value received, promised your orators to pay to them or their order the amount of said notes, to-wit, eighty thousand dollars, on the fifteenth day of January, in the year eighteen hundred and fifty-eight, with interest from the fifteenth day of January, of the year eighteen hundred and fifty-three, copies of which notes, with the indorsements thereon, are set out in the copy of judgment hereto annexed.

And your orators further show, that, at the time the said Lawrence Machine Shop made and delivered said notes to your orators, and from the time of its incorporation and organization until the twenty-first day of February, in the year eighteen hundred and fifty-seven, the said Lawrence Machine Shop had not given notice annually as required by the laws of this commonwealth, in some newspaper printed in the county where the works of said corporation were established, to-wit, the county of E., or in any newspaper printed in any other county, of the amount of all assessments voted by the corporation and actually paid in; nor had it given notice in any newspaper of the amount of all existing debts due from said corporation.

And your orators further show, that from the time of the incorporation and organization of said Lawrence Machine Shop to the time said corporation

made and delivered said notes to your orators, and for a long time thereafter, the capital stock fixed and limited by said corporation as aforesaid had not been fully paid in; nor has there, from the time of its organization to the present time, been any certificate of the payment of said capital stock made and recorded by said corporation, as by the law provided.

And your orators further show that on, to-wit, the fourth day of August, in the year eighteen hundred and sixty-two, they commenced a suit against the said Lawrence Machine Shop upon the aforesaid notes returnable to the ——— court, then next to be holden at N., within and for the said county of E., on the first Monday of September, in the year eighteen hundred and sixty-two, and duly entered said suit in said court, and there prosecuted the same to judgment. And at said term of the said court, on, to-wit, the twenty-first day of October, in the year eighteen hundred and sixty-two, by consideration of the justice of said ——— court, judgment was rendered in said suit against said Lawrence Machine Shop in favor of your orators for the sum of thirty-seven thousand seven hundred and forty-seven dollars and sixty-two cents debt, and fifteen dollars and eighty-nine cents costs of suit; and execution was thereupon issued by said ——— court on, to-wit, the twenty-fifth day of said October, against said Lawrence Machine Shop in favor of your orators for the said sum of thirty-seven thousand seven hundred and forty-seven dollars and sixty-two cents debt, and fifteen dollars and eighty-nine cents, costs of suit; copies of which judgment, execution and officer's return upon said execution are hereto annexed.

And your orators further show that on, to-wit, the said twenty-fifth day of October, A. D. 1862, the day of issuing said execution, they placed for collection said execution in the hands of one A. F. N., a deputy sheriff, qualified to collect, serve and return said execution. And the said deputy sheriff on, to-wit, the third day of November, A. D. 1862, made demand upon the said Lawrence Machine Shop for the payment of the amount due to your orators; and for which judgment and execution had been rendered and issued in said suit as aforesaid.

And your orators show that the

Lawrence Machine Shop did neglect, for the space of thirty days after said demand by said deputy sheriff, holding said execution, to exhibit to said deputy sheriff real or personal estate belonging to said corporation, subject to be taken on execution, sufficient to satisfy said execution or any part thereof. And the said corporation has never exhibited to said deputy sheriff any estate, real or personal, from which he might satisfy said execution in whole or in part; and the said corporation has ever since neglected and refused to pay the same or any part thereof; and the said deputy sheriff duly returned said execution into the clerk's office of said ——— court, at S., in said county of E., in no part satisfied; and there is now due to your orators upon said judgment, rendered upon said notes, the said sum of thirty-seven thousand seven hundred and forty-seven dollars and sixty-two cents debt, and fifteen dollars and eighty-nine cents, costs of suit, making in all thirty-seven thousand seven hundred and sixty-three dollars and fifty-one cents, with interest from the said twenty-first day of October, A. D. 1862, the day of the date of said judgment.

And your orators further show that, at the time when said judgment debt was contracted, on, to-wit, the twenty-seventh day of January, in the year eighteen hundred and fifty-three, the day of the date of said notes, and during the time from and after the said twenty-seventh day of January, A. D. 1853, and before the capital stock of said corporation, fixed and limited as aforesaid, was fully paid in, and before any certificate that said capital stock had been paid in, was made and recorded, as by law required, and from and after the said twenty-seventh day of January, A. D. 1853, and before any notice of the assessments, voted by said corporation and actually paid in, had been given, in any newspaper printed in said county of E., or printed in any other county; and from and after said twenty-seventh day of January, A. D. 1853, and before any notice of the amount of all existing debts due from said corporation had been given in any such newspaper, as by law required, and at the time when your orators commenced their suit aforesaid against the said Lawrence Machine Shop, and in which judgment aforesaid was rendered the following named per-

sons became and were stockholders in the said Lawrence Machine Shop, each holding stock therein of the amount and number of shares set against their respective names:

T. A., of L., county of M., holder of _____ shares, par value \$_____.

E. B., of B., county of S., holder of _____ shares, par value \$_____, etc., etc.

Wherefore your orators, in behalf of themselves and the aforesaid other creditors of the said Lawrence Machine Shop, bring the foregoing bill against said Lawrence Machine Shop, and the aforesaid stockholders therein, and pray that the aforesaid stockholders may be ordered and decreed to pay to your orators the amount due them as aforesaid, as fixed and determined by the judgment aforesaid, with interest from the date of said judgment, and to pay such other creditors of the said corporation as may become parties to this bill such sums as may be found due to said creditors; and that the amount of the debt due as aforesaid to your orators from said Lawrence Machine Shop, and such as may be found due to such other creditors as may become parties hereto, may be assessed upon said stockholders as law and equity may require.

And that your orators may have such orders, decrees and process as may be necessary to enforce the payment of such sums as may be assessed upon said stockholders, and may have such further and other relief in the premises as the nature and circumstances of the case may require and as shall seem meet unto this honorable court;

May it please your honors to grant unto your orators a writ of subpoena to be directed to the said Lawrence Machine Shop, and the said stockholders in this bill named, thereby commanding them, at a certain day, and under certain penalties therein expressed, personally to appear before this honorable court then and there full, true, direct and perfect answers make to all and singular the premises; and further, to stand to, perform, and abide under such further orders, directions, and decrees therein as to this honorable court shall seem meet.

The Essex Company, by its treasurer,

C. S. S.

D. S., Jun.

J. J. S.,

Solicitors and of counsel.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1957, 1960.

B. *Bill by Creditors Against Executors.*

Humbly complaining, show unto your honors your orators, W. B., of, etc., and C. D., of, etc., creditors by simple contract of J. F., late of, etc., deceased, on behalf of themselves and all other the creditors of the said J. F., who shall come in and seek relief by, and contribute to, the expense of this suit, that the said J. F., at the time of his death, was justly and truly indebted unto your orator, W. B., in the sum of \$_____ and upwards, for goods sold and delivered, and moneys paid, laid out, and expended to and for his use, and that the said J. F. was also justly and truly indebted to your orator, C. D., in the sum of \$_____ and upwards, for, etc. And your orators further show unto your honors, that the said J. F., in his lifetime, and at the time of his death, was possessed of, or well entitled unto, a considerable personal estate, and being so possessed, departed this life on or about _____, having first duly made his last will, bearing date, etc., and thereby appointed J. M. and C. S. (the defendants hereinafter named) the executors thereof, as in and by the said will or the probate thereof, to which your orators crave leave to refer when produced to this honorable court, will appear. And your orators further show unto your honors, that the said J. M. and J. S. duly proved the said will in the _____ court, etc., and undertook the executorship thereof, and possessed themselves of the personal estate and effects of the said testator to a very considerable extent, and more than sufficient to satisfy his just debts and funeral expenses. And your orators further show unto your honors, that the said J. M. and C. S., having possessed themselves of the said testator's personal estate and effects as aforesaid, your orators have made and caused to be made several applications to them the said J. M. and C. S., and requested them to pay and satisfy unto your orators their respective demands, with which just and reasonable requests your orators well hoped that the said J. M. and C. S. would have complied, as in justice and equity they ought to have done. But now so it is, etc. (See *Bills and Answers*, several parts.) And the said defendants pretend that the

said testator's personal estate was small and inconsiderable, and has already been exhausted in the payment of his funeral expenses and just debts. Whereas your orators charge that the said testator's personal estate and effects were more than sufficient to discharge all his just debts and funeral expenses, and so it would appear if the said defendants would set forth a full, true and particular account of all and every the personal estate and effects of the said testator come to their or either of their hands or use, and also a full, true and particular account of the manner in which they have disposed of or applied the same, but which they refuse to do. All which actings, etc. (see **Bills and Answers**, several parts), and that an account may be taken of the moneys due to your orators in respect of their said several demands, and of other the debts owing by the said J. F. at the time of his death; and that if the said defendant shall not admit assets of the said testator, then that an account may also be taken of the personal estate and effects of the said testator, possessed or received by or by the order, or for the use of the said defendants, or either of them, and that such personal estate may be applied in a due course of administration. And that your orators and the said other unsatisfied creditors, by simple contract of the said testator, may have such further or other relief in the premises as to your honors shall seem meet, and the circumstances of this case may require. May it please, etc. (See **Bills and Answers**, several parts.)

Pray subpoena against J. M. and C. S. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1948, 1949.

C. Bills in Behalf of Themselves and All Other Creditors, Etc.

Humbly complaining, show unto your honors your orators, W. R., of, etc., T. B., of, etc., and A. C., of, etc., on behalf of themselves and all other the creditors of J. S. (a defendant hereinafter named), who are parties to the deed of trust hereinafter mentioned, who shall come in and contribute to the expenses of this suit, that in or about the month of October, etc., the said J. S. was the sole owner of a certain ship or vessel called the G. M., and sailed in her as captain or master thereof, on or about the ——— day

of ———, etc., from Portsmouth to the island of A. and D., in, etc., with a considerable cargo on board. And your orators further show unto your honors that the said J. S., previously to his sailing on board the said ship, caused two policies of insurance on the said ship and cargo to be underwritten by the ——— insurance company, whereby the said ship and cargo were insured at and from L. to A. & D., for \$10,500. And your orators further show unto your honors that in the said voyage from L. to A. & D., the said ship and cargo received damage to the amount of \$510, whereby the said J. S., by virtue of the said two policies of insurance, became entitled to receive of the said ——— insurance company the said sum of \$510. And your orators further show unto your honors that M. L. (a defendant hereinafter named) was the agent of the said J. S., who was indebted to the said M. L., and for securing the said debt had given a mortgage of the said ship, and also assigned to him the said two policies of insurance hereinbefore mentioned, which said mortgage and assignment was and were made as well for securing the said debt as such other moneys as the said M. L. might afterwards advance as such agent as aforesaid. And your orators further show unto your honors that the said J. S. having arrived in his said ship at the island of D., and having taken a cargo for the London market, part thereof on his own account, and being about to return home, wrote the following letter to his said agent M. L. (that is to say): (Informing his agent that he should sail a full ship on or before the 30th of July, and enclosing the bill of lading, and requesting the agent to make the following insurance at the ——— office, viz., \$5,000 upon goods, and \$5,000 upon freight.)

And your orators further show unto your honors that the said J. S., by his agent the said M. L., also caused a policy of insurance for \$11,000 to be underwritten, for insuring the said ship and cargo on her said voyage from D. to L. And your orators further show unto your honors that the said J. S. sailed in the said ship, the G. M., from the island of D., on his homeward bound passage, and that the said ship with her cargo was unfortunately lost in a storm off the coast of ———, on or about the ——— day

day of, etc., in consequence whereof the said underwriters became liable to pay the respective sums mentioned in the said policies of insurance. And your orators further show unto your honors that the said J. S., not being able to pay his creditors the whole of their respective debts, and such inability arising from the aforesaid loss of the said vessel, the said J. S., on or about the ——— day of, etc., called a meeting of his creditors and proposed to assign the said policies of insurance and the moneys due thereon, and the said sum of \$510, due on the said policy of insurance for damage done on the said outward-bound voyage, together with a quantity of yellow saunders wood and fustic, in lieu of their respective demands upon him, to which proposal your orators, as well as the rest of the creditors of said J. S., acceded, and it was, at the same time, agreed that the said M. L. should be the trustee for the said creditors of said J. S., whereupon, by a certain indenture bearing date, etc. (stating the deed), which said indenture was duly signed, sealed and delivered by the said J. S., M. L., your orators, and the rest of the creditors of the said J. S. And your orators further show unto your honors that since the execution of the said indenture the said defendant M. L. has received the sum of \$10,500, on the said policy of insurance in the said indenture mentioned to have been made on the homeward-bound voyage of the said ship or vessel G. M., and retains the said sum of \$10,500 in his own hands, and applies the same to his own advantage, and refuses to make any division of the said sum amongst the creditors of the said J. S. And your orators further show unto your honors that the said defendant M. L. has also received the sum of \$510, and also the sum of \$5,000 on the said policies in that behalf, hereinbefore mentioned to have been made and assigned to him in trust for the creditors of the said J. S. And your orators further show unto your honors that the said defendant M. L., neglecting his said trust, suffered the said quantity of saunders wood and fustic to remain at ——— without ever attempting to sell or dispose of the same, whereby the said saunders wood and fustic have been totally spoiled and also a considerable sum of money, and more than the value

thereof, has become due for warehouse room. And your orators submit that the said defendant M. L. ought to pay and divide between your orators and the other creditors of said J. S., who have signed the said deed of trust, the value of the said saunders wood and fustic, and take upon himself the payment of the said warehouse room. And your orators further show that the defendant M. L., after paying himself his said debt of \$5,970, ought to have divided the said several sums equally between your orators and the other creditors of said J. S., who are parties to the said indenture, for which purpose your orators, on behalf of themselves, and such other the creditors of the said J. S. have frequently applied to the said M. L., and requested him to make such equal distribution as aforesaid. But the said M. L., combining and confederating with the said J. S., and with divers other persons, etc., refuses to comply with your orator's said requests, and sometimes pretending that he has not received the said sum of \$5,000, insured on the said policy on the goods on board the said ship or vessel from D. to L. Whereas your orators charge that the said confederate has received the said sum of \$5,000 on the said policy, or if not, that he might have received the same if he had used due diligence. And your orators charge that if in truth any obstacle arises to prevent the said M. L. receiving the said sum due on the said policy, it is entirely owing to his own misconduct in not obeying the directions given by the said J. S. to make the said insurance at the ——— office. Whereas your orators have lately been informed that the said M. L. made the said insurance on the said goods with private underwriters, and procured the policy to be underwritten in his own name, in which case your orators charge and humbly submit that the said defendant M. L., by such misconduct is himself become liable to answer to your orators and other the creditors of the said J. S., for the said sum of \$5,000 due on the said policy. And at other times the said confederate M. L. pretends that the several persons, who have underwritten the said policies respectively, refuse to pay the said sum due on the said policy, because they allege that the said J. S. had not any goods on board the said ship at the

time of the making the said policy, or at the time of the loss of the said ship. Whereas your orators charge that the said J. S. had goods on board the said ship to the value of \$5,000 and upwards at the time of the making of the said policy, and at the time of her loss. And at other times the said defendant M. L. will pretend that he never had the said policy for \$5,000 on the goods of the said J. S., shipped on board the G. M. from D. to L. in his possession. Whereas your orators charge that it was generally understood at the time of the execution of the indenture hereinbefore mentioned, and the said M. L. declared to the said creditors of the said J. S. that he had at that time the said policy in his possession. And your orators also charge that if he had not a policy made in the name of the said J. S. in his possession, but that the same was made in his own name, then that he deceived your orators, and the other creditors of the said J. S., and that he ought to answer the value of the said policy, the obstacle (if any) to the recovery thereof arising from the said confederate M. L. having procured the said policy to be made out in his own name, and to be executed by private underwriters instead of the said ——— insurance company, contrary to the direction of the said confederate J. S. in that behalf. And at other times the said confederate pretends that he did make the said insurance on the said goods in the name of the said J. S., and with the ——— (a different) insurance company; but that they refused to pay the same, and therefore, as he has not collected the whole of the effects assigned by the indenture hereinbefore mentioned, he is not bound to divide among the creditors of the said J. S. any part of what he has collected. Whereas your orators charge that the said confederate M. L., after paying himself the said debt and expenses hereinbefore mentioned, is bound from time to time to divide such sums of money as he has collected or shall collect equally between the creditors of the said J. S., who are parties to the said indenture, but the said confederate M. L. refuses so to do, or to permit your orators to see the said policy on the said goods, or in any manner to account for what he has collected or might have collected and received by virtue of said indenture. All

which actings, etc. (see **Bills and Answers**, several parts). And that the said defendant M. L. may be decreed by this honorable court (after paying himself his said debt of \$5,970, and his other expenses) to account with your orators and the other creditors of the said J. S., parties to the said indenture, who shall come in and contribute to the expense of this suit, for all sum and sums of money received by him from time to time by virtue of the said indenture. And if it shall appear that the said defendant M. L., as the agent of the said J. S., has neglected to obey the directions given him by the said J. S. in regard to the making of the said insurance of \$5,000 on the goods of the said J. S. on board of the said ship the G. M., from D. to L., then that he may be decreed to be liable to your orators and the rest of the creditors of the said J. S., parties to the said indenture, for the same, and that the said defendant M. L. may be also decreed to account for the value of the quantity of saunders wood and fustic so possessed by him as aforesaid under the said deed of trust, and that the said defendant M. L. may be decreed to pay to your orators and the rest of the creditors of the said J. S., parties to the said indenture, an equal dividend in proportion to their respective debts, of all and every the sum and sums of money which the said M. L. has received, or which might have been received by him by virtue of the said indenture, as well as of such sum or sums of money as the said M. L. is become liable to pay by reason of his said neglect of the orders of the said confederate J. S. respecting the said insurance of \$5,000 on the said goods.

And that the said M. L. may be removed from being the trustee under the said trust deed, and that some other trustee may be appointed under the direction and decree of this honorable court. (And for further relief; see **Bills and Answers**, several parts). May it please, etc. (See **Bills and Answers**, several parts.)

Pray subpoena against M. L. and J. S. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1952, 1956.

II. Complaints.

A. Commencement of Complaint, Where Plaintiff Sues on Behalf of Other Creditors.

The plaintiff, complaining on behalf

of himself and all other judgment creditors of the defendant (whose executions have been returned unsatisfied, and), who shall in due time come in and seek relief by, and contribute to, the expenses of this action, alleges: 1 Abb. Forms 569.

B. Complaint Against Debtor To Reach Demands Due Him From Third Person.

I. That at _____ term (or on the _____ day of _____, 18—, at _____, in the _____ court, in and for the county of _____), the plaintiff recovered a judgment, which was duly given by said court against the defendant (and M. N. and O. P.), for _____ dollars, in an action wherein this plaintiff was plaintiff (or defendant), and the defendant herein was (or the defendant herein, and said M. N. and O. P. were) defendant (or plaintiff); and that on the same day (or the _____ day of _____, 18—), said judgment was docketed in the office of the clerk of said county (and on the _____ day of _____, 18—, a transcript thereof was filed, and the judgment docketed in the county of M.).

II. That on the _____ day of _____, 18—, an execution in due form was issued upon the said judgment against the personal and real property of (all said debtors) to the sheriff of said (last mentioned) county, in which county the defendant then resided (or in which county was the defendant's last known residence within this state, his residence * at the time of said execution being unknown to the plaintiff, and not ascertainable, though the plaintiff made diligent inquiry therefor; (or say: in which county was the defendant's residence at the time of bringing said action, his residence, continuing as above from the *).

III. That the said execution has been duly returned by said sheriff wholly unsatisfied (or unsatisfied, except as to the sum of _____ dollars), and there is now due to the plaintiff on said judgment _____ dollars, and interest from the _____ day of _____, 18—.

IV. That a short time before the commencement of the action in which the said judgment was obtained, and after the indebtedness upon which said judgment was obtained had accrued, the said defendant was, and for several

years previous thereto had been, engaged in mercantile business at _____, and, as the plaintiff is informed and believes, various persons became indebted to him to a large amount; that, although the said defendant about the time of, or soon after, the commencement of this action, to-wit, about the _____ day of _____, 18—, did assign and transfer all his stock in trade to one M. N., yet the said business is still wholly unsettled; and that the defendant had, at the time of the commencement of this action, debts due him to a large amount, to-wit, to an amount not less, as plaintiff is informed and believes, than _____ dollars, a considerable portion of which are evidenced by charges on his books of account, which the said defendant refuses to produce, or allow to be examined by or on behalf of the plaintiff; and the plaintiff is therefore unable to specify, and cannot learn, and does not know, the particular items or amounts of said indebtedness, or the names of the several persons from whom the same are due; but is informed and believes that several of them, owing defendant in the aggregate a sum not less than _____ dollars, reside at _____, and are solvent and able to pay the respective demands against them.

Where a debtor in the judgment is not made defendant in this action because of insolvency or absence, add:

V. That said (insolvent or absentee) is wholly insolvent and destitute of property or is not and has not been for the space of _____, within this state, but resides at _____, in the state of _____, and has no property within this state.

Where a debtor in the judgment is not made a defendant because he was merely a surety, add:

VI. That the said judgment was recovered in an action (describing it, e. g., thus) brought to foreclose a mortgage made by the defendant to said (surety), with a bond collateral thereto, and that said bond and mortgage was assigned to the plaintiff by the said (surety), who thereupon guaranteed the payment thereof; but the same not being paid, and the mortgaged premises being sold upon foreclosure in said action for less than the sum due, said judgment was recovered for the deficiency, as to which the said

(surety) was merely a surety, and not liable as a principal debtor, and which it was, by a provision in said judgment, directed should be levied of the property of the defendant (principal debtor), if it could be so collected; and if it could not, then to be levied of the property of said (surety).

Wherefore the plaintiff demands:

1. That the said defendant be adjudged to apply to the payment of the amount of said judgment and interest thereon, together with the costs of this action, said property, debts, choses in action, and equitable interests belonging to him, or held in trust for him, or in which he is in any way or manner beneficially interested.

2. That he be enjoined from selling, transferring or interfering with said property, debts, things in action and equitable interests.

3. That he be prohibited from making an assignment, or confessing any judgment, to enable other creditors or persons to obtain a preference over plaintiff, or to take any portion of defendant's property.

4. That a receiver may be appointed of all said property, equitable interests, things in action, and effects of the said defendant, and said defendant directed to execute to him an assignment thereof, and said receiver sell or otherwise dispose of the same, and convert the same into money, as soon as may be, and that said receiver apply so much of the proceeds thereof as may be necessary for that purpose, to the payment of the plaintiff's said debt, with interest and costs of this action. 1 Abb. Forms 571.

C. *Complaint To Set Aside an Assignment Void on Its Face.*

I, II and III. Allege judgment and issue, and return of execution, as in II, B.

IV. Allege making of assignment, setting it forth or annexing it, as in the following form, I to IV, and adding: And the plaintiff alleges and submits that the said instrument of assignment is fraudulent and void upon its face; and he alleges that it was made and executed by the said defendant (assignor), (and accepted by the defendants, assignees), with the intent to hinder, delay and defraud the creditors of said (assignor).

(Continue as in other forms.) 1 Abb. Forms 574.

D. *Complaint Against Judgment Debtor, Assignee and a Pretended Creditor Named in Assignment for Extrinsic Fraud.*

I, II, and III. Allege judgment and issue, and return of execution, as in II, B.

IV. That after the contracting of the debt on which the aforesaid judgment debtor was recovered, the said (judgment debtor) assigned all his property to the defendant (assignee), in trust for the payment of his debts (or, made an assignment, of which a copy is annexed as a part of this complaint).

V. That the said (assignee) accepted the said trust, and has collected a large sum of money and other property from the assets of his assignors, amounting in all to the value of over ——— dollars.

VI. That the property so assigned is of the value of ——— dollars.

VII. That the said assignment was made by the said (judgment debtor) with the intent to delay, hinder, and defraud his creditors; that it was not accompanied by an immediate and continued change of possession of the property; that ever since the same was executed and delivered, and up to the present time, the said property has remained in the actual possession and under the control of said (judgment debtor), who has retained possession and control thereof under the false and fraudulent pretense that he is agent of said (assignee).

VIII. That the pretended indebtedness set forth in said assignment as due from the defendant (judgment debtor) to the defendant (the preferred creditor) is fictitious; that, in fact, no such indebtedness exists, but that the same is therein inserted for the purpose of enabling the defendant (judgment debtor) to distribute the proceeds of the goods passed under the assignment among his friends, and thereby to keep the possession and control thereof of himself.

IX. That the defendant (judgment debtor) has not any property other than that embraced in the assignment aforesaid, out of which the execution aforesaid could be satisfied in whole or in part; and that unless the said property can be reached and applied to the payment of said judgment, the same must remain wholly unpaid.

Wherefore the plaintiff demands judgment:

1. That said assignment be adjudged fraudulent and void as against the plaintiff (and such other judgment creditors of said judgment debtor as shall elect to come in and share the expenses of this action).

2. That a receiver of all the property and effects of said (judgment debtor) be appointed.

3. That the defendants be adjudged to account for all the property received by them or either of them under said assignment, and for all proceeds arising from sale thereof, and deliver the same to such receiver.

4. That the defendants be, in the meantime, enjoined from disposing of any of said property, or paying away any of the proceeds thereof, or in any wise interfering therewith.

5. That said receiver pay, out of the proceeds of said property, the judgment aforesaid, and the costs and expenses of this action, and hold the balance subject to the further order of this court. 1 Abb. Forms 575.

E. Complaint Against Debtors Who Transferred Assets to Third Person for His Note, and Assigned Note for Benefit of Creditors, To Set Aside Transaction as Fraudulent, and for Receiver.

I, II, and III. Allege judgment and issue, and return of execution, as in II, B.

IV. That on the _____ day of _____, 18____, said judgment debtors were booksellers at _____, doing business as partners under the firm name of Y. Z. & Co.; and were possessed of (designating assets, *e. g.*, thus), a large stock of books, stationery, fancy articles, jewelry, and musical publications, a valuable lease of their store, No. _____, _____ street, having five years to run, and sundry demands against other persons; but were insolvent and unable to pay their creditors punctually or in full.

V. That on that day, and after the indebtedness for which the plaintiff's judgment was recovered had accrued, the said defendants (judgment debtors) in contemplation of, and with full knowledge of their insolvency, made a pretended sale of their said stock to the defendant (transferee), then a clerk in their employ in their said store, and took in payment therefor his promissory notes having several months to

run, but for what exact amounts these plaintiffs do not know and cannot state.

VI. That the defendant (clerk) was wholly irresponsible and insolvent, and has no means of paying his said notes, except such moneys as he may derive from the sale of the property transferred to him as aforesaid.

VII. That thereafter and on the same day the said (judgment debtors) executed and delivered to the defendant (assignee) an instrument in writing, of which the following is a copy; (copy assignment; or, say, of which a copy is annexed as a part of this complaint, and annex a copy at the end of the complaint).

VIII. That the property so assigned is of the value of about _____ dollars and upwards.

IX. That the said note to the said (clerk), and the said assignment to (assignee), were intended by each and all of the aforesaid defendants to be one transaction, and were in fact one transaction, and were intended and completed for the purpose of delaying, hindering, and defrauding the creditors of said (judgment debtors), by putting it out of the power of such creditors to reach by execution, or other due process of law, the stock and assets of the said (judgment debtors); that such sale and assignment were not, nor was either of them, followed by immediate and continued change of possession; that ever since the said sale was made, and since said assignment was delivered, and up to the present time, the said property has remained in the actual possession and under the control of the said (judgment debtors), who have retained possession and control thereof under the false and fraudulent pretense that they are agents of said (clerk).

(X. That said assignment is fraudulent and void upon its face.)

XI. That the defendants (judgment debtors) have not, nor has either of them, any property other than that embraced in the sale and assignment aforesaid, out of which the execution aforesaid could be satisfied in whole or in part, and that unless the said property can be reached and applied to the payment of said judgment, the same must remain wholly unpaid.

Wherefore these plaintiffs demand judgment:

1. That the said sale by the defend-

ants (judgment debtors) to the said (clerk), and said assignment by the defendants (judgment debtors) to the defendant (assignee), may each be declared fraudulent and void as against these plaintiffs.

2. That a receiver of all the property and effects of the said (judgment debtors) or either of them, which they or either of them had at the time of the said sale to the defendant (clerk), or at any time thereafter, be appointed.

3. That the defendants, and each of them, be adjudged to account for all the property received by them, or either of them, under either the sale or assignment aforesaid, and for all proceeds arising from the sale thereof, and deliver the same to such receiver.

4. That the defendants, and each of them, be in the meantime enjoined from disposing of any of said property, or paying away any of the proceeds thereof, or in any wise interfering therewith.

5. That the said receiver be directed to sell the said property, or so much thereof as may be necessary, and to pay out of the proceeds of said property the judgment aforesaid, and the costs and expenses of this action, and hold the balance subject to the order of this court. 1 Abb. Forms 577.

F. Complaint Against Debtor and His Trustee, To Reach Trust Fund or Its Income.

I. II. and III. (Allege judgment, and execution unsatisfied, as in II, B.)

IV. That the defendant (judgment debtor) is the beneficiary under a trust created by deed heretofore executed by him (or, created by the will of one M. N., deceased), of which a copy is hereto annexed as a part of this complaint.

V. That the fund, consisting of about the sum of _____ dollars, is now in the hands of the defendant (trustee) as trustee (or, executor), and the defendant (judgment debtor) is entitled to receive, or does receive annually, the sum of _____ dollars therefrom.

VI. (If it is a trust under which the creditor can only reach surplus income, state facts to show what it is, e. g.), that the defendant (judgment debtor) is a man without family, and residing at _____, where he has been for the last three years, and still is,

boarding, and the sum of _____ dollars annually is a reasonable sum for his support, and that the sum of _____ dollars annually is surplus income; and if the creditor is only entitled to surplus accrued, add _____, of which surplus _____ dollars is in the hands of the defendant (trustee), already accrued, but not paid over.

Wherefore the plaintiff asks that the defendants be enjoined respectively from paying over and from receiving said fund (or, so much of said income [already accrued] as is not necessary for the support of the defendant, judgment debtor, and his family), and that the same be applied to the satisfaction of the plaintiff's judgment and interest, and the costs of this action. 1 Abb. Forms 579.

G. Complaint by an Assignee of a Judgment, Etc.

I. That on or about the _____ day of _____, 18____, at _____, in the _____ court, in and for the county of _____, one (plaintiff's assignor) recovered a judgment against (the judgment debtor) for _____ dollars, which was duly given by said court, in an action, continue as in II, B, to end of paragraph III.

IV. That on the _____ day of _____, 18____, the said (plaintiff's assignor) duly assigned to the plaintiffs for a valuable consideration said judgment, and all rights arising therefrom.

V. That the said judgment was recovered upon debts of the said (judgment debtor), contracted previous to the making of the transfer hereinafter mentioned.

VI. That the defendant (judgment debtor) was a manufacturer of blank books and stationery at _____, and kept a store there stocked with blank-books and stationery, and a factory stocked with machinery and stock; the value of the said stock in the store being _____ dollars, and of the machinery and stock in the factory being _____ dollars, or thereabouts, the said machinery being subject to a chattel mortgage for _____ dollars, held by the defendants (mortgagees) under the firm name of S. T. & Co., the said W. V., being the active and managing partner of said firm.

VII. That subsequent to the contracting of said debts, and about the month of _____, 18____, the said

(judgment debtor) failed in business and stopped payment, and in anticipation of the said failure, and shortly previous thereto, he conspired with the defendant (managing partner of mortgagees), and the defendant (assignee), to dispose of his property in fraud of his creditors, and to conceal or cover up the same, so that his creditors could not reach it; and, in pursuance of this scheme, and with intent to delay and defraud the said creditors, the said (mortgagee) and (assignee), mutually arranged and agreed that after the transfer should be made to said (assignee), as hereinafter mentioned, the said mortgage should be foreclosed, and the property sold and bid in by the said (mortgagee), and that the deficiency then existing between the amount of the mortgage and the price bid should be paid to him by the defendant (assignee); and the defendants (debtor, mortgagee and assignee) further arranged and agreed that all the property in the said store and factory should be transferred and delivered to the defendant (assignee) at the nominal price of _____ dollars, or thereabouts, which the said (assignee) should pay in notes, and (the debtor) should use in effecting favorable compromises with his creditors. And it was further arranged and agreed between the defendants that the defendant (assignee) should go on, in his own name, with the business previously conducted by (the debtor), and should employ said (debtor) as managing agent, at a nominal salary of _____ dollars a year; that the business should be thus continued for two years, to give said (debtor) an opportunity to buy up at a low rate the claims against him held by his creditors, and at the end of that time said (assignee) should pay over and redeliver to the debtor all the residue of said property and effects, and the proceeds and profits thereof, after deducting _____ dollars a year for his own compensation and the amount of the notes given by him as aforesaid. And it was further arranged and agreed, that if the defendant (debtor) could procure a purchaser of said property at a fair price, the said (assignee) should sell the same to such purchaser in his own name, and after making the deduction above mentioned should pay over the balance to said (debtor).

VIII. That in pursuance of this arrangement the defendant (mortgagee)

foreclosed the mortgage and bought in the property at _____ dollars, and immediately transferred the same to said (assignee), who paid him _____ dollars therefor, that being the amount of said mortgage; which amount the said (mortgagee) received for, and paid over to, the said firm of S. T. & Co.

IX. That also, in pursuance of said arrangement, the other property of said (debtor) in the factory and store was transferred by him to said (assignee) for _____ dollars, paid in notes as aforesaid, who continued the business, employing said (debtor) as managing agent, and the said (assignee) has made a large profit thereon, and at least _____ dollars a year; and that the said (assignee) still continues in said business, and in possession of the said goods and property, or the proceeds and profits thereof.

Wherefore the plaintiffs demand judgment:

1. That the transfer of his property by the defendant (debtor) to the defendant (assignee) may be adjudged fraudulent and void as against the plaintiffs.

2. That the said defendant (assignee) be enjoined and restrained from selling, assigning, or in any way disposing of the machinery and stock in said blank-book manufactory, transferred to him by said (debtor), or said (mortgagee), and the goods and stock in the store transferred to him by said (debtor), or the proceeds and profits thereof.

3. That a receiver may be appointed to take possession of the said property, and the proceeds and profits thereof.

4. That the said Y. Z., may be compelled to account to said receiver for the profits of said store and manufactory since the said transfer.

5. That the said (mortgagees) be compelled to pay over to said receiver _____ dollars, being the sum received by them over and above the amount that the mortgaged machinery brought at the sale.

6. That the property taken possession of by said receiver, or collected by him, may be sold and appropriated to the payment of the judgment held by the plaintiffs.

7. And for the costs of this action. 1 Abb. Forms 580.

II. Complaint Against Judgment Debtor, and One to Whom He Fraudulently Confessed Judgment.

I, II, and III. Allege judgment and execution, as in II, B.

IV. That, prior to the entry of said judgment, but after the indebtedness upon which the said judgment was rendered had accrued, the said defendant (debtor) authorized a judgment to be entered, on confession, in the _____ court for _____ county, against him, in favor of the defendant (fraudulent creditor), the father of said (debtor), for _____ dollars damages and _____ dollars costs, for a pretended indebtedness for so much money alleged to have been theretofore lent by said defendant (debtor) to said defendant (fraudulent creditor).

V. That thereafter, and about the _____ day of _____, 18____, execution having been issued upon the said judgment, personal property of said (debtor), consisting of (briefly describing it), of the value of _____ dollars, was thereunder sold by public auction by the sheriff of the said county of _____, and was struck off to said defendant (fraudulent creditor), at about _____ dollars, a sum far less than its real value; who thereupon took possession, and is now in possession of the same, claiming to be the owner thereof.

VI. That afterwards, and about the _____ day of _____, 18____, real property of said (debtor), consisting of (briefly describing it), was sold by auction by the sheriff of said county, under an execution issued upon said judgment, and was struck off to the said defendant (fraudulent creditor), also at a price much below its real value, his being the highest bid for the same; and the said sheriff thereupon made his certificate of sale of the said real estate, to-wit, on the _____ day of _____, 18____, aforesaid (and no deed or conveyance has yet been given by him, the time for such conveyance having not yet expired).

VII. That the said last-mentioned judgment was fraudulently confessed by the said (debtor) to the said (fraudulent creditor), and for the purpose of covering up his said property, and defrauding the plaintiff in the collection of his demand. That said defendant (debtor) was not indebted to the defendant (fraudulent creditor); but said

judgment was confessed without any consideration, and the sale of said property was made with the intention, on the part of both, of defrauding the plaintiff out of his demand, and of transferring the ostensible ownership and possession of the property of said (debtor), liable to execution, to the said defendant (fraudulent creditor), so as to prevent the plaintiff, or any other creditor, from levying upon and selling any part thereof.

(VIII. That said real estate cannot be sold for more than about one-half the amount of the plaintiff's said judgment; and that the said defendant [fraudulent creditor] is of no pecuniary responsibility, and is possessed of little or no property other than that so bid in by him as aforesaid, and is in embarrassed circumstances and involved in debt.)

Wherefore the plaintiff demands judgment against the defendants:

1. That the said judgment in favor of the defendant (fraudulent creditor), and the proceedings and sale under it, and the sheriff's certificate of sale, be set aside, and declared void.

2. That the said defendants, and each of them, be enjoined from disposing of, transferring, incumbering, or in any way interfering with the said property, or any part thereof; and that a receiver be appointed, with the usual powers and duties, to whom the said defendants shall be directed to assign the said property, real and personal (and all other estate, property, and effects of said defendant, debtor); and who shall be authorized and directed to sell the same, or so much thereof as shall be necessary for that purpose, and apply the proceeds, or so much thereof as may be necessary, to the payment of the plaintiff's said judgment, and interest thereon.

3. And for the costs of this action, and for such other or further relief as may be just. 1 Abb. Forms 582.

III. Answers (Code).

A. *Answer in Creditors' Suits, Denial of Judgment.*

That there is no record of the said judgment. 2 Abb. Forms 161.

B. *Answer in Creditor's Suit, Denial of Execution.*

That no execution upon the said judgment was ever returned unsatisfied in whole or in part (or, was ever issued

to the said county) before this action. 2 Abb. Forms 161.

C. Answer, Denial of Residence Where Execution Issued.

That the defendant was not, at the time mentioned in the complaint, a resident of the county to which execution is alleged to have been issued; but was a resident of _____ county, to which no execution was issued before this action. 2 Abb. Forms 161.

D. Defendant Has Assets.

That the defendant (judgment debtor) has, at the commencement of this action had, real property (or, personal property, or both) in the county of _____, in this state, liable to execution, and sufficient in value to satisfy said judgment; to-wit (designating what). 2 Abb. Forms 161.

E. Denial of Possession of Assets Belonging to Judgment Debtor.

That he had not, at the commencement of this action, nor has he had at any time since, property of the defendant (debtor) in his possession or under his control, as alleged. 2 Abb. Forms 161.

F. Denial That Conveyance Was Fraudulent.

That upon the making of the alleged assignment (or, mortgage) there was an actual and continued change of the possession of the assigned (or, mortgaged) property from the said (debtor) to the (transferees), who, immediately after the execution of the assignment (or, mortgage), took actual and exclusive possession of the property; and that it has at all times since the assignment (or, mortgage) remained in their exclusive possession and control. 2 Abb. Forms 161.

IV. Reference.

A. Order of Reference To Determine Priority Among Creditors.

This cause coming on to be tried at a special term of this court, held on the _____ day of _____, 18—, before J. J., one of the justices thereof, and it appearing that (a reference to determine priority among creditors) is necessary for the information of the court before judgment; thereupon, on hearing counsel for the respective parties,

Ordered, that it be referred to R. F. Esq., as sole referee, to ascertain and report who are the creditors of the said

firm of _____, and the amounts due to said creditors respectively, and the order in which they are entitled to payment out of the assets of the said firm of _____, (in conformity with the provisions of the statute of limited partnerships).

That any party to this action, or any person claiming to be a creditor of said firm, and presenting to the said referee prima facie evidence of his claim, shall have the right to contest any claim preferred by any other creditor, and that testimony may be taken before said referee on the part of the claimants and contestants. That the said referee report to this court the names of the creditors, and the amounts, found by him to be due to each respectively, and the order in which they are entitled to payment; and that in case any of said claims be contested, the said referee do report the facts relative to the claim so contested, and the grounds of objection alleged by the contestant, and the decision of the said referee thereupon.

And it is further ordered, that on the coming in of the referee's report, any party to this action, or any creditor whose claim is allowed by the referee, may apply to this court for an order for the final distribution of the balance of the funds in the hands of the receiver herein, among the creditors of said firm as ascertained by said report, or by the order of the court thereupon.

And it is further ordered, that either party, or any creditor, may apply to this court, from time to time, for further directions in the premises. 2 Abb. Forms 673.

B. Referee's Report as to Priority of Creditors.

To the _____ court of _____.

Pursuant to an order of this court, in this action, dated the _____ day of _____, 18—; I, the undersigned referee report: That I have been attended upon such reference by counsel for the plaintiff and for the defendants, and for M. N. and O. P., creditors of said firm of Y. Z. & Co.

That upon being served with a copy of the said order, I caused notice to be published (twice a week, for three weeks, in two daily newspapers of the city of New York, one published in the morning and one published in the

afternoon), requiring all persons having any claim against the said firm to produce and prove the same before me at a place in said city, and by a time therein specified; copies of which notice, with affidavits of the publication thereof, are hereto annexed, marked Schedule No. 1 and Schedule No. 2.

That I also obtained from the defendant W. X., a list of the outstanding creditors of the said firm, made up by him while acting as assignee thereof, and which he testified was correct, to the best of his knowledge, information, and belief; and I caused duplicates of the said notice to be served upon all of such creditors, either personally or by being left at their places of business, or when such creditors were a firm now dissolved, to be served as aforesaid upon one of the members of such creditor firm.

II. I further report, that the creditors of the said firm of Y. Z. & Co., and the amounts at the date of this my report, found due to them, respectively, are as follows: (designating names and amounts).

III. I further report, that of the said creditors, M. N. above mentioned, is entitled to be preferred to all the others to the extent of _____ dollars, being the amount (specifying nature of claim and grounds of preference). That except as to the said sum of _____ dollars, all the said creditors, including the said M. N., are entitled to be paid ratably and proportionately out of the assets of the firm of Y. Z. & Co., and that neither ought to be postponed to any other in whole or in part, except as aforesaid.

IV. I further report, that one and one only of the said claims is contested by either party, or by any creditor, namely, the said claim of O. P.; that the facts relative to the said claim are as follows: (stating the facts, and continuing); and that I found the facts in respect thereto to be as above stated and decided, and do report that by virtue of the facts above stated, the said O. P. has a valid claim against the said Y. Z. & Co., for the amount above severally mentioned in the second article of this my report, being the sum of _____ dollars, with interest thereon from the said _____ day of _____, 18—. 2 Abb. Forms 676.

C. Order of Reference To Appoint Receiver in Creditor's Suit.

(Commencement and recitals as in other forms, continuing):

Ordered, that it be referred to R. F., of _____, counsellor-at-law, to appoint a receiver of the estate and property, real and personal, things in action, debts, equitable interests, and other effects of the said defendant Y. Z., and which belonged to or were held in trust for him at the time of commencing this action, or in which he had any beneficial interest, except such property as is by law exempt from execution; and, also, except where such trust has been created by, or the fund so held in trust has proceeded from, some person other than the said defendant (and if there be property which plaintiff seeks to subject to his execution, after removing incumbrance, add), and of the property hereinafter described, and the rents, issues, income, and profits thereof, to-wit (describing specific property).

*And it is further ordered, that the said referee take from such receiver security for the faithful performance of his trust, to-wit, a bond in the sum of _____ dollars, with two or more sufficient sureties, approved by said referee, and file the same with the clerk of this court (or, of the county of _____).

And it is further ordered, that upon the filing of such security, and of the said referee's report, such receiver shall be vested with the usual rights and powers of receivers under this court. And, further, the said defendant Y. Z. is hereby ordered to appear before the said referee, and assign, convey, transfer, and deliver over to such receiver, on oath and under the direction of the said referee, the estate, property, choses in action, and effects as to which such receiver is appointed, as aforesaid, with all vouchers and papers relating thereto; as well as, from time to time, produce such books and papers, and submit to such examination as the said referee shall direct, in relation to the property or effects which he is directed to assign and deliver over. And, also, that the plaintiff be at liberty to examine witnesses before the said referee in relation to the real estate, leasehold, chattels—real and personal and equitable interests, things in action, and effects of the said defendant Y. Z.; and

also as to any matter charged in the said complaint and not admitted by the said defendant on such examination, so far as necessary to carry out the object of this order. And it is also ordered, that the receiver, when so appointed, shall have general power and authority to sue for and collect any of the debts, demands, and rents belonging to the said defendant Y. Z. which may be transferred to him, and to compromise and settle such as are unsafe or of a doubtful character. (He may also sue in the name of the debtor where it is necessary or proper for him to do so); but the said receiver will not, in his accounts, be allowed for the costs of any suit brought by him against an insolvent from whom he is unable to collect his costs, unless such suit is brought by order of the court or by the consent of all persons interested in the funds in his hands. And the tenants of such real estate of the debtor Y. Z. as may also be assigned or transferred to the said receiver are to attorn to such receiver; or the said receiver may, when necessary, apply for an order that any of such tenants attorn and pay rents to him. And such receiver is hereby permitted to make leases from time to time, as may be necessary, of any such real estate, for a term not exceeding (one year). And it is also hereby made the duty of the said receiver, without any unreasonable delay, to convert all the personal estate and effects which may be assigned or delivered over to him into money; but he is not to sell any real estate without the special order of the court, although he may sell desperate debts and all other doubtful claims to personal property by public auction, giving at least ten days' public notice of the time and place of such sale. Before making such appointment, said referee shall ascertain whether a receiver be already appointed of the estate and effects of the said defendant; and if there should be, and if the referee appoints him to be the receiver herein also, then all the rights and powers herein provided shall attach to such present receiver. 2 Abb. Forms 380.

D. Referee's Order That Defendant Deliver and Convey to Receiver.

It appearing to my satisfaction, by the examination of the defendant Y. Z. (and of O. P. and Q. R., produced, sworn, and examined before me as wit-

nesses), on the reference before me held pursuant to the order appointing me referee herein, bearing date on the _____ day of _____, 18—, that said defendant has certain goods and chattels, as of his own property, and now in his possession, to-wit (describing them generally); also, certain bills, notes, and evidences of debt, that is to say (specifying them) in his possession; also, certain accounts, the books of original entries of which are in possession or under the control of said defendant Y. Z. (etc., stating as particularly as may be the kind and description of property discovered upon such examination):

I, the undersigned referee, do hereby order and direct that the said defendant do, within _____ days from the date hereof, deliver over to R. C., the receiver in this action, the said personal property, bills, notes, and evidences of debt, and books of account (each of said defendants delivering to said receiver so much of said property, bills, notes, evidences of debt, and books of account as may be in his separate possession); and also all other property (not exempt from execution), evidences of debt, books of account, etc., etc., owned by said defendant at the time of the commencement of this action, and which are susceptible of delivery, in the possession of, or under the control of (either of the) defendant (s).

And I further order and direct that said defendant Y. Z. execute and deliver (a general assignment to said receiver, to be approved by me; and also execute, acknowledge, and deliver to said receiver), under my direction, a conveyance and assignment of the real estate mentioned in said complaint, and of the rents, issues, and profits thereof. 2 Abb. Forms 393.

V. Order Appointing Receiver in Creditor's Suit Against Foreign Corporation and Resident Agent.

Whereas, it has been made to appear to this court by the report of G. S. H., to whom this cause was referred as master, that there are now in the hands and possession of H. E. one of said respondent's promissory notes to the amount of \$_____, accounts to the amount of \$_____, and money to the amount of \$_____, belonging to the said Columbia Insurance Company, over and above all claims or liens which the said H. E. has against said com-

pany or their property in his hands. And whereas it has been made to appear that it is necessary that some fit and proper person should be appointed to receive and hold said promissory notes, accounts, and money, until the further order of this court, with authority also to collect and compromise said notes and accounts, according to his best judgment and discretion.

It is ordered that E. M. be, and hereby is, appointed a receiver, to receive and hold said promissory notes, accounts, and money; and the said E. M. is hereby authorized to collect said notes and accounts, and to receive less than the full amounts due thereon whenever the full amounts in his best judgment are not collectible, subject in all cases to the approval of the court; and to surrender up said notes, and to give receipts for the payment of said accounts upon the payment thereof, in whole or in part as aforesaid.

And the said E. M. is to retain said funds, promissory notes, and accounts, or the proceeds thereof, and to account for and pay over the same as this court shall hereafter order and direct.

And the said H. E. is hereby ordered and directed forthwith to deliver and pay to said E. M., receiver as aforesaid, the promissory notes, accounts and funds aforesaid, and all books and papers in his possession or under his control relating thereto. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2343.

VI. Injunction in Creditors' Actions Against Selling, Etc.

From selling, assigning, or transferring, receiving, collecting, discharging, or incumbering, or in any manner disposing of or interfering with any property, real or personal (not exempt by law from execution), things in action, or other equitable property or interests, of any kind whatever, held or controlled by him, or by any other person held in trust for him or for his use and benefit, or in which he has any interest whatever. And where the complaint seeks to reach the surplus proceeds of a trust beyond what is necessary for the debtor's support, except where such trust has been created by, or the fund so held in trust has proceeded from, some person other than the said defendant, add: And said defendant and his agents are further enjoined from receiving or using, or suffering to

be applied to his use, any more of (here designate fund or income), than the (annual sum or rate of _____ dollars).

And said defendant and his agents are further enjoined from making any assignment of his property, and from confessing any judgment, for the purpose of giving preference to any other creditor over the plaintiff, or from doing any other act or thing to enable other creditors or persons to obtain any portion of his said property. 2 Abb. Forms 346.

VII. Judgment and Decrees.

A. Decree Discharging One Defendant on Paying Amount Reported to Receiver.

Whereas this cause was referred on the 27th day of April, A. D. 1857, to G. S. H., esq., as master, to ascertain and report what amount of funds, promissory notes, or other choses in action belonging to said Columbia Insurance Company were in the hands of H. E., the other respondent, and what liens, if any, the said H. E. had upon the same, as will more fully appear by a reference to said order; and whereas said G. S. H., in pursuance of said order, has now made his report to this court, wherein and whereby it appears that there are now in the hands of said H. E. promissory notes belonging to said Columbia Insurance Company to the amount of \$_____, accounts to the amount of \$_____, and cash to the amount of \$_____, and that the said H. E. has a lien thereon for the following claims, namely: (stating them).

Making in all the sum of \$_____.

Now it is hereby ordered and decreed, that the said H. E. deliver to E. M., Esq., who has been appointed receiver in this case, the said promissory notes and accounts, and all books, papers, and vouchers relating to the same, and also that the said H. E. pay to said receiver the sum of \$_____, being the balance of cash in his hands, after deducting the amount of his claims and liens as aforesaid; and also, if the said H. E. is not held to pay the two said notes of \$120 and \$90 as aforesaid, then, that said H. E. pay to said receiver the additional sum of two hundred and ten dollars (\$210).

And after compliance by the said H. E. with each and every one of the terms of this order, it is ordered and

decreed that the said H. E. be forever discharged from all liability to account to the plaintiff, or to said Columbia Insurance Company, or to any other person or corporation, for said funds, promissory notes, or accounts as aforesaid; and that as against the said H. E. this bill be dismissed. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2344.

B. Decree Setting Aside Fraudulent Conveyance, Charging Real Estate With Judgment Debt, and Not Permitting Conveyance To Stand as Security on Account of Intent To Defraud.

This cause came on to be heard at this term, and was argued by counsel, and thereupon upon consideration thereof.

It was ordered, adjudged, and decreed as follows, to-wit: that the conveyance made by the said S. S. mentioned in the bill and answers in this cause, bearing date the 15th day of September, A. D. 1809, to the said Esther Steene and Elizabeth Foster, and William Steene and the said William Foster, for two certain farms lying in G. and F., in the county of P., within said district of R. I., containing three hundred and thirty-five acres of land, one called the Wells farm and the other called the Rounds farm, and also the conveyances in the said bill and answers mentioned, made by the said S. S. to the said Z. S., bearing date the 15th day of September, A. D. 1809, for a farm or lot of land, situate in Smithfield, in said district, and known by the name of the Waterman lot, containing fifty-four acres, and also the conveyances in the said bill and answers mentioned, made by the said S. S. to D. S., and to D. S. and the said A. S., bearing date the 15th and 18th days of September, A. D. 1809, for the farm on which the said D. S. then lived, situate in G. aforesaid, called the D. E. farm, lying on both sides of the turnpike road; and also the deed in the said bill and answers mentioned, made by the said S. S. to the said Z. S., bearing date the 18th day of September, A. D., 1809, for a lot of land situate in said G., containing twenty-six acres; and also the deed, in the said bill and answer mentioned, made by the said S. S., to the said Z. S. and S. S., Jr., bearing date the 22d day of November, A. D. 1809, for the farm whereon the said S. S. then lived, situate in the said G.,

it being all the land he purchased of John Eddy, etc., and is about three hundred acres, were made by the said S. S. with the intent to defraud his creditors, and particularly the plaintiff, and are, therefore, as to the plaintiff, utterly void.

But inasmuch as it appears to the court, that the real estate so as aforesaid conveyed to the said D. S., and to the said D. S. and A. S., have, with the exception of a life estate therein still held by the said A. S., been conveyed to persons who are not parties to the present bill, and the plaintiff seeks no relief against them, it is further ordered, adjudged, and decreed, that the said life estate of said A. S. only be subject to the debt of the plaintiff in this suit, in manner as hereinafter stated, without prejudice to the rights of persons not parties to this bill.

And it is further ordered, adjudged, and decreed, that the said conveyance before mentioned, having originated in a meditated fraud upon the creditors of the said S. S., cannot be permitted to stand as a security for any debts then due to the grantees, or for any subsequent advances by them made in furtherance of the original intention of the parties thereto.

And it is further declared and decreed, that the plaintiff has a right to be paid the principal debt due to him, with interest up to the time of this decree, and that the same ought to be, and is decreed to be, a charge on the same lands, and on the rents and profits (making all proper allowances), which have accrued to the respective respondents, or might have accrued to them without wilful default, since the estates contained in the same conveyances have come to their hands, possession, and use; and it is declared and decreed, that the said lands, rents, and profits, are specifically holden for, and charged with the payment of the plaintiff's said debt.

And it is further declared and decreed, that the defendants be permitted to pay in the proportion of the value of the estates respectively conveyed to them, to be ascertained by a master, the amount due to the plaintiff for principal and interest, with costs, if they shall elect so to do, within sixty days from the date of this decree, and in that event the plaintiff is to assign

to them, by conveyances to be approved by a master, all his right and title to the judgments stated in his bill, and to the debts due, and his right and title under this decree; and the defendants shall be admitted to hold the same accordingly as a charge on the same lands; but if the defendants shall not pay the said debt and costs within the period aforesaid, then the same master is to ascertain the rents and profits of the said estates as aforesaid, which are to be paid by the defendants respectively towards the discharge of the plaintiff's debt, and if this fund shall not be sufficient, or shall not be productive, then it is further declared and decreed, that the master shall sell the lands so conveyed to the defendants by the conveyances aforesaid, or a sufficiency thereof to pay the plaintiff's debt, interest, and cost, at public auction to the highest bidder, in manner as shall hereafter be decreed by the court, and make due and legal conveyances thereof to the purchaser or purchasers thereof and the defendants S. S., Z. S., A. S., S. S., Jr., E. S., W. F., and E. F. shall respectively join in such conveyance or conveyances, releasing their right, title, and interest therein and thereto, and covenanting against their own acts, in such manner as the master shall approve, and the proceeds of such sale shall be brought into this court to discharge the plaintiff's debt and costs of suit.

And it is further declared and decreed, that it be further referred to the same master, to ascertain by an examination of the plaintiff on oath or otherwise, what was the value at which the plaintiff received the farmers' exchange bills for which the drafts, on which his judgments were founded, were given, at the time when he received or bought the same, and that the plaintiff is to be allowed that sum, the damages on said drafts at the rate allowed by law, on the bills of the like nature, and his costs of suit, in the state courts of R. I., as his principal debt, and the interest is to be computed thereon as aforesaid, and the same master is to make his report as soon as may be, and in the meantime all further proceedings and orders are reserved for the consideration of the court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2277; *Bean v. Smith*, 2 Mason (U. S.) 299-303.

C. Judgment in Creditor's Suit, Setting Aside Conveyance With Leave To Proceed on Execution.

It is adjudged, that the conveyance (describing it) dated the _____ day of _____, 18____, executed by the defendant Y. Z. to the defendant W. X., was made with intent to defraud the creditors of the said Y. Z., and is void as against the plaintiff in this action; and that the judgment confessed by the defendant Y. Z. in favor of the defendant U. V. in the _____ court, and entered in the office of the clerk of _____, for _____ dollars, was made with intent to defraud the creditors of said Y. Z. (or, is insufficient, and, in law, fraudulent as against the creditors of said Y. Z.); and that the same, and all the proceedings thereon, the execution, and the sale thereunder, and the sheriff's certificate of sale, bearing date the _____ day of _____, 18____, and his deed, bearing date the _____ day of _____, 18____, to the defendant S. T., in pursuance thereof, are each and all void as against the plaintiff in this action (and said judgment is ordered to be cancelled and discharged of record by the clerk of this court).

And it is further adjudged, that the plaintiff recover of the defendants (naming which) _____ dollars costs of this action.

And it is further adjudged, that the plaintiff in this action is at liberty to proceed upon his execution heretofore issued upon the judgment in his favor mentioned in the complaint, or to issue another execution, as he may be advised; and that the said defendant _____ deliver to the sheriff upon any such execution said property (describing the property reached), to be sold and applied to satisfy said judgment, and interest, and also the costs of this action. 2 Abb. Forms 558.

D. Judgment Avoiding Sale and General Assignment; Directing Sale by Sheriff.

(After declaring incumbrance, etc., void, continue):

And it is further adjudged, that the property described in the complaint (or, in said assignment) be sold by the sheriff of _____ county (proceed with directions as to mode of sale, and direct payment to the plaintiff of the) net proceeds, or so much thereof as will satisfy the amount of the judgment de-

scribed in the complaint, being for _____ dollars, with interest from the _____ day of _____, 18____, and _____ dollars costs of this action. And if there be any surplus remaining after such payment, the sheriff pay the same to the defendant (debtor) or his attorney. 2 Abb. Forms 561.

E. Avoiding Sale and General Assignment, and Directing Transfer to Receiver.

Therefore it is adjudged, that the plaintiffs, by virtue of their judgment and execution, and the commencement of this action, have a lien upon all the property of every description of the said defendants (debtors), and all that was assigned or transferred by them to the defendant (a vendee of certain goods), or so much thereof as may be necessary to satisfy the plaintiff's judgment, interest, and costs, which lien took effect on the _____ day of _____, 18____, when the summons and complaint herein were served; and that the assignment to the defendant (an assignee for benefit of creditors), and the sale to the said (vendee) in the pleadings mentioned, was made with intent to hinder, delay, and defraud the plaintiffs and other creditors of the said (debtors), was and is void as against them.

It is therefore ordered and adjudged, that the sale made by the defendants (debtors) to the defendant (vendee), and the assignment made by said defendants (debtors) to the defendant (assignee), be, and they hereby are set aside and declared void; and that the said (assignee) do forthwith pay and deliver all the money and other property assigned to him, and the proceeds thereof, to R. C. (receiver heretofore appointed of the property of the said [debtors] and), who is hereby appointed receiver in this action, as well of the property belonging to the said (debtors) as of that assigned to said (assignee), and that sold to said (vendee).

And it is further ordered and adjudged, that the defendant (vendee) do transfer and deliver all the property sold to him, and the proceeds thereof, to the said receiver.

And it is further ordered and adjudged, that the said receiver do pay to the said plaintiffs the amount of their said judgment, being _____ dollars with interest from the _____ day of _____, 18____, and _____

dollars, the plaintiff's costs in this action, out of the said money and property (or any other money and property received by him as such receiver, or the proceeds thereof, or so much thereof as has not been already disposed of by the order of a competent court, binding upon the said receiver, and having priority over the plaintiffs).

And it is hereby referred to R. F., Esq., counsellor-at-law, of the city of _____, to examine into the accounts and doings of the said (assignee), while acting or professing to act as assignee under the said assignment, and also to decide upon what sums are properly and what sums are improperly charged, credited, or entered by said defendant (assignee) in his accounts as such assignee, and to adjust and settle the said accounts, and to direct the delivery to said receiver, and the payment to him of any assets or moneys pertaining to said assigned estate yet remaining in the hands of said defendant, or for which he is or ought to be chargeable.

And that said referee do also examine and inquire, so far as is practicable, what disposition has been made of the property sold to the said (vendee), and where the same now is; that he charge the said (vendee) with the sum of _____ dollars, as the price of the said property, and credit him with any portion of the same that he may deliver to the receiver at its value, based upon the estimate that the whole property so sold was worth _____ dollars.

And it is further ordered, that either party be at liberty to apply to this court at any time for further directions upon the foot of this judgment. 2 Abb. Forms 559.

CRIMINAL CONVERSATION.

I. Declaration, 313

II. Complaint, 314

CROSS-REFERENCE:

ARREST IN CIVIL CASES:

Capias, Criminal Conversation.

I. Declaration for Criminal Conversation.

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea of trespass on the case: For that whereas the said defendant, contriving, and wrongfully, wickedly and unjustly intending to injure the

said plaintiff, and to deprive him of the comfort, fellowship, society, aid and assistance of E. B., the wife of him the said plaintiff, and to alienate and destroy her affection for him the said plaintiff, heretofore, to-wit, on, etc., and divers other days and times, between that day and the day of exhibiting this bill (or "the commencement of this suit"), at, etc., _____, wrongfully, wickedly and unjustly debauched, and carnally knew the said E. B., then and there, and still being the wife of him the said plaintiff, and thereby the affection of the said E. B. for him the said plaintiff was then and there alienated and destroyed, and also, by means of the premises, he the said plaintiff hath thence hitherto wholly lost and been deprived of the comfort, fellowship, society, aid and assistance of the said E. B., his said wife, in his domestic affairs, which he the said plaintiff during all that time ought to have had, and otherwise might and would have had, to-wit, at, etc., aforesaid. To the damage of the said plaintiff of _____ dollars, and therefore he brings his suit, etc. Burr. App. 307, §575; 2 Chit. Pl. 642, 643.

II. Complaint for Criminal Conversation.

I. That M. B. is, and at the times hereinafter mentioned was, the wife of the plaintiff.

II. While in the month of _____, 18—, while the plaintiff was living and cohabitating with and supporting her, in _____, and while they were living together happily as man and wife, the defendant, wrongfully contriving and intending to injure the plaintiff and to deprive him of the comfort, society, aid and assistance of his wife, on the _____ day of _____, 18—, at _____ (forcibly and without the consent of the said M. B., and), wickedly, wilfully and maliciously debauched and carnally knew the said M. B., without the privity or consent of the plaintiff.

III. That thereby the affection which the said M. B., theretofore had for the plaintiff was alienated and destroyed, and the plaintiff was deprived of the comfort, society, aid and assistance which he otherwise would have had from the said M. B., and has suffered great distress of body and mind, to his damage _____ dollars. 1 Abb. Forms 504.

CROSS-BILL.

I. Cross-Bills, 314

- A. *To Have Release Executed*, 314
- B. *In Nature of Plea Puis Darrein Continuance*, 316

II. Stay of Proceedings, 317

- A. *Notice of Motion*, 317
- B. *Order To Stay*, 317

III. Petition To Use Depositions in Cross-Cause, 317

IV. Order That Original and Cross-Bill Be Heard Together, 317

I. Cross-Bills.

- A. *Cross-Bill by Administrator de Bonis Non To Have Release Executed*.

Humbly complaining sheweth unto your honors your orator T. B., of, etc., administrator of the goods and estate which were of R. H., late of, etc., deceased, at the time of his death, left unadministered by M. H., late of, etc., in her lifetime, now deceased, and which said M. H. in her lifetime, and at the time of her death, was administratrix of the goods and estate which were of the said R. H., deceased, at the time of his death; that J. M., late of, etc., deceased, when of sound mind, duly made his last will and testament in writing, and thereby after bequeathing several pecuniary legacies, gave the residue of his goods and estate, subject to the payment of his debts, to his daughter H., then an infant under the age of twenty-one years, but now the wife of J. C., of, etc. (and which J. C. and H., his wife, are two of the defendants hereinafter named), and thereby appointed R. P., of, etc. (another defendant hereinafter named), and the said R. H., executors of his said will; as by the said will, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors, that the said testator died on or about the _____ day of _____, without altering or revoking his said will, leaving his said daughter H. him surviving; and upon, or soon after, his decease, the said R. P. and R. H., as such executors as aforesaid, duly proved the said will in the proper court, and the said R. P., who principally acted in the execution of the said will (the said R. H. having only interfered for the sake of conformity), under and by virtue of such probate, possessed himself of a consid-

erable part of the said testator's goods and effects.

And your orator further sheweth unto your honors, that the said R. H. departed this life on or about ———, and shortly after his decease letters of administration were duly granted to the said M. H., his wife, who died on or about ———; and after her decease such letters of administration of the unadministered goods and estate of the said R. H., deceased, as aforesaid, were duly granted to your orator by the proper court of probate, as by such letters of administration, reference being thereunto had, will appear.

And your orator further sheweth unto your honors, that the said R. H., previously to his death, accounted for and paid to the said R. P., as such co-executor as aforesaid, all such part of the estate of the said testator as had been received by him the said R. H., as such executor as aforesaid, and no part of the said estate remained in the hands of the said R. H., at the time of his decease, previously where to the said R. H. resided in the country, where his house was robbed, and all papers relative to his acts as such executor as aforesaid, and for which he had accounted as hereinbefore mentioned, and have never hitherto been recovered.

And your orator further sheweth unto your honors that the said J. C. and H., his wife, duly intermarried previously to the said H. attaining the said age of twenty-one years, which she has since done, and after that period the said R. P. duly accounted for the residue of the said testator's estate with the said J. C. (who in the right of said H., his wife, became entitled to receive the same), and thereupon obtained a general release from the said J. C. and H., his wife, of all demands in respect thereof, as by the said release, reference being thereunto had, will appear. And your orator hoped, under the circumstances aforesaid, he would not have been called upon for any account of the administration of the said testator's estate. But now so it is, may it please your honors, etc., that the said J. C. and H., his wife, etc., have lately filed their bill in this honorable court against your orator as such representative of the said R. H., deceased, as aforesaid, for an account of the estate of the said testator J. M. received by the said

R. H., deceased, in his lifetime, as such executor as aforesaid, thereby praying that your orator may be decreed to pay the said J. C., in right of his wife, what, upon such account, shall appear to be due to the said J. C., in right of the said H., his wife, out of the assets of the said R. H.; and to which said bill they have made the said R. P. a defendant, without praying any account or relief against him. And they pretend that there are various receipts and accounts (particularizing those charged in the original bill) of the said R. H., deceased, as such executor as aforesaid, as to the estate of the said testator, which remained unaccounted for by the said R. H., at his decease, and which ought to be paid by your orator. Whereas your orator charges the contrary thereof to be true (negating specifically the pretended receipts and accounts); and that an account was stated, and a settlement of accounts took place between the said R. H., previously to his death, and the said R. P., and that an account has likewise been stated and settled by and between the said R. P. as such surviving executor as aforesaid, and the said J. C. in right of the said H., his wife, since she attained the age of twenty-one years as aforesaid; and that no demand was ever made on the estate of the said R. H. in respect of his accounts, until lately, when the loss of such papers as aforesaid was discovered, and of which loss your orator charges an undue advantage is intended and attempted to be taken; and your orator also charges that the said R. P. abets the said J. C. and H., his wife, in their proceedings, and refuses to indemnify the personal estate of the said R. H., in respect of his accounts in the execution of the will of the said testator J. M. so accounted for by him, and settled with the said R. P. as aforesaid; and the said R. P. also refuses to inform your orator what he knows of the matters aforesaid, or any of them, and also denies such statements as have been made by him relative thereto. All which actings, etc. In tender consideration whereof, etc. To the end, therefore, etc. And that the said J. C. and H., his wife, may be decreed to execute to your orator, as such administrator of the goods and estate of the said R. H., deceased, left unadministered by the said M. H., also deceased, at the time of her death, a

general release of all claims and demands upon such unadministered estate and effects of the said R. H., deceased, as aforesaid, in respect of all the accounts of the said R. H. in the execution of the will of the said testator J. M.; or that an account may be taken of the said estate of the said testator J. M., received by the said R. H., and of his application thereof; your orator being willing and hereby offering to pay what (if anything) shall appear to be due on the balance of such account; and that the said R. P. may be decreed to indemnify the estate of the said R. H., and your orator, as such administrator thereof as aforesaid, in respect of such part thereof as the said R. H. paid to, or by the order, or for the use of the said R. P., or otherwise to account for and pay the same to your orator. And that the said J. C. and H., his wife, may be decreed to pay to your orator his costs of this suit. And that your orator may have such other and further relief, etc. May it please, etc. 3 Dan. Ch. Pl. & Pr (Perkins' ed.) 2103.

B. Cross-Bill in Nature of Pleas Puis Darrein Continuance.

Complaining sheweth unto your honor, your orator A. B., of, etc. That C. D., of, etc., the defendant hereinafter named, on or about the _____ day of _____, filed his bill of complaint in this honorable court against your orator, thereby praying (state the prayer of the bill), and your orator being duly served with process of subpoena, appeared and put in his answer thereto, to which answer the said C. D. replied; and issue being thus joined, witnesses were examined on both sides, and the proofs closed; whereupon the said cause was noticed for hearing by the said C. D., before your honor, as by the said bill, and other pleadings and proceedings in the said cause, now remaining filed as of record in this honorable court, reference being thereunto had, will more fully appear.

And your orator further sheweth unto your honor, that the said cause has not yet been heard; and on or about _____, the said C. D., by a certain writing of release bearing date the _____ day of _____, did remise, release, and forever quit-claim unto your orator, his heirs, executors, and administrators, the several matters

and things complained of in and by the said bill of the said C. D., and in question in the said suit, and each and every of them, and of all sums of money then due and owing, or thereafter to become due and owing, together with all, and all manner of actions, causes of action, suits, and demands whatsoever, both at law and in equity, or otherwise howsoever, which he the said C. D. then had, or which he should, or might at any time or times thereafter have, claim, allege or demand, against your orator, for, or by reason or means of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of the said deed or writing of release; as by the said release, reference being thereunto had, will appear. And your orator hoped that in consequence of the said release, the said C. D. would not have proceeded in the said suit against your orator; but the said C. D. combining and confederating (confederating part), notwithstanding the said release, threatens and intends to proceed in the said suit, and to bring the said cause on for hearing in due course; and he pretends that no such release was ever executed by him, or if so, that the same was obtained by fraud and surprise, and therefore void. Whereas your orator charges that the same was, in every respect, fairly and properly obtained by your orator, and duly executed by the said C. D.

And your orator further charges, that under the circumstances aforesaid, he is unable to put the said release in issue, or to use the same as a plea in bar in the said suit. All which actings and pretenses, are contrary to equity and good conscience, and tend to the injury and oppression of your orator.

In tender consideration whereof, and forasmuch as your orator has no remedy without the assistance of a court of equity.

To the end therefore (interrogatories), and that the said release may be established and declared by this honorable court a sufficient bar to any further proceedings by the said C. D. in the said suit; and that the bill of the said C. D. therein, may, under the circumstances, be forthwith dismissed with costs (and for general relief).

May it please (prayer for subpoena).
2 Barb. Ch. Pr. 582.

II. Stay of Proceedings.**A. Notice of Motion for Order To Stay Proceedings in Original Suit (Cross-Bill Filed).**

A. B. v. C. D., original bill. C. D. v. A. B., cross-bill.

Take notice, etc., etc., that the proceedings in the original suit commenced by the above A. B. be stayed, until the said A. B. shall have put in his answer to the cross-bill, filed against him by C. D. Dated, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2154.

B. Order To Stay Proceedings in Original Suit.

On reading and filing the cross-bill of C. D., to the bill of complaint of A. B., and the affidavits and certificate of counsel thereto annexed, and on motion of W. H., solicitor for the said C. D., and on hearing J. E., of counsel for the said A. B. in opposition thereto, it is ordered, that all further proceedings in the original suit commenced by the said A. B. against the said C. D. be stayed until the said A. B. shall have put in his answer to the cross-bill filed against him by the said C. D. 2 Barb. Ch. Pr. 584.

III. Petition To Use Depositions in Cross-Cause.

Showeth, that the secondly above-mentioned cause is a cross-cause touching the same matters as the first-mentioned cause, and that your petitioner is advised that the (affidavits and) depositions taken in each cause (or taken in the original cause) will be proper to be read in the other (or the cross-cause).

Your petitioner therefore humbly prays that the affidavits and depositions taken in either of these causes (or in the original cause) may be read and made use of in the other (or the cross-cause) at the hearing of these causes, saving all just exceptions. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2162.

IV. Order That Original and Cross-Bill be Heard Together.

On reading and filing affidavits, showing that both the above causes are at issue and ready for hearing, and on motion of J. E., solicitor for C. D., the complainant in the cross-bill, ordered that the said causes be brought on for hearing together; provided that the hearing upon the original bill shall not be delayed by any delay or neglect to proceed on the part of the com-

plainant in the said cross-bill. 2 Barb. Ch. Pr. 584.

CROSS-COMPLAINT.**CROSS-REFERENCE:****QUIETING TITLE:**

Cross-Complaint, Setting Up Title in Defendant.

CROSS-DEMAND.—See SET-OFF, COUNTERCLAIM AND RECOURSEMENT.

CRUELTY TO ANIMALS.

I. Indictment for Overdriving Team, 317

II. Indictment, Burning a Goose, 318

III. Indictment, Turning Fox Loose to Dogs, 318

For other forms, see 6 STANDARD PROC. 315-317.

I. Indictment for Overdriving Team (a).

"State of Missouri, County of Monroe, ss.

"The State of Missouri v. William Haley.

"Before R. E. L. Sevier, a justice of the peace, within and for Monroe township, Monroe county, Missouri.

"William T. Ragland, assistant prosecuting attorney within and for the county of Monroe in the state of Missouri, informs the justice that one William Haley, on or about the thirtieth day of March, A. D. 1891, at the said county of Monroe, did then and there unlawfully torture two domestic animals, to-wit, two black mares, the property of E. P. Nelson and D. D. Nelson, by then and there forcing said animals through mud and over miry roads with violent speed, by cruelly whipping and beating them, the said mares, when they were greatly distressed, fatigued and injured by reason of having been previously driven over a great distance of muddy roads, and with great speed, against the peace and dignity of the state.

"William T. Ragland, assistant prosecuting attorney within and for the county of Monroe, as aforesaid, further informs the justice that William Haley, on or about the thirtieth day of March, 1891, at the said county of Monroe, did then and there unlawfully and cruelly overdrive two domestic animals, to-wit, two black mares, by then (and there) driving said animals

through mud and over miry roads with violent speed, by whipping and beating them, the said mares, when they were greatly distressed, fatigued and injured by reason of having been previously driven, with great speed, a long distance over muddy roads, against the peace and dignity of the state.

"William T. Ragland,

"Assistant Prosecuting Attorney."

State v. Haley, 52 Mo. App. 520.

Indictment, Overdriving Team (b).

"State of Indiana, Randolph county, ss.:

"Before me, Jacob Dick, a justice of the peace for said county, came Oliver Y. Sackman, who, being duly sworn according to law, deposeth and sayeth: that on or about the 26th day of June, 1881, at the county of _____, and state of Indiana, one Albert Friedline, late of said county, did then and there unlawfully and cruelly beat, torture and overdrive a team of horses, mares or geldings, at said county, said horses, mares or geldings being then and there the property of one _____, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Indiana." *Friedline v. State*, 93 Ind. 366.

II. Indictment, Burning a Goose.

"Before me, John M. White, a justice of the peace for said county" (meaning Pike county), "came William Long who, being duly sworn according to law, deposeth and sayeth that on or about the 21st day of November, in the year 1885, at the county of Pike and state of Indiana, Ralph Smith and Edward Bruner, late of said county, did then and there unlawfully and cruelly torture, torment and needlessly mutilate a certain animal, to-wit, a goose, the property of some person or persons to the affiant unknown, by then and there unlawfully turpentineing and burning, in a cruel and wanton manner, the said goose." *State v. Bruner*, 111 Ind. 98, 12 N. E. 103.

III. Indictment, Turning Fox Loose to Dogs.

Complaint, alleging that the defendant, on April 7, 1887, at Rockland, "was the person having the charge and custody of a certain animal, to-wit, a fox, and did then and there, knowingly and wilfully, permit the said fox to be subjected to unnecessary suffering, by then and there, knowingly

and wilfully, turning the said fox loose, to be hunted by divers dogs, in consequence of which turning loose of the said fox, as aforesaid, the said fox was hunted by divers dogs, and thereby subjected to unnecessary suffering as aforesaid." *Com. v. Turner*, 145 Mass. 296, 14 N. E. 130.

Note.—Held sufficiently definite on objection after judgment.

DEATH.—See DEATH BY WRONGFUL ACT; NEGLIGENCE; RAILROADS.

DEATH BY WRONGFUL ACT.

I. Complaint Against Railroad, 318

II. Complaint Against Owner of Building, 319

III. Complaint Setting Out Defect, 319

IV. Declaration Against Railroad, 320

V. Notice of Injury, 321

VI. Notice of Injury to Railroad Company, 321

VII. Indictment Against Railroad Company, 321

VIII. Answer Setting Up Contributory Negligence, 322

I. Complaint Against Railroad by Personal Representative for Negligence Causing Death.

I. That the defendants are a corporation created by and under the laws of this state, organized pursuant to an act of the legislature, entitled "An Act to Authorize the Formation of Railroad Corporations, and to Regulate the same," passed _____ (or state title, etc., of special charter), and the acts amending the same; and at the times hereinafter mentioned, being such corporation, were common carriers of passengers for hire between the places hereinafter mentioned.

II. That on the _____ day of _____, 18—, said defendants received one M. N. into their cars for the purpose of conveying him therein as a passenger from _____ to _____ (for _____ dollars paid to them by said M. N.).

III. That the defendants so negligently and unskilfully conducted themselves in the management of said train of cars that through the negligence of the defendants and their servants in guiding the said train of cars, and in

not keeping the track of said railroad in proper condition, the said train, while proceeding from _____ to _____, was thrown from the track, and the car in which the said M. N. then was was thrown down an embankment, and the said M. N. was thereby killed (or thereby so injured as to cause his death, or state other accident, according to the fact).

IV. That said M. N. left no widow, and that his only next of kin is one O. N., his daughter, a child of the age of _____ years, who was dependent upon the deceased for her support, nurture and education, and has been otherwise injured by his death, to her damage five thousand dollars.

V. Allege plaintiff's appointment as administrator or executor, as in following form, or as in *Executors*, I, A, 1 or 2. 1 Abb. Forms 536.

Note.—The necessity for affirmatively alleging the want of contributory negligence is regulated by statute and rule in the various jurisdictions, and reference thereto is essential in framing the complaint. See also 6 *STANDARD PROC.* 418. There are also other statutory requirements, such as the necessity for alleging in an action for death of child that he supported or contributed to the support of the plaintiff, to which attention is directed in the article on this subject in 6 *STANDARD PROC.* 404.

II. Complaint Against Owner of Warehouse, the Walls of Which Fell on Deceased.

I. That on or before the _____ day of _____, 18—, the firm of R. Hoe & Co. was possessed of certain lots or parcels of lands, with the buildings thereon erected, situate in (designating city, street and number), and which were used by said firm in the prosecution of their business as machinists; that upon a portion of said premises was situated a blacksmith's shop, also in the possession and occupation of and used by said firm in their said business, all as aforesaid.

II. That on and before said day the defendants were brewers, possessed of certain premises lying in the rear of and next adjoining the said premises of R. Hoe & Co.; and upon the defendant's said premises, and adjoining said blacksmith's shop, was a building used by defendants in their said brewing business; which building last mentioned

had been negligently, carelessly, and improperly constructed, and was not sufficiently strong for the uses to which the defendants had put it; the upper part of the wall of the gable end of said building next adjoining said shop not being fastened with anchors as is commonly done, and the said wall being in other respects weak and insecure; of all of which the said defendants then and there had notice.

III. That the defendants carelessly, negligently, and wrongfully placed, or caused to be placed, in the upper part of said building last aforementioned, and next adjoining that portion of the wall of the gable end thereof adjacent to the said shop as aforesaid, a very large quantity of barley, much more than was customarily stowed there, and much more than the said wall was able to bear; and that in consequence thereof, and of the weak and insecure state and improper construction of said wall as aforesaid, the upper portion of the said wall of the gable end of said building was, on said _____ day of _____, forced outward, and fell upon said blacksmith's shop, and crushed it, and cast into the said shop and its yard a large quantity of brick, mortar, rubbish, and barley.

IV. That on that day E. S. B., being then engaged in the employ of said R. Hoe & Co., as a workman, and while in their said blacksmith's shop, was, by the said fall of the wall and contents of the building, struck and instantly killed.

V. That said E. S. B., so killed, died intestate; and that on the _____ day of _____, 18—, letters of administration on his estate, dated on that day, were duly issued and granted to the plaintiff by the surrogate of the county of _____, whereby she was duly appointed administratrix as aforesaid, and that thereupon she duly qualified and entered upon the duties of her said office.

VI. That the plaintiff is the widow of the deceased, and that she was dependent upon him for subsistence, and sustained pecuniary injury by his death to her damage _____ dollars. 1 Abb. Forms 538.

III. Complaint, Death by Wrongful Act Setting Out Defect.

"First Paragraph. Florence M. Pearey, administratrix of the estate of David L. Pearey, deceased, com-

plains of the Ohio and Mississippi Railway Company, defendant, and says that the defendant is a corporation, organized under the laws of the state of Indiana, and owns and operates, for hire, a railroad running through the counties of Jennings, Ripley and Dearborn, in said state, commonly known as the Ohio and Mississippi Railroad; that, on the 1st day of August, 1887, said David L. Pearcy was employed by the defendant to work for it in and about its freight trains, in the capacity of a brakeman on said railroad, in the transportation of freight over defendant's said railroad for hire; that on said day, while said David L. Pearcy was at work pursuant to his said employment, and in the proper discharge thereof, in the capacity of a brakeman on a certain freight train, then being transported by the defendant over its said railroad, at or near a place known as 'Moore's Hill' grade, in Dearborn county, state of Indiana, he was killed by reason of the defectiveness and unsafe condition of a brake and the appliances thereof on one of the defendant's cars in said freight train, the said brake and appliances being unsafe, defective and out of repair, in this, that the threads of the screw on top of the brake-staff of said brake had become and were worn out and battered so that said threads would not hold a nut securely so as to keep the brake wheel on said brake-staff, when the said wheel was grasped to let off brakes, as said Pearcy was required in his said employment to do by the defendant as a brakeman on said freight train, and which he might with safety do when said screw and nut were in good condition and repair, which unsafe and defective condition of said brake, brake-staff and screw was unknown to said David L. Pearcy, and which brake, brake-staff and screw the defendant negligently and carelessly used in its said business on said day and for many days prior thereto; that, on said 1st day of August, 1887, at or near the foot of said 'Moore's Hill' grade, the said David L. Pearcy was required by said defendant, pursuant to said employment, to let off the said brake while said train was in rapid motion, and when he was grasping said brake wheel to let off said brake, the said wheel came off in his hands by reason of the fact that the threads of

said screw were in the condition aforesaid, and did not, and would not, by reason of its unsafe and defective condition, retain the nut that held said brake wheel in position on said brake-staff, and said brake wheel coming off suddenly in his hands, while the said David L. Pearcy was applying only sufficient force thereto to let off said brake, he thereby lost his balance and was thrown forward and off said car onto the ground below and killed, without fault or negligence on his part, or on the part of the plaintiff; that said David L. Pearcy was a young man about 24 years of age, and in good health and splendid physical condition, and had dependent on him for support a young wife and unborn child at the time he lost his life as aforesaid; that, on the _____ day of November, 1887, the plaintiff was appointed administratrix of his estate by the circuit court of Jackson county, in the state of Indiana. Wherefore plaintiff demands judgment for ten thousand dollars, and all other and proper relief." *Ohio & M. R. Co. v. Pearcy*, Admx., 128 Ind. 197, 27 N. E. 479.

IV. Declaration Against a Railroad, Running Over Intoxicated Person.

"And for this also, to-wit: That on the 24th day of December, in the year 1890, and for a long time before that day, the defendant company was and had been operating a railroad in the said county of Southampton, over which it operates steam locomotives to propel cars and coaches for the purposes of transporting passengers and freight; and that on the said 24th day of December, 1890, said defendant carried said Sinclair Joyner, contrary to the expressed wishes and requests of his wife, from Branchville, a station on its road in said county, to some point north, and on the same day brought him, the said Sinclair Joyner, back to said Branchville station about noon, under the influence of ardent spirits, and, when thus landed at said Branchville station, he, the said Sinclair Joyner, proceeded to walk from said station down the said railroad, and proceeding thus a short distance, to a point on said road about three hundred yards south of said Branchville station, stopped and sat down on said railroad track, and while he was thus sitting on said railroad track the

local freight train of said defendant was at said Branchville station, standing still on said railroad track, plainly within sight of said Sinclair Joyner, then and there being on said track as aforesaid; the said defendant carelessly and negligently, and with great force and violence, ran its said engine in and upon said Sinclair Joyner's body, being then and there constantly, from the time the said engine moved off from said Branchville station till it ran in and upon the body of said Sinclair Joyner, clearly, easily, and plainly within seeing distance of the employes and agents of said defendant who were in charge of said engine, then and there giving to said Sinclair Joyner several fatal and mortal wounds, of which he died, and that his death was then and there caused by said wrongful act, neglect, and default of said defendant. Wherefore the said plaintiff, administrator of said Sinclair Joyner, deceased, says he is entitled to recover damages to the amount of \$10,000." *Seaboard & R. Co. v. Joyner's Admr.*, 92 Va. 354, 23 S. E. 773.

V. Notice of Injury.

"You are hereby notified that on the eighth day of November, 1892, my husband, Jeremiah J. Brick, while in your employ, was instantly killed or died without conscious suffering. The place where my said husband was instantly killed or died without conscious suffering was between Cabot street and the railroad of the Connecticut River Railroad Company, near the Connecticut River in said Holyoke, and at the place where a new mill was being erected, supposed to belong to the Riverside Paper Company of said Holyoke. The cause of the death of my said husband was the falling of a derrick upon him on account of the same being improperly or insecurely fastened." *Brick v. Bosworth*, 162 Mass. 334, 39 N. E. 26.

VI. Notice of Injury to Railroad Company.

"To the Meriden Electric Railroad Company, a railway corporation operating an electric railroad running through Pratt street in the town of Meriden, Connecticut:

"Please take notice that Daniel R. Budd, of said Meriden, administrator of the estate of Mizze E. Budd, deceased, claims damages against said company for injuries inflicted upon the person

of the said Mizze E. Budd, caused by the negligence of said corporation and its employes, resulting in the death of the said Mizze E. Budd. The injuries were inflicted on the 30th day of August, A. D. 1895, at about quarter past four o'clock in the afternoon, and at a place upon the railroad track of said corporation on Pratt street, about one hundred and ten feet northerly of the crosswalk at the intersection of Pratt and Camp streets in said Meriden. The cause of the injuries was that said corporation had negligently omitted and refused to equip and provide the electric car, which the said company was operating and propelling at said time and place, with any fender or other appliance for the safety of human life and limb, and the negligence and carelessness of the motorman in charge of said car in man-aging and operating said car, and in his allowing and causing said car to strike, throw down, and run over and upon said Mizze E. Budd, then an infant of the age of twenty-one months, while she was crossing said Pratt street, thereby injuring, mutilating, and crushing her, and causing her death. By said injuries both legs and both feet of the said Mizze E. Budd were crushed and broken, her right hip was crushed, and her perineum was cut open nearly to the spine, death resulting within three hours. The above claim and statement is made as nearly as the same can now be ascertained." *Budd v. Meriden Elec. R. Co.*, 69 Conn. 272, 277, 37 Atl. 683.

VII. Indictment Against Railroad for Death by Negligence.

The second count alleges that the defendants "did negligently and carelessly omit to erect gates, or to place signals, notices, watchmen, or guards at a certain dangerous crossing in said Salem, called Ballard's crossing, where said Manchester & Lawrence Railroad crosses a certain public and frequented highway at the grade or level thereof" (here follows a description of the highway), "and by the agents and servants of the said Manchester & Lawrence Railroad corporation in this state, to the jurors aforesaid unknown, at the crossing aforesaid, in Salem aforesaid, on the seventeenth day of December aforesaid, did with gross negligence and carelessness and unlawfully run a certain locomotive

steam engine and a certain train of cars, all of the proper goods and chattels of said Manchester & Lawrence Railroad corporation, upon the said Manchester & Lawrence Railroad, across said public highway at said Ballard's crossing, at the grade or level of said public highway, at a greater speed than six miles per hour; to-wit, at the speed of twenty-five miles per hour, and did then and there, by the gross negligence and by the carelessness of the said corporation and of their agents and servants aforesaid, in this state, omit to give suitable and proper notice of the approach of said engine and train to said crossing, so that, at the crossing aforesaid, the said engine and cars did suddenly surprise, overtake, strike, and throw down one Benjamin Woodbury, of Salem aforesaid, yeoman, who was then and there not in the employment of said corporation, and was then and there peaceably riding and passing in a wagon, drawn by two horses along the said public highway at the crossing aforesaid, and him, the said Benjamin Woodbury, did then and there mangle and kill, by which gross negligence and carelessness of said corporation, and of its agents and servants aforesaid, the life of the said Benjamin Woodbury was then and there lost as aforesaid." (Then follows a statement of the administrator, widow, and children of the deceased, as in the first count). "And so the jurors aforesaid, upon their oath aforesaid, do say that the life of the said Benjamin Woodbury, he being a person not then and there in the employ of said corporation, was lost as aforesaid, by reason of the negligence and carelessness aforesaid of the said corporation, proprietors of the railroad aforesaid, and by the unfitness and gross negligence and by the carelessness of the agents and servants aforesaid of said corporation, in this state, contrary," etc. *State v. Manchester & L. R. Co.*, 52 N. H. 528.

VIII. Answer Setting Up Contributory Negligence.

"Defendant, for answer to plaintiff's petition, denies each and every allegation therein, excepting only, the allegation that defendant is a corporation. Defendant, for further answer, says, that the injury sued for was not occasioned by any negligence or default of the defendant, or its

servants, or agents, but by the carelessness and negligence of the deceased, Edward B. Barker." *Barker v. Hannibal & St. J. R. Co.*, 91 Mo. 86, 14 S. W. 280.

DEBT.

For other forms, see 6 STANDARD PROC. 478, 479.

CROSS-REFERENCES:

ARBITRATION:

Declaration on Award on Bonds of Submission.

BONDS:

Declaration on Bond With Condition, Assigning Breaches;
Declaration on Bond To Perform Covenants of Another Instrument;
Declaration on Bond for Costs;
Declaration on Several Bonds;
Declaration on Bond (Commenced by Capias).

DEFAULT:

Judgment Record on Default for Not Pleading in Debt.

DURESS:

Plea of Duress of Imprisonment.

EXECUTORS AND ADMINISTRATORS:

Declaration Against an Executor or Administrator in Debt.

GENERAL ISSUE AND GENERAL DENIAL:

Plea of Non Est Factum in Debt and Covenant;
Plea of Nil Debit.

INQUIRY, WRIT OF:

Writ of Inquiry in Debt on Bond.

INSURANCE:

Declaration on Marine Policy of Insurance.

JUDGMENT RECORDS:

Judgment Record for Plaintiff in Debt;
Judgment Record on Cognovit in Debt.

JUDGMENTS:

Judgment for Plaintiff in Debt.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias for Plaintiff in Debt;
Fieri Facias for Residue in Debt;
Fieri Facias, Testatum in Debt;
Fieri Facias for Plaintiff in Debt Qui Tam;
Capias Ad Satisfaciendum in Debt;
Capias Ad Satisfaciendum, Testatum in Debt;
Capias Ad Satisfaciendum for Plaintiff in Debt, Qui Tam;
Capias Ad Satisfaciendum on Seire Facias on Judgment in Debt;

Declaration on a Final Judgment;
Declaration on a Judgment for Defendant;
Declaration on a Justice's Judgment.

LANDLORD AND TENANT:

Declaration for Rent on Demise, and Use and Occupation.

PAYMENT:

Plea of Payment in Debt.

PENALTIES, FORFEITURES AND FINES:

Declaration by a Common Informer;
Declaration in Qui Tam Action;
Declaration in Debt for Violation of Excise Law;
Declaration for Penalty Given by Statute.

PERFORMANCE:

Plea of Performance in Debt on Bond;
Plea in Excuse of Performance in Debt on Bond, Non-performance of Condition Precedent.

PLEAS:

Relicta in Debt.

RECOGNIZANCES:

Declaration on Recognizance of Bail;
Declaration on Bail Bond by Assignee of Sheriff.

SCIRE FACIAS:

Scire Facias To Revive Judgment in Debt.

VERDICT:

Postea for Plaintiff, Plea of Non Est Factum in Debt;
Postea for Plaintiff, Non Est Factum in Debt, Breaches Assigned;
Postea for Defendant, Plea of Nil Debt;
Postea for Defendant, Plea of Nul Tiel Record in Debt.

Declaration in Debt on Simple Contract.

In the king's bench. The _____ day of _____, in the year of our Lord _____, to-wit, A. B. (the plaintiff in this suit), by E. F., his attorney (or in his own proper person), complains of C. D. (the defendant in this suit), who has been summoned to answer the said plaintiff (or who has been arrested at the suit of the said plaintiff), in an action of debt. And he demands of the said defendant the sum of _____ pounds, which he owes to and unjustly detains from the said plaintiff: For that whereas the said defendant heretofore, to-wit, on the _____ day of _____, in the year of our Lord _____, was indebted to the said plaintiff in the sum of _____

pounds, for the price and value of goods then sold and delivered by the said plaintiff to the said defendant, at his request, to be paid by the said defendant to the said plaintiff on request; yet the said defendant (although often requested) hath not as yet paid the sum of _____ pounds above demanded, or any part thereof, to the said plaintiff, but so to do hath hitherto wholly refused, and still refuses, to the damage of the said plaintiff of _____ pounds; and therefore he brings this suit, etc. Steph. Pl. 35.

DECEDENTS' ESTATES.

I. Appointment of Administrator, 325

- A. *Application for Administration*, 325
- B. *Citation on Application for Administration*, 326
- C. *Order Appointing Administrator*, 326

II. Termination of Authority (note), 326

III. Discovery of Assets (note), 326

IV. Inventory and Appraisement, 326

- A. *Inventory by Executor*, 326
- B. *Affidavit To Be Annexed to Inventory*, 327
- C. *Oath of Appraisers*, 327
- D. *Application of Widow for Allowance*, 327

V. Claim Against Estate, 327

- A. *Notice To Present Claim*, 327
- B. *Proof of Claim*, 327
- C. *Proof of Claim by Executor of Creditor*, 328
- D. *Petition To Compromise Claim*, 328
- E. *Order To Compromise Claim Due Estate*, 328
- F. *Notice of Application To Compel Allowance*, 328
- G. *Notice of Application for Allowance of Claim Disallowed*, 329
- H. *Order Allowing Claim*, 329
- I. *Petition for Order To Pay Claims*, 329
- J. *Order To Pay Claims Against Estate*, 330

VI. Sales of Property Under Order of Court, 330

- A. *Notice of Hearing on Petition To Sell Personalty*, 330

- B. *Order To Sell Personal Property After Notice*, 330
 - C. *Petition for Leave To Convey Real Estate*, 331
 - D. *Order Granting Leave To Convey Real Estate*, 331
 - E. *Decree for Sale of Real Estate*, 331
 - F. *Report of Sale of Land*, 332
 - G. *Order Confirming Report of Sale*, 332
 - H. *Published Notice of Application for Conveyance on Decedent's Contract*, 333
- VII. Proceedings Where Estate Is Insolvent**, 333
- A. *Report of Insolvency*, 333
 - B. *Decree of Insolvency*, 333
- VIII. Proceedings Requiring an Accounting (note)**, 333
- IX. Accounting**, 334
- A. *Petition To Reopen Account*, 334
 - B. *Order for New Account*, 334
- X. Proceedings for Distribution (note)**, 335
- CROSS-REFERENCES:**
- ANNUITIES:**
Bill for Dower and Annuity Against Executors, Devisees in Trust.
- CREDITORS' SUITS:**
Bill by Creditors Against Executors.
- DEMURRER:**
Demurrer for Want of Privity to Bill by Unsatisfied Legatee Against Debtor of Testator.
- DOWER, PROCEEDINGS TO RECOVER:**
Præcipe for Writ of Dower;
Writ of Dower;
Declaration in Dower;
Plea by Defendant by Guardian, That He Was Always Ready To Render Dower;
Plea Ne Unques Accouple;
Plea Ne Unques Se Sic. Que;
Replication Where Married Without Jurisdiction;
Replication That They Were Lawfully Married (in England);
Verdict in Dower;
Judgment After Verdict To Recover Dower and Damages;
Judgment for Demandant for Dower, No Damages Found;
Writ of Habere Facias Seisinam of Recovered Dower;
Declaration in Ejectment for Dower;
- Bill for Dower Setting Aside Release for Fraud;
Decree for Dower, Master To Assign;
Decree Assigning Dower, Commissioners Appointed;
Report of Commissioners on Dower;
Order To Confirm Report of Commissioners on Dower;
Decree Assigning Dower and Ordering Inquiry as to Separate Parcels;
Petition for Admeasurement of Dower;
Complaint for Admeasurement of Dower;
Notice of Petition for Admeasurement of Dower;
Order for Admeasurement of Dower.
Order in Final Judgment Confirming Report of Commissioners Assigning Dower.
- EJECTMENT:**
Complaint in Ejectment Setting Forth Title by Descent.
- GUARDIAN AND WARD:**
Master's Report, on Petition for General Guardian;
Order Appointing General Guardian;
Bond of General Guardian.
- INFANTS:**
Order Appointing Guardian of Person and Maintenance;
Order for Increase of Maintenance of Infant.
- INHERITANCE:**
Declaration Against Heir on Bond of His Ancestor;
Declaration Against Heir and Devisee of Obligor;
Plea of Rien Per Descent by Heir;
Replication to Plea of Rien Per Descent, That Defendant Had Assets at Time of Commencement of Suit;
Declaration to Plea of Rien Per Descent That Defendant Had Assets Before Commencement of Suit;
Complaint Against Heir by Creditor of Deceased;
Complaint by Creditor of Deceased Against Next of Kin;
Complaint Against Heir or Devisee Where He Has Conveyed Land;
Answer by Heir or Devisee, Nothing by Descent or Devise;
Bill by Next of Kin for Share (a), (b);
Decree in Favor of Heirs, Declaring Void Deed Obtained of Their Ancestor by Imposition.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

- Execution Against Heirs and Terre Tenants;
- Fieri Facias for Executor or Administrator on Judgment for Testator or Intestate;
- Fieri Facias Against Executor or Administrator on Judgment Against Testator or Intestate;
- Fieri Facias Against Executor for Damages De Bonis Testatoris.

PROBATE OF WILLS:

- Petition To Revoke Probate;
- Order Admitting Foreign Will;
- Certificate of Probate of Foreign Will;
- Objection to Probate, Nuncupative Will;

RECEIVERS:

- Order That Receiver and Manager of Testator's Business Be Appointed.

SCIRE FACIAS:

- Revival of Judgment Against Terre Tenants.

TRUSTS AND TRUSTEES:

- Bill for Payment of Legacies and Execution of Trust;
- Bill for Payment of Legacy and Accounting.

WILLS:

- Bill by Husband of Legatee Against Executor;
- Complaint Against Devisee by Creditor of Deceased;
- Complaint by Creditor of Deceased Against Legatee;
- Plea by Devisee, Rien Per Devise;
- Decree Establishing Will Where Proved;
- Decree Establishing Will Where Admitted;
- Decree, Will Established, Except as to Legacies Partly Failing;
- Decree Declaring Construction of Will.
- Decree, Devise Declared Good;
- Decree, Declaration That Real Estate Is Charged With Debts;
- Decree, Forfeiture Declared Under Terms of Will;
- Decree That a Devise on a Double Contingency Failed;
- Decree, Directions for Inquiries as to Charities and Their Treasurers;
- Decree Declaring Void Testamentary Papers, Not Being Executed According to Law of Testator's Domicil;
- Decree, Gifts by Deed and Will in Charity Declared Void;

Order for Inquiry if Executors Have Recovered Moneys;

Inquiry as to Employment of Balances;

Decree, Direction for Inquiry as to Exercise of Power To Appoint;

Decree, Directions to Executor To Pay Money Out of General Assets, Costs;

Decree, Defect of Execution of Appointment by Will Supplied.

Note.—The jurisdiction now generally exercised by probate courts, variously known as probate courts, county courts, surrogate courts, orphans' courts, etc., was exercised during the common law period by the ecclesiastical courts, except such limited equity jurisdiction as has been conferred by statutes on probate courts, exercised in most cases concurrently with courts having general equity jurisdiction. Some proceedings unknown to either ecclesiastical or equity jurisdiction in connection with the administration of estates have been created by statute.

The forms used in the various probate courts while derived in most instances from similar forms in the ecclesiastical courts and equity courts are of such varied character, and so modified by local statutes, that it is impracticable to attempt to set them out in a general form book, aside from the fact that they are fully provided in books of local practice on probate law.

The forms provided below are here presented as having passed the adjudication of the court and should be considered as supplemental to the local forms, and not in any sense as a substitute therefor.

Before any of the forms are used they should be carefully tested by comparison with the requirements of local statutes.

In notes below is stated, in general, the derivation of forms in probate procedure.

I. Appointment of Administrator.

A. Application for Administration.

State of Arkansas, Pulaski county. In the Matter of John Desmond's Estate.

Standish Acres says, that, to the best of his knowledge and belief, the value of the estate of the said John Desmond, who died in said county, of which he was a resident, on or about the third day of May, 1894, is ———

dollars; that the heirs of said John Desmond, deceased, are George Desmond, who resides in the county of Washington, in the state of Arkansas; Caroline Desmond, who resides in the county of Bourbon, in the state of Kentucky; and Ann Brown, formerly Ann Desmond, who resides in the county of Callaway, in the state of Missouri; that said John Desmond died without a will; that he will make a perfect inventory of and faithfully administer all and singular the goods and chattels, rights and credits, of the said deceased, and pay his debts, as far as the assets which may come to his hands will extend and the law direct; and that he will account for and pay over, according to law, all assets which shall come to his hands or possession.

Standish Acres.

Subscribed and sworn to before me this twentieth day of May, 1894.

Henry Keeling, clerk.

Sand. & H. Dig. (Ark. 1894), p. 1653, No. 135.

Note.—The application or petition for administration, the order for notice thereof, the order appointing an administrator, the bond of the administrator, letters of administration, and letters of administration with will annexed were used in the ecclesiastical courts.

B. Citation on Application for Administration.

In the matter of Joseph Newton's estate.

John Tippet is notified, on the application of Wm. Barlow, a person interested in the estate aforesaid, to take letters of administration on said estate within ten days after the service of this citation, or, on neglect so to do, his right to administration upon said estate will be considered a renunciation thereof.

Witness my hand and seal of office this third day of May, 1894.

Joseph Snow, clerk.

Sand. & H. Dig. (Ark. 1894), p. 1654, No. 139.

C. Order Appointing Administrator.

"Athens, Limestone county, Ala., probate court, July 29, 1857. Alexander T. Jones, adm'r. appointed.

Came W. S. Donnell, and made application to this court to grant unto him letters of administration on the estate of Alexander T. Jones, deceased.

And it appearing to the satisfaction of the court that the next of kin of said deceased have had notice of this application, thereupon the said James W. S. Donnell entered into and acknowledged his bond, that John H. Jones and John T. Tanner as his sureties, in the penal sum of eighty thousand dollars, conditioned as required by law in the case of executors and administrators. It is ordered by the court, that the said bond of the said James W. S. Donnell, with the sureties thereto, be and the same is hereby approved of by the court. It is further ordered, that letters of administration issue to the said James W. S. Donnell, as the administrator of the estate of the said Alexander T. Jones, deceased." *Tanner v. Mills*, 50 Ala. 356.

II. Termination of Authority.

Note.—Proceedings for removal of the administrator are generally provided by statute.

III. Discovery of Assets.

Note.—Summary proceedings for the citation and examination of parties supposed to have concealed assets of the estate are also provided by statute.

IV. Inventory and Appraisement.

A. Inventory by Executor and Administrator.

Inventory of the estate of John Desmond, deceased:

Cash on hand at death of decedent	\$100 00
A note of J. D., dated January 1, 18—, bearing interest at ten per centum per annum..	100 00
Interest due thereon	10 00
Account against T. D. for corn sold and delivered	17 50
One horse	100 00
One silver watch	20 00
Forty acres of land in Pulaski county (sw nw, T 1 N, R 12 W)	500 00
A mortgage deed to lot 1, block 49, Little Rock, by E. F., to secure payment of	250 00
Interest due on above debt, rate ten per centum per annum..	50 00
Standish Acres, administrator, etc.	

Sand. & H. Dig. (Ark. 1894), p. 1652, No. 130.

Note.—The inventory and appraisement of the assets of the estate were known to the ecclesiastical courts.

B. Affidavit To Be Annexed to Inventory.

State of Arkansas, County of Pulaski.
Standish Acres, administrator of the estate of John Desmond, deceased, says that the foregoing is a full inventory and description of all the moneys, goods, chattels, books, papers and evidences of debt of the estate of said deceased, and of all debts due or becoming due thereto, as far as he has been able to ascertain them, except the property reserved as the absolute property of the widow; and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

Standish Acres, administrator, etc.

Subscribed and sworn to before me this third day of May, 1894.

Henry Keeling, clerk.

Sand. & H. Dig. (Ark. 1894), p. 1652, No. 131.

C. Oath of Appraisers.

State of Arkansas, County of Pulaski.

John Dean, John Doe and Richard Roe, being appointed to appraise the personal estate of John Desmond, deceased, before entering on their duties, severally make oath and say that they are householders of said county; that they are not interested in said estate, nor of kin to any person interested therein as heir or legatee; and that they will, to the best of their ability, view and appraise the personal property to them produced.

(Signatures of appraisers.)

Sand. & H. Dig. (Ark. 1894), p. 1652, No. 132.

D. Notice of Application of Widow for Allowance.

"State of Georgia, Quitman County.
To all whom it may concern:

"Mrs. Nannie J. Johnson, widow of Neri Johnson, late of said county, deceased, having in due form made application to me for twelve months' support out of the estate of said Neri Johnson, for herself and minor children, I will pass upon the same the first Monday in March next.

"Given under my hand and official signature, this 27th January, 1887.

M. L. Albritton, ordinary."

Parks v. Johnson, 79 Ga. 567, 5 S. E. 243.

V. Claim Against Estate.

A. Notice To Present Claims Against Estate of Deceased Person.

Letters of administration on the estate of John Desmond, deceased, were granted to the undersigned, dated the twentieth day of January, 1894, by the probate court of Pulaski county.

All persons having claims against said estate are required to exhibit them, properly authenticated for allowance, to the administrator, within one year after the date of said letter, or they may be precluded from any benefit in said estate; and if such claims be not exhibited within two years from the date of said letters, they shall be forever barred and precluded from any benefit from said estate.

Standish Acres,

Administrator of estate of John Desmond, deceased.

Little Rock, Pulaski county, February 1, 1894.

Sand. & H. Dig. (Ark. 1894), p. 1652, No. 134.

Note.—Orders for notice to creditor, notice to creditors, the presentation of claims, the order allowing claims, and the proceedings by reference on claims are derived from equity proceedings, and pertain to functions exercised by courts of equity.

B. Proof of Claim Against Deceased Person (a).

"Exhibit 'A.'"

"State of Washington, County of Spokane, ss. In the Superior Court, Probate Department. In the matter of the estate of H. T. Fairlamb, deceased.

"State of Pennsylvania, County of Chester, ss.

"D. M. McFarland, trustee, being first duly sworn, on oath deposes and says:

"That he is the claimant herein; that there is justly due him from the estate of H. T. Fairlamb, deceased, the sum of five thousand five hundred and eighty-seven and 50-100 dollars (\$5587.50); that no payments have been made thereon, and that there are no offsets to the same to his knowledge; that the aforesaid indebtedness is evidenced by a certain promissory note, a true copy of which is hereto attached and made a part of this affidavit.

"(Signed.) D. M. McFarland,

Trustee.

"Subscribed and sworn to before me this 7th day of July, 1896.

"Benjamin W. Harvey,

"Notary Public in and for the State of Pennsylvania, residing at West Chester.

"Commission expires Aug. 1, 1899."
(Set out copy of note.)

McFarland v. Fairlamb, 18 Wash. 601, 607, 52 Pac. 239.

Note.—In some jurisdictions the statute requires the affidavit to state specifically that no payments have been made on the claim, and that there are no offsets thereto except such as are stated.

Proof of Claim Against Deceased Person (b).

"State of Alabama, Montgomery county.

Before me, David Campbell, judge of probate court of said county, Joseph Shackelford, who, being duly sworn says, "that he is the owner and holder of an original bill of exchange drawn by J. A. Bozeman, the deceased, on and accepted by D. H. Lewis and J. W. Payne, and endorsed by the said J. A. Bozeman and John H. Stacey, of which bill of exchange the above copied bill is a true and correct copy, with the endorsements thereon, and that said bill of exchange is a correct claim against the estate of the said J. A. Bozeman, and is due and unpaid. Subscribed and sworn to," etc. *Flinn v. Shackelford*, 42 Ala. 202.

C. Proof of Claim by Executor of Creditor Against Deceased Person.

"State of California, County of Colusa, ss.

"Sebia Davis, being first duly sworn, deposes and says that she is the executrix of the estate of Howell Davis, deceased, whose foregoing claim is herewith presented to the administrator of the estate of R. S. Browning, deceased; and Sebia Davis, being duly sworn, says that the amount thereof, to-wit, the sum of fifteen hundred and four and forty-seven one hundredths dollars, is justly due to the said Sebia Davis, as executrix of the estate of Howell Davis, deceased; that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of said affiant; that the reason said affiant makes this affidavit is that said Howell Davis is dead, and she is

executrix of said estate of Howell Davis, deceased.

Sebia Davis.

"Subscribed and sworn to before me this twenty-fifth day of June, A. D. 1888.

"S. M. Bishop, county clerk.

"By S. S. Russell, depy."

Davis v. Browning, 91 Cal. 603, 27 Pac. 937.

D. Petition To Compromise Claim Due Estate.

"To H. K. Baker, Judge of probate for Kennebec county:

"We have a suit against Wm. H. Healy, on a note given by him to N. Gilman & Son, for \$1,945.38, dated Nov. 1, 1855, and also a note given by said Healy to N. Gilman, deceased for \$900, dated August 17, 1855, and said Healy defends said suit and claims to have a defense to said notes, but, for the purpose of a settlement and by way of compromise, said Healy offers to pay the balance on said notes, deducting from the note in favor of N. Gilman & Son, as of its date, the sum of \$500, claimed as paid by him, and from the note to N. Gilman, \$318, claimed as a payment by him, computing the interest on the balance annually, and said Healy to pay one-third of the costs of suit. And we ask the authority of the court to compromise said suit as above.

"Joseph Baker, Atty. for Exrs. of N. Gilman's estate."

Gilman v. Healy, 55 Me. 120.

E. Order To Compromise Claim Due Estate.

"Augusta, ——— 13, 1867."

"Kennebec county. In Probate court, held at Augusta, on the second Monday of May, 1867.

"On the foregoing petition,

"Ordered, that the said executors have authority to compromise the claims of said estate against William H. Healy, as requested therein.

H. K. Baker, Judge."

Gilman v. Healy, 55 Me. 120.

F. Notice of Application To Compel Allowance of Claim.

"To Thomas Madden, administrator of the estate of James Madden, deceased.

Sir: You will please take notice, that on the first day of the next term of the Probate Court, in and for the county of Pope, in the State of Arkansas, at a court to be holden at the

court house, in said county and state, on the first Tuesday after the 4th Monday of October, next, we will present to said court, our claim against said estate of James Madden, deceased, for allowance; which claim is founded on a certain promissory note, in the words and figures following, to-wit: (here follow copies of the note, and of the endorsements:) "which claim has been presented to you, the original note exhibited, and a copy delivered to you, and which you have refused to allow and class. This 18th day of August, A. D. 1845.

Henry L. Biscoe,
George Hill,
John Drennen,
Sanford C. Faulkner,

Surviving residuary trustees of the Real Estate Bank of the state of Arkansas.

By A. Pike, attorney."
Biscoe v. Madden, 17 Ark. 533.

G. Notice of Application for Allowance of Claim Disallowed by Representative of Deceased.

To Theodore Eaton, administrator of the estate of Joseph Newton, deceased:

You will take notice that I shall present for allowance, at the next term of the probate court of ——— county, to be holden at the court house in said county, on the ——— day of ——— next, and on the first day thereof, or as soon thereafter as I can be heard, a demand against said estate, founded on an (account, note or other writing, as the case may be), of which the following is a copy (here copy). (If the claimant hold the demand as an assignee, insert as follows). And on which demand is an assignment, of which the following is a copy, to-wit: (Here copy assignment.)

Henry Farrar.
This third day of May, 1894.
(Indorsed.)

Executed this notice by delivering a copy of the same to Theodore Eaton on the fifth day of May, 1894.

Anthony Kennedy,
Sheriff of ——— county, Arkansas.
Sand. & H. Dig. (Ark. 1894), p. 1655, No. 142.

H. Order Allowing Claim Against Deceased (a).

"Estate of Robert B. Engles, deceased.
"Now on this day comes James A. Carter as administrator of said estate,

etc., and also come the widow and heirs at law of said deceased, by attorney, and the claim of Henry C. Smith, for \$259.93 upon two certain promissory notes duly presented and allowed by the administrator, on the twelfth of August, 1875, was presented to the court, and after argument of counsel, the premises being seen and by the court fully understood: it is ordered and adjudged by the court that the said claim of Henry C. Smith be and the same is hereby allowed and classed in the fourth class of claims against said estate, and that said claim bear interest at the rate of 10 per cent. per annum from this date until paid; to which order of the court in allowing and classifying said claim the widow and heirs of said deceased, by attorney, at the time excepted, and asked and obtained leave to file their bill of exceptions at any time during the present term of the court." Carter v. Engles, 35 Ark. 205.

Order Allowing Claim Against Deceased (b).

"M. A. Ward and Lawson H. Ward, to use of Henry C. Smith, v. Estate of Robert B. Engles, deceased. Transcript of judgment.

"Now on this day was presented to the court the plaintiff's demand against said estate, it being a transcript of a judgment against said deceased in his lifetime, before Henry Neill, a justice of the peace, on the eighth day of December, 1866, principal and interest to this date amounting to \$49.20, and having been examined and allowed by the administrator, on the eleventh day of August, 1877, the same is now, by the court, examined, allowed and classed in the fifth class of claims against said estate." Carter v. Engles, 35 Ark. 205.

I. Petition for Order To Pay Claims Against Estate.

The probate court for the county of Wayne. In the matter of the estate of Joseph Campau, deceased. To the Hon. Albert H. Wilkinson, judge of probate of the said court:

The petition of Halmer H. Emmons respectfully shows unto your honor, as follows, to-wit:

Your petitioner is a creditor of said estate; that his claim against the said estate as such creditor was duly proved and allowed on the 15th day of January, A. D. 1866, at the sum of three

thousand one hundred and five and 94-100 dollars, as in and by the records and files more fully appears.

Your petitioner has frequently applied to the administrators of said estate to pay the said claim, but they have hitherto neglected and refused to pay said claim, and the same still remains unpaid.

Upon examination of the record and files it appears that no order as required by §4457 of the Compiled Laws of 1871 of the payment of debts proved against said estate has ever been made, and your petitioner therefore prays your honor to make such order, to the end that your petitioner may enforce payment of his said claim.

Halmer H. Emmons.

By Ashley Pond, his attorney.

Filed January 16, 1873.

In re Palms, 44 Mich. 637.

J. Order To Pay Claims Against Estate.

"At a session of the probate court for the county of Wayne, holden at the probate office in the city of Detroit, on Tuesday, the twenty-eighth day of January, in the year of our Lord one thousand eight hundred and seventy-three.

"Present, Hon. Albert H. Wilkinson, Judge of Probate.

"In the matter of the estate of Joseph Campau, deceased.

"This being the adjourned day assigned by the court for hearing the petition of Halmer H. Emmons, a creditor of the said estate, whose claim has been duly proved and allowed, praying that an order may be entered in this court requiring the administrator of said estate to pay the debts proved and allowed against the same; and it appearing to the satisfaction of the court by proof on file that a certified copy of said petition and of the order assigning the twenty-first instant for the hearing by the court of said petition has been duly served on Denis J. Campau, now sole administrator of said estate, as was in said order by the court directed, and the hearing of said petition having been continued by consent until this day, and the court having now heard Ashley Pond of counsel for said petitioner, and James D. Weir of counsel for said Denis J. Campau, administrator as aforesaid, and due consideration having been had in the premises, and it appearing to the

court by the records and files in the matter of the said estate that sufficient assets came to the hands of the said Denis J. Campau, as administrator jointly with Theodore J. Campau, then one of his co-administrators to pay the debts proved and allowed against the said estate in full, and the time limited in the statute for payment of said debts having elapsed, it is ordered and decreed that the said Denis J. Campau, administrator of said estate aforesaid, pay the debts proved and allowed against the said estate within sixty days from the date hereof.

"Albert H. Wilkinson, Judge of Probate."

In re Palms, 44 Mich. 637.

VI. Sales of Property Under Order of Court.

A. Notice of Hearing on Petition To Sell Personality of Deceased.

"Notice is hereby given, that H. W. Halleck, P. W. Van Winkle, and Archibald C. Peachy, having filed in this court their report and account, as executors, with a petition for an order of sale of personal property of the estate of Joseph L. Folsom, deceased, the hearing of the same has been fixed by said court, for Monday, the twenty-first day of March, 1859, at eleven o'clock in the forenoon of said day, of the March Term of 1859, at the court room thereof, in the City Hall in the City and County of San Francisco; and all persons interested in said estate are notified then and there, to appear and show cause, if any they have, why said petition should not be granted." *Halleck v. Moss*, 22 Cal. 266.

B. Order To Sell Personal Property After Notice.

"Application having been made to the Court by the executors of the estate of J. L. Folsom, deceased, for an order of sale of certain personal property of the estate hereinafter mentioned by the petition, in writing, of said executors, filed herein on the seventh day of March, 1859, setting forth the facts showing such sale to be necessary; which application was, by the order of this Court, on that day made and filed, set for hearing upon the twenty-first day of March last, upon which day the said executors appeared by their counsel, Gregory Yale, Esq., and certain of the creditors of the estate appeared and were rep-

resented by their counsel, Eugene Casserly, Esq.; and due proof having been there made, to the satisfaction of the Court and filed herein, that notice of said application had been given according to law, the hearing of the said application was regularly continued from that time to this day by orders of this Court duly entered of record. And now on this twenty-fifth day of April, 1859, at eleven o'clock A. M., to which time said application was duly adjourned by the last of continuances, aforesaid, the said parties appearing by their counsel, aforesaid, and no objections or exceptions having been filed, and no opposition having been made, and the Court, from an examination of the said matter, being satisfied that a sale of said property is necessary, and that the articles are perishable property and liable to assessment and taxation, it is hereby ordered, that the said executors be authorized to sell at public auction to the highest bidder, for cash, the personal property of the estate undisposed of, comprised under the heads of 'Library,' 'Pictures,' 'Table and Bed Linen,' and 'Stocks,' as set forth in their petition filed in this Court November 12th, 1855." *Halleck v. Moss*, 22 Cal. 266.

C. Petition for Leave To Convey Real Estate of Deceased.

"To the Hon. Judge of Probate for the County of Carroll:

"Respectfully represents Sanborn B. Carter, administrator of the estate of William N. Roberts, late of Tuftonborough, in said county, deceased, that the said William N. Roberts, in his lifetime, to-wit, on the twenty-fifth day of June, A. D. 1868, did contract and engage, in writing, to convey to one Adam Roberts, of said Tuftonborough, upon the performance of certain conditions on the part of said Adam Roberts therein stated, certain real estate situated in said Tuftonborough, bounded and described as follows: Commencing at corner of land of Levi Brown, on south side of the highway leading from Tuftonborough to Water Village, and running westerly on said highway twenty-four rods, thence south, turning right angles, and running far enough into the land of said William N. Roberts to contain one acre;—that the said William N. Roberts was prevented from making said

conveyance by death, and that the said Adam Roberts stands ready to perform the conditions of said contract on his part. Wherefore your petitioner prays that he may be licensed to make and execute a conveyance of said real estate, agreeably to the statute in such case provided.

"Dated at Ossipee, the 1st day of January, A. D. 1869. _____."

Carter v. Jackson, 56 N. H. 364.

Note.—Equity also exercises jurisdiction to compel the satisfaction of debts out of real property.

D. Order Granting Leave To Convey Real Estate of Deceased.

"State of New Hampshire, Carroll, ss.

"(L. S.) The judge of probate for said county, to whom it may concern: Whereas, on examination, it appears that William N. Roberts, late of Tuftonborough, in said county, deceased, did in his lifetime contract by writing to convey to one Adam Roberts certain real estate, situated in Tuftonborough, bounded (description same as in above petition), upon certain conditions on the part of the said Adam Roberts which he has performed, or stands ready to perform, and that the said William N. Roberts was prevented from making said conveyance by death; therefore license is hereby granted to Sanborn B. Carter, administrator of the estate of the said William N. Roberts, deceased, to make and execute to the said _____ a good and valid conveyance of all the right, title, and interest that the said deceased had, at the time of his death, in and unto said real estate.

"In testimony whereof I have hereunto set my hand and the seal of said court of probate, at _____, in said county, this second day of March, A. D. 1869.

"Larkin D. Mason, judge of probate."

Carter v. Jackson, 56 N. H. 364.

E. Decree for Sale of Real Estate.

"Jonathan McDonald. Decree to sell land.

"Be it remembered, that heretofore, to-wit on the 1st day of October, 1867, came E. M. Hussey as administrator of said estate, and did file with the judge of this court his application in writing and under oath, praying an order to sell the lands belonging to said estate, on the ground that the same is necessary to pay the debts of said

decedent, and the costs and charges of administration, and alleging an insufficiency of personal property thereto; and this being the day regularly set for the hearing of said application, a day more than forty days from the filing of said petition, the court proceeded to hear and determine said cause. I find that due notice of said filing and said day for hearing has been given to all the parties defendant to said application, by citation duly executed on all the parties defendant, they being residents of the State of Alabama, and John Turrentine, duly appointed guardian ad litem to represent the minor heirs, accepting said appointment, and appearing in open court and denying the allegations of said application. I find from the proof taken by deposition as in chancery cases, that the allegations of said petition are correct; that there is not sufficient personal property belonging to said estate to pay said debts, costs and charges. It is therefore ordered, adjudged and decreed, that the prayer of said petition be granted; that lands described as follows: (Here follows order of sale and description of land by numbers, section, township and range, and terms of sale, etc., and reservation of five hundred dollars to the widow, etc., in addition to dower.) Given under my hand and seal, this 11th day of November, 1867.

(Signed.) John B. McClellan,
Judge, etc."

Hine v. Hussey, 45 Ala. 496.

F. *Report of Sale of Land of Deceased.*

"The undersigned, administrator of the estate of Eleanor Coker, deceased, reports that in pursuance of an order heretofore made by the said court, to-wit, on the 11th day of December, 1876, authorizing and empowering the undersigned to sell realty belonging to the estate of said deceased, after having given authorized notice by advertising the same at the court house door of said county and three other public places in said county, for three weeks previous to the said sale, containing further the time, terms and place of said sale, etc., on Monday, the 8th day of January, 1877, as the day, and at the place appointed for said sale, between the legal hours of sale, did offer said realty for sale at public outcry, and at said sale Jasper Langs-

ton, being the highest, best and cash bidder, therefor, became the purchaser of the" (lands describing them, which were the same lands described in the order of sale) "lying and being in Bibb county, Ala., at the price of two and 50-100 dollars per acre, and amounting in the aggregate to the sum of four hundred dollars. The said administrator further reports that the said Jasper Langston has complied with the terms of said sale, and has paid in full said purchase money, that said sale was fairly conducted, and that said realty was sold for an amount not greatly disproportionate to its real value. Wherefore, the said administrator prays that said sale may be ratified and confirmed, and that a decree be granted authorizing him to execute titles to the purchaser, said Jasper D. Langston, for the said real estate purchased by him as aforesaid, all of which is respectfully submitted.

(Signed.) M. L. Cottingham."

(This report was sworn to before the probate judge.)

Moore v. Cottingham, 113 Ala. 148, 20 So. 994.

G. *Order Confirming Report of Sale, Land of Deceased.*

"This day came M. L. Cottingham, as the administrator, with the will annexed of said estate, and files his request in writing and under oath, setting forth, among other things, that on the 8th day of January, 1877, within the legal hours of sale, in pursuance of law in such cases made, and in strict accordance with all and singular the terms and requirements of the former order and decree of this court, granted and entered in the primaries on the 11th day of December, 1876, proceeded and sold, at public outcry, at the late residence of said decedent, the land set forth and particularly described in said former order and decree, and that said land was purchased at said sale by Jasper D. Langston, for the sum of \$400, and it appearing to the satisfaction of the court from said report, and from the evidence therewith submitted, that said amount so bid for said land by Jasper D. Langston, was the highest and best bid for the same; that said sum so bid was not greatly less or disproportionate to its real value; that said sale was legally and fairly made and conducted; and that the whole of the purchase money has

been paid in cash. It is ordered, adjudged, and decreed, that said sale be, and the same hereby is, approved; and in all things ratified and confirmed by the order and authority of this court. It is further ordered that this report and all other papers on file relating to this proceeding, be recorded. It is further ordered, adjudged and decreed, that said M. L. Cottingham, as the administrator of said estate, be authorized and he is hereby ordered to convey by proper deed to the said Jasper D. Langston all right, title, and interest which the said Eleanor Coker, deceased, had in said lands at the time of her death. It is further ordered, that the said administrator pay the costs of this proceeding, to be allowed him against said estate." *Moore v. Cottingham*, 113 Ala. 148, 20 So. 994.

H. Published Notice of Application for Conveyance of Real Estate on Decedent's Contract.

"Notice. In the district court of the third judicial district holding terms at Seattle, in and for King county.

"(Title of cause.) To J. D. Lowman, administrator of the estate of Sarah B. Yesler, deceased, and all parties having an interest in said estate: You, and each of you, will please take notice that whereas, the Sander-Bowman Real Estate Company, petitioner and plaintiff herein, heretofore filed and presented its certain petition, praying, among other things, for an order of the court for the conveyance to it of the following described real estate in King county, to-wit: (description.) Now, therefore, you are notified, pursuant to an order of court heretofore entered herein on the 2nd day of May, 1889, that Monday, the 24th day of June, 1889, being a day of the regular term of said district court, at 11 o'clock A. M., at the court-room in the court-house in the city of Seattle, said petition will be heard when and where all parties interested as creditors, devisees, or personal representatives of Sarah B. Yesler may appear and show cause, if any they have or can show, why the prayer of said petitioner shall not be granted. (Attested by the clerk)." *Sander-Bowman, etc., Co. v. Yesler's Est.*, 2 Wash. 429, 27 Pac. 269.

VII. Proceedings Where Estate Is Insolvent.

A. Report of Insolvency.

"To the Hon. J. B. McClellan, judge, etc.:

"Your petitioner, as the administrator of Jonathan McDonald, deceased, would respectfully represent unto your honor, that to the best of his, the said administrator's knowledge and belief, said estate is insolvent, as the accompanying list of the goods and chattels, evidences of debt, and other personal property and real estate, and in fact all the assets of said estate, and also a list of claims filed against said estate will show; schedule A showing assets, and schedule B the claims presented against the estate.

E. M. Hussey, Admr."

Hine v. Hussey, 45 Ala. 496.

Note.—Equity also assumed jurisdiction to administer the estate in case of insolvency.

B. Decree of Insolvency.

"Jonathan McDonald, estate of. Decree of insolvency.

"This day having been regularly appointed by the order of the judge of this court to hear and determine the report and statement of the insolvency of said estate, filed by E. M. Hussey, the administrator thereof, now comes said administrator, and moves the court to declare said estate insolvent; and the guardian ad litem regularly appointed, now in open court consenting to represent the minor heir in said proceedings; and the court being satisfied, from due examination and proof, that notice of the filing of said report, and of the day set to hear and determine the same has been given to the creditors in all respects as required by law, and directed by the former order of the court; the court thereupon proceeds to hear and determine as to said report, and none of the creditors contesting the correctness of said report, it is ordered, adjudged and decreed that said estate be, and the same is hereby declared insolvent." (Here follows order appointing day for a settlement by said Hussey of his administration, and the notice required to be given thereof.) *Hine v. Hussey*, 45 Ala. 496.

VIII. Proceedings Requiring an Accounting.

Note.—Equity also assumed jurisdiction to compel an accounting by the

administrator where he failed to perform his duty in this respect for the reason that the power exercised by the ecclesiastical courts was inadequate.

IX. Accounting.

A. *Petition To Reopen Account.*

The petition of appellant, filed April 3, 1893, averred:

"John B. Ellison died in the city of Philadelphia on March 7, 1865, leaving a last will bearing date May 30, 1864, a copy of which is hereunto attached. Letters testamentary upon the estate were duly granted by the register of wills of Philadelphia county to Rodman B. Ellison and William P. Ellison.

"The said executors entered upon their duties and continued to act as executors and trustees under the provisions of the said will until the filing of their account.

"By the terms of the said will no distribution was to be made of the principal of the estate until the death of the wife of the said John B. Ellison, which occurred July 14, 1880.

"On the death of the said wife of John B. Ellison, the said executors filed their account in the orphans' court, which was adjudicated Jan. 13, 1882.

"By the terms of the said will, on the death of the said wife of John B. Ellison, the estate was to be divided into four shares, one share to each of the four children of the decedent, of whom your petitioner was one; but the shares of your petitioner and her sister, Margaret Ellis, were, after the said distribution, to be held in trust by trustees to be selected by them respectively.

"The said Margaret Ellis selected Ellis D. Williams, Esq., as her trustee, and your petitioner selected, at the special instance and request of her brother, Rodman B. Ellison (the executor of the will), her brother William P. Ellison to act as the trustee for your petitioner.

"At the audit of the account of the said executors, your petitioner was not present, but was represented by her trustee and brother, William P. Ellison, who was also one of the executors of the said will. (Here follow particular allegations of fraudulent use of funds and concealment from petitioner.)

"In conclusion, your petitioner avers that she was at the time of the ad-

judication aforesaid a married woman, and has been under coverture from that time until the present.

"Your petitioner therefore prays that a citation may issue to Rodman B. Ellison and William P. Ellison and to Margaret Ellis and Ellis D. Williams, trustee for Margaret Ellis (being all the parties in interest) to appear and show cause: (1) Why the adjudication of the accounts of Rodman B. Ellison and William P. Ellison as executors of the will of John B. Ellison, deceased, should not be reopened and a rehearing granted, and the said Rodman B. Ellison and William P. Ellison be surcharged with the profits earned by the moneys of the estate by their use in business of the said Rodman B. Ellison and William P. Ellison from 1865 until 1882. (2) To show cause why the record of the said orphans' court should not be amended by striking therefrom the adjudication so fraudulently procured to be entered upon the account of the said executors as hereinbefore set forth. (3) Why the said Rodman B. Ellison and William P. Ellison should not state an account of the profits earned by the said moneys of the estate by their use in the business aforesaid, and make payment of the proper portion thereof to your petitioner. (4) And your petitioner prays such other and further relief in the premises as to the court shall seem meet or the cause may require." Ellison's Estate, 163 Pa. 315, 30 Atl. 199.

Note.—Upon accounting courts of equity entertained exceptions to accounts of administrators by persons interested in the estate, and by their decree settled the accounts.

B. *Order for New Account and Setting Aside Former Approval.*

"Now, therefore, it is by the court ordered and adjudged, that the account of the said John S. Branner filed in this court on or about February 22, 1892, purporting to be the final account of his administration of said partnership estate, and therein entitled as follows: 'Second and final report of John S. Branner, guardian of the person and estate of Josie Webb (formerly Josie Klein) and Millie Klein, as the surviving partner of the firm of Branner & Klein; said firm composed of said John S. Branner and Jacob Klein.'

"And the order of the court made

on April 20, 1892, allowing said account, and the subsequent order of this court discharging said John S. Branner from his said trust, be and the same are hereby declared to be fraudulent and void, and they are hereby vacated and set aside.

"And it is by the court further ordered, and adjudged, and decreed, that the said John S. Branner be and he is hereby required in _____ days from this date to render to this court a full and complete account of all the moneys and assets which came into his hands as such administrator." Branner. v. Webb, 61 Kan. 181, 59 Pac. 270.

X. Proceedings for Distribution.

Upon petition for distribution by the next of kin equity issued decrees for distribution.

DECEIT.—See FRAUD AND DECEIT.

DECLARATION AND COMPLAINT.

I. Declarations, Commencements, 349

- A. *By Declaration*, 349
- B. *Defendant in Actual Custody*, 349
- C. *Defendants, Some Taken*, 350
- D. *Executor, Plaintiff*, 350
- E. *Administrator, Plaintiff*, 350
- F. *Executor, Defendant*, 350
- G. *Administrator, Defendant*, 350
- H. *Infant, Plaintiff*, 350
- I. *Town, Plaintiff*, 350
- J. *Town, Defendant*, 350
- K. *County, Plaintiff*, 350
- L. *County, Defendant*, 350
- M. *Corporation, Plaintiff*, 350
- N. *Corporation, Defendant*, 351
- O. *Banking Association, Plaintiff*, 351
- P. *Banking Association, Defendant*, 351
- Q. *Defendant by Wrong Name*, 351

II. Complaints, Common Forms, 351

- A. *Commencement, General Form*, 351
- B. *Complaint, General Form*, 351
- C. *One Creditor on Behalf of Others*, 351
- D. *One Creditor on Behalf of Particular Class*, 351
- E. *By Common Informer*, 351
- F. *Averment of Performance of Conditions Precedent*, 351
- G. *Averment of Consideration*, 352
- H. *Averment That Defendants Made Instrument*, 352
- I. *Money Due on Account*, 352

J. *Against Buyer for Not Delivering Note*, 352

K. *Non-Negotiable Note*, 352

L. *Note Payable in Chattels*, 352

M. *Bill Payable Out of Particular Fund*, 353

III. Complaints on Undertakings, 353

A. *To Discharge Attachment*, 353

B. *Claim and Delivery*, 353

C. *Of Bail*, 354

D. *For Costs and Damages on Attachment*, 354

E. *For Costs and Damages on Arrest*, 355

F. *Reciting Facts*, 355

G. *On Obtaining Injunction*, 355

For other forms, see 6 STANDARD PROC. 730, 735.

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Declaration in Account - Render Against Defendant as Bailiff;

Declaration in Account - Render Against Defendant as Receiver;

Declaration in Assumpsit for Not Rendering Just Account of Sale of Goods;

Complaint on Account Stated;

Complaint To Correct an Account Stated.

ADJOINING LANDOWNERS:

Complaint for Negligently Excavating Adjacent to Plaintiff's Land;

Complaint for Negligently Excavating Adjacent to Plaintiff's Buildings;

Complaint for Flowing Water From Roof on Plaintiff's Premises;

Complaint for Negligence, Whereby Plaintiff's Land Was Overflowed;

Complaint for Carelessly Kindling a Fire on Defendant's Land, Whereby Plaintiff's Property Was Burned.

ALIENATING AFFECTIONS:

Declaration;

Complaint for Enticing Away Plaintiff's Wife.

ANIMALS:

Declaration in Assumpsit for Agistment;

Declaration on Promise To Pay on Exchange of Horses;

Declaration for Keeping Dog Accustomed To Bite Mankind;

Declaration for Keeping Dog Accustomed To Bite Sheep and Other Animals;

Declaration for Shooting Plaintiff's Dog;

Complaint for Keeping Mischievous Dog by Which Plaintiff Was Bitten;

Complaint for Keeping Dog Accustomed To Bite Sheep and Other Animals;

Complaint for Shooting Plaintiff's Dog;

Complaint for Immoderately Driving Horse;

Complaint for Chasing Plaintiff's Cattle.

APPEAL BONDS:

Complaint on Undertaking for Costs of Appeal.

APPEALS:

Complaint for Repayment of Judgment Paid and Afterwards Reversed.

APPRENTICES:

Complaint by Apprentices Against Master;

Complaint by Master Against Father of Apprentice.

ARBITRATION:

Declaration on Award on Bonds of Submission;

Complaint on Award of Arbitrators;

Complaint, Allegation of Enlargement of Time;

Complaint on Award of Umpire.

ARCHITECTS AND BUILDERS:

Complaint Against Builder for Not Well Finishing Building;

Complaint Against Builder for Not Completing His Work, With Special Damage by Loss of Rent;

Complaint by Architect for His Services;

Complaint on Special Contract, Modified by Parol, With Claim for Extra Work.

ASSAULT AND BATTERY:

Declaration for Common Assault on Person;

Declaration in Trespass, for Assault and Battery;

Declaration by Master for Battery of Servant;

Declaration by Husband for Battery of Wife.

Complaint for Assault and Battery and False Imprisonment;

Complaint for Assault and Battery (a), (b);

Complaint for Assault and Battery (Short Form);

ASSIGNMENTS:

Complaint, Allegation of Assignment to Plaintiff;

Complaint, Allegation Where Plaintiff Is Trustee;

Complaint on Special Contract, Where Fulfilled by Assignee;

Complaint by Assignee for Price of Stock and Fixtures of Store and Good-Will Agreed To Be Paid in Instalments.

ASSOCIATIONS:

Complaint by Officer of Joint Stock Company;

Complaint by Treasurer of Unincorporated Company on Note Payable to Former Treasurer;

Complaint, Allegation by Association of Joint Tenants in Common.

ASSUMPSIT:

Declaration in Assumpsit for Goods Sold and Delivered;

Declaration, Common Counts for Goods Sold, Work, Labor and Materials, With Money Counts;

Money Counts Condensed;

Declaration on Contingent Note;

Declaration on Chattel Note;

Declaration Against Bailee Without Reward, for Want of Care;

Declaration Against Watchmaker for Losing Watch.

ATTORNEYS:

Declaration by an Attorney for Costs and Fees;

Declaration in Case Against an Attorney for Negligence;

Complaint by an Attorney for Services and Disbursements;

Complaint Against Attorney for Negligence in Prosecution;

Complaint Against Attorney for Negligent Defense;

Complaint Against Attorney for Negligence in Examining Title.

BANKS AND BANKING:

Complaint Against Bank, Drawee, Having Certified Check;

Complaint Against Bank for Neglecting To Present Note;

Complaint Against Bank for Not Giving Due Notice;

Complaint, Banking Association Suing or Sued in Name of Its President;

Complaint, Action by or Against an Individual Banker;

Complaint, Banking Association Suing or Sued in Its Associate Name.

BASTARDY PROCEEDINGS:

Affidavit for Bastardy (Complaint) by Female (a), (b), (c);

Complaint by Selectmen.

BILLS AND NOTES:

Declaration on Bill of Exchange, Payee Against Acceptor;

- Declaration on Bill of Exchange,
 First Endorsee Against Acceptor;
 Complaint by Payee Against Acceptor, Short Form, Setting Out Copy;
 Complaint Pleading Legal Effect;
 Complaint on Acceptance, Varying as to Time From Bill;
 Complaint Against Acceptor for Honor;
 Complaint on Bill by Drawer to Himself and Accepted by Him;
 Complaint by Payee Against Drawer for Non-Acceptance;
 Complaint on Bill Setting Out Copy;
 Complaint on Bill for Non-Payment;
 Complaint on Bill for Non-Payment After Acceptance;
 Complaint, Averment, Non-Presentment Excused, Drawee Not Found;
 Complaint on Bill, Demand and Notice Excused by Waiver;
 Complaint on Bill, Non-Presentment Excused, Drawer Having Countermanded Bill;
 Complaint, Payee Against Drawer and Acceptor, Bill Accepted by Drawee;
 Complaint on Bill Accepted for Honor;
 Complaint by Remote Indorsee Against Acceptor;
 Complaint Against Drawer and Indorser for Non-Acceptance;
 Complaint Against Drawer, Indorser Before Acceptance and Acceptor for Non-Payment;
 Complaint Against Drawer, Acceptor and Indorser After Acceptance for Non-Payment;
 Complaint, Drawer Against Acceptor on Bill Returned and Taken Up;
 Complaint on Bill Payable to Drawer's Own Order, Not Negotiated;
 Complaint, Payee Against Drawer;
 Complaint, Indorsee or Bearer Against Drawer;
 Complaint, Omission of Notice of Non-Payment Excused, Drawer Had No Funds;
 Complaint, Non-Presentment Excused, Insolvency of Drawee;
 Complaint Against Drawer, Indorser and Drawee;
 Declaration on Promissory Note, Payee Against Maker;
 Declaration on Promissory Note, Indorsee Against Maker;
 Declaration on Promissory Note, Indorsee Against Indorser;
 Complaint, Payee Against Maker, Ordinary Form Pleading Legal Effect of Note;
 Complaint on Two Notes, One Partly Paid;
 Complaint on Several Notes Given on Agreement To Pay All on Default in Any;
 Complaint on Note Signed by Agent;
 Complaint on Note Made by Partners;
 Complaint on Note Made by Partners, Averring Partnership;
 Complaint by Partners on Note Payable to Order of Firm Name;
 Complaint by Surviving Partner on Note Payable to Order of Late Firm;
 Complaint by Payee Against Surviving Maker;
 Complaint by Receiver, Payee, Against Partners, Makers;
 Complaint by Insurance Company on Deposit Note;
 Complaint on Note Payable at a Certain Time After Sight;
 Complaint on Note Wrongly Dated;
 Complaint by First Indorsee Against Maker, Ordinary Form, Pleading Legal Effect;
 Complaint by Second or Later Indorsee Against Maker;
 Complaint on a Note Payable to Bearer, or to a Fictitious Person, or to Maker's Own Order;
 Complaint by First Indorsee Against Payee, Indorser, Ordinary Form, Pleading Legal Effect;
 Complaint, Remote Indorsee Against Payee;
 Complaint by Remote Indorsee Against His Immediate Indorser;
 Complaint, Special Averment of Excuse for Non-Presentment, Where Indorser Has Waived Notice;
 Complaint, Special Averment of Excuse for Non-Presentment, Where the Maker Could Not Be Found;
 Complaint by First Indorsee Against Maker, and Payee, Indorser;
 Complaint on Note Not Valid as Against Maker;
 Complaint, Remote Indorsee Against Maker, First Indorser and Later Indorser;
 Complaint by Payee Against Maker and Indorser, Payee Having Parted With Full Value;
 Complaint by Assignee of Note;
 Complaint on Negotiable Bond Payable to Bearer.

BONDS:

Declaration on Bond (Commenced by Captains);
 Declaration on Bond for Costs;
 Declaration on Bond To Perform Covenants of Another Instrument;
 Declaration on Several Bonds;
 Declaration on Bond With Condition, Assigning Breaches;
 Complaint on Administration Bond;
 Complaint on Arbitration Bond for Refusal To Comply With Award;
 Complaint on Arbitration Bond for Revoking Arbitrator's Powers;
 Complaint on Bond for Accounting of Subscription Agent;
 Complaint on Bond for Fidelity of Clerk or Cashier;
 Complaint on Bond of Security for Costs;
 Complaint on Bond for Rent Against Principal and Sureties;
 Complaint on Bond for Stay of Proceedings, for Reformation and for Judgment on Bond;
 Complaint on Bond Pleading Substance of Condition;
 Complaint on Bonds Other Than for Payment of Money;
 Complaint on Bond for Payment of Money Only, Pleading Legal Effect;
 Complaint by Surviving Oblige in Joint Bond;
 Complaint on Bond for Payment of Money Only;
 Complaint on Bond To Discharge Attachment Against Vessel.

BREACH OF PROMISE:

Declaration on Promise of Marriage;
 Complaint for Refusal To Marry;
 Complaint on Marriage With Another;
 Complaint, Defendant Married at Time of Promise.

CASE (THE ACTION OF TRESPASS ON THE):

Declaration Against Occupier of House for Laying Rubbish in Street Whereby Carriage Was Overturned.

CHATTEL MORTGAGES:

Petition (Complaint) for Foreclosure.

CIVIL RIGHTS:

Complaint for Refusing Accommodation to Colored Person.

COMPROMISE AND SETTLEMENT:

Complaint Upon Compromise of Suit;
 Complaint Upon Compromise of Suit

for Withdrawing Opposition to Probate of Will.

CONTRIBUTION:

Complaint for Contribution by Co-surety.

CORPORATIONS:

Declaration by a Domestic Corporation (Commencement);
 Declaration, Commencement of, Against a Domestic Corporation;
 Declaration by a Foreign Corporation (Commencement);
 Declaration Against Foreign Corporation (Commencement);
 Complaint Against Domestic Corporation Formed Under General Act;
 Complaint by or Against Foreign Corporation;
 Complaint by Corporation on Stock Subscription (Short Form);
 Complaint by Corporation on Stock Subscription;
 Complaint Against Stockholder by Creditor;
 Complaint by Attorney-General To Dissolve a Corporation for Exercising a Franchise Not Conferred by Law;
 Complaint Against Trustees, Averment Where Debt Is Judgment for Costs;
 Complaint Against Trustees of Dissolved Corporation;
 Complaint, Averment of Indebtedness Beyond Capital;
 Complaint by Corporation Formed Under General Act, Payee, Against Foreign Corporation, Maker.

COVENANT, ACTION OF:

Declaration for Not Repairing, Against Lessee.

CREDITORS' SUITS:

Commencement of Complaint Where Plaintiff Sues on Behalf of Other Creditors;
 Complaint Against Debtor To Reach Demands Due Him From Third Person.
 Complaint Against Debtor and His Trustee To Reach Trust Fund or Its Income;
 Complaint To Set Aside an Assignment Void on Its Face;
 Complaint Against Judgment Debtor, and One To Whom He Fraudulently Confessed Judgment;
 Complaint by an Assignee of a Judgment, Etc.;
 Complaint Against Debtors Who Transferred Assets to Third Person for His Note, and Assigned Note

for Benefit of Creditors, To Set Aside Transaction as Fraudulent, and for Receiver;

Complaint Against Judgment Debtor, Assignee, and a Pretended Creditor Named in Assignment, for Extrinsic Fraud.

CRIMINAL CONVERSATION:

Declaration for Criminal Conversation;

Complaint for Criminal Conversation.

DEATH BY WRONGFUL ACT:

Complaint Against Railroad by Personal Representative for Negligence Causing Death;

Complaint Against Owner of Warehouse, the Walls of Which Fell on Deceased;

Complaint, Death by Wrongful Act Setting Out Defect;

Declaration Against a Railroad, Running Over an Intoxicated Person.

DEBT:

Declaration on Simple Contract.

DEMURRER:

General Demurrer to Declaration;

Special Demurrer to Declaration.

DETINUE:

Declaration in Detinue;

Declaration in Action of Detinue for House on Land of Another.

DIVORCE:

Complaint for Divorce on Ground of Adultery;

Complaint, Allegation of Wilful Absence;

Complaint, Allegation of Drunkenness;

Complaint for Allegation of Imprisonment;

Complaint for Divorce on Ground of Fraud by Husband;

Complaint for Divorce on Ground of Fraud by Wife;

Complaint for Divorce on the Ground of Lunacy;

Complaint for Divorce on Account of Non-age;

Complaint for Divorce for Physical Incapacity;

Complaint for Limited Divorce, on Account of Cruel and Inhuman Treatment.

DOWER, PROCEEDINGS TO RECOVER:

Declaration in Dower;

Declaration in Ejectment for Dower;

Complaint for Admeasurement of Dower.

EASEMENTS:

Declaration for Obstructing Plaintiff's Right of Way;

Complaint for Obstructing Private Way.

EJECTMENT:

Declaration in Ejectment, Common Law;

Declaration in Ejectment for Term of Years;

Declaration in Ejectment, Plaintiff Claiming Whole in Fee or for Life;

Declaration in Ejectment for Undivided Share;

Declaration by Several Plaintiffs;

Suggestion for Damages or Mesne Profits in Ejectment;

Complaint in Ejectment, General Form;

Complaint in Ejectment, Setting Forth Title by Descent;

Complaint in Ejectment Setting Forth Title by Devise;

Complaint in Ejectment, Setting Forth Plaintiff's Title by Deed;

Complaint in Ejectment Where Plaintiff Was Once in Possession;

Complaint in Ejectment by Widow for Dower (a, b);

Complaint in Ejectment by Owner of Undivided Interest;

Complaint in Ejectment by Widow and Heirs.

ELECTIONS:

Complaint Against Officers of an Election for Refusing Plaintiff's Vote;

Complaint for Usurping an Elective Office.

EMINENT DOMAIN:

Complaint in Action for Damages by Landowner on Condemnation;

Complaint for Injury to Adjoining Property in Condemnation;

Complaint for Injunction Against Using Without Compensation.

EXECUTORS AND ADMINISTRATORS:

Declaration Against an Administrator;

Declaration Against an Executor in Assumpsit;

Declaration Against an Executor or Administrator in Debt;

Declaration by Administrator;

Declaration by Executor in Assumpsit for Work Done by Testator;

Commencement of Complaint by Executor or Administrator, Where He May Sue in His Own Right;

Complaint, Allegation of Plaintiff's Appointment as Administrator;

Complaint, Allegation of Defendant's Appointment as Administrator;

Complaint, Allegation of Plaintiff's Appointment as Executor;
 Complaint, Allegation of Defendant's Appointment as Executor or Administrator With the Will Annexed.

FACTORS AND BROKERS:

Declaration for Commission as Real Estate Broker, Oral Agreement;
 Declaration by Factor for Commission;

Declaration Against a Factor for Selling on Credit, Contrary to Orders;

Complaint Against Factor for Price Received by Him for Goods Sold;

Complaint Against Factor Under Del Credere Commission;

Complaint Against Note Broker for Proceeds of Note Discounted;

Complaint for Commissions of Broker;

Complaint by Stockbrokers for Money Advanced on Account of Their Principal.

Complaint, Commissions for Sale of Merchandise;

Complaint for Money Advanced by Merchandise Broker;

FALSE IMPRISONMENT:

Declaration for False Imprisonment (a, b);

Complaint for False Imprisonment (a, b);

Complaint Against Railroad Company and Agent for False Imprisonment;

Complaint Against Officer and Surety.

FORCEFUL ENTRY AND DETAINER:

Declaration on Statute for Forceful Entry;

Complaint for Treble Damages for Forceful Entry or Detainer.

FRAUD AND DECEIT:

Declaration for Misrepresentation as to Quantity of Business;

Declaration for Deceit in Selling Smaller Quantity of Coal Than Pretended;

Declaration for Deceitfully Selling Land for Greater Quantity Than It Was;

Declaration for False Warranty of Cable;

Declaration for False Warranty of Horse;

Declaration, Misrepresentation to Third Person Whereby Credit Was Obtained;

Complaint for Fraudulently Misrepresenting Value of Good Will of Business Sold;

Complaint for Fraudulently Misrep-

resenting Value of Stock in Corporation Taken in Payment for Services;

Complaint for Fraudulently Selling Tract of Land for More Than It Was;

Complaint for Fraudulently Delivering Smaller Quantity Than Agreed for;

Complaint for Fraudulently Obtaining Goods on Credit;

Complaint for Fraudulently Obtaining Credit for Another;

Complaint Against Seller of Chattels for Fraudulently Representing Them To Be His Property;

FRAUDS, STATUTE OF:

Complaint, Allegation of Part Payment Where No Memorandum.

FRAUDULENT CONVEYANCES:

Complaint by Subsequent Creditor.

GAMING:

Declaration To Recover Money Lost at Play;

Complaint To Recover Back a Wager.

GUARANTY:

Declaration on Promise To Be Accountable for Goods Sold to Third Person;

Complaint on Agreement To Be Answerable for Goods Sold to Third Person;

Complaint Against Guarantors for Payment of Rent;

Complaint Against Principal and Guarantors in Contract for Work and Labor;

Complaint Against Guarantor of Mortgage To Recover Deficiency;

Complaint on Guaranty of Precedent Debt.

GUARDIAN AND WARD:

Complaint, Action To Compel Guardian To Turn Over Money Due on Final Account;

Complaint Against Guardian for Ward's Board and Lodging.

HAWKERS AND PEDDLERS:

Complaint in Action To Recover Penalty.

HUSBAND AND WIFE:

Declaration by Husband and Wife for Work Done by Wife Before Marriage;

Declaration Against Husband and Wife for Work Done for Wife Before Marriage;

Complaint Alleging Marriage and Separate Estate of Plaintiff;

Complaint Against Husband and

Wife for Goods Sold for Her Separate Estate;
 Complaint Against Husband on Ante-Nuptial Debt of Wife;
 Complaint on Ante-Nuptial Debt, Where Husband Has Acquired, After Marriage, Property of Wife;
 Complaint on Ante-Nuptial Debt of Wife, Where Husband Has Acquired That Which Became Separate Property of Wife After Marriage;
 Complaint Against a Married Woman on Her Contract;
 Complaint, Alleging Marriage and Separate Estate of Plaintiff in Action Other Than on Contract for Payment of Money Only;
 Complaint Against Married Woman, Contract Expressed Intent To Charge Separate Estate.

INDEMNITY:

Declaration for Not Indemnifying;
 Complaint on Promise To Indemnify on Action for Money Which Defendant Claimed;
 Complaint by Retiring Partner on Remaining Partner's Promise To Indemnify Him Against Damage;
 Complaint of Surety Against Principal, on Promise To Indemnify;
 Complaint by Retiring Partner Against Sureties in Partner's Bond To Indemnify.

INFANTS:

Declaration by Infant, in King's Bench;
 Declaration by Infant, in Common Pleas;
 Complaint by Infant Plaintiff, Showing Appointment of Guardian Ad Litem (a, b).

INHERITANCE:

Declaration Against Heir on Bond of His Ancestor;
 Declaration Against Heir and Devisee of Obligor;
 Complaint Against Heir or Devisee Where He Has Conveyed Land.
 Complaint Against Heir by Creditor of Deceased;
 Complaint by Creditor of Deceased Against Next of Kin;

INJUNCTIONS:

Complaint To Restrain Negotiation of Bill or Note;
 Complaint on Note Against Maker and Indorser, and To Enjoin Withdrawal of Collateral Securities Held by Indorser.

INJURIES TO PERSONS:

Declaration, Injury to Person Passing in Unloading Wagon;
 Declaration, Injury to Child by Reason of Improperly Guarding Machinery;
 Declaration, Injuries Caused by Falling Into Unguarded Areaway;
 Declaration, Injury to Employee Using Defective Appliance;
 Declaration, Injury Caused by Defective Insulation of Electric Light Wires;
 Declaration, Action for Being Run Over While on Track;
 Declaration, Injuries Caused by Collision Between Two Street Cars;
 Declaration, Collision Between Row-Boat and Tug;
 Declaration Against Manufacturer of Elevator for Injury to Servant of Owner While Testing;
 Complaint, Injuries Caused by Unguarded Excavation, Near Sidewalk;
 Complaint, Injuries Received on Jumping From Street Car, Collision Being Imminent;
 Complaint, Injuries Received at Grade Crossing;
 Complaint, Injuries Caused by Train Falling Through Bridge;
 Complaint, Injuries Sustained by Sudden Start of Train;
 Complaint, Injury to Employee by Reason of Defective Appliance.

INNS AND INNKEEPERS:

Declaration Against Innkeeper for Refusing To Lodge Plaintiff During the Night;
 Declaration, Loss of Personal Property;
 Complaint for Loss of Trunk or Contents;
 Complaint Against Proprietor of Bathing House for Loss of Pocket Book.

INSANE PERSONS:

Complaint by Committee of Lunatic, Idiot, or Habitual Drunkard;
 Complaint Against Committee of Lunatic, Etc.

INSURANCE:

Complaint by Wife, Partner or Creditor, Insured, on Life Policy;
 Complaint by Executor on Life Policy;
 Complaint on Life Policy by Assignee in Trust for Wife;
 Complaint by Insured on Fire Policy;

Complaint on Fire Policy by Assignee, Purchaser of Property;
 Complaint by Assignee on Agreement To Insure, Policy Not Delivered;
 Complaint by Insured, Correcting Alleged Mistake;
 Complaint Where Insurance Was a Renewal;
 Declaration on Marine Policy of Insurance;
 Complaint on Valued Policy on Ship or Cargo;
 Complaint on Open Marine Policy;
 Complaint, Averment of Loss by Collision;
 Complaint on Marine Policy on Freight;
 Complaint on Marine Policy for Partial Loss and Contribution to General Average;
 Complaint, Marine Policy, Averment of Waiver of Condition.

INTERPLEADER:

Complaint, Interpleader.

INTOXICATING LIQUORS:

Complaint, Recovery of Penalty;
 Complaint To Recover a Penalty for School Fund.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Declaration on a Final Judgment;
 Declaration on Judgment for Defendant;
 Declaration on Judgment of Foreign Court;
 Declaration on a Justice's Judgment;
 Complaint on Judgment, General Form;
 Complaint Upon Justice's Judgment;
 Complaint on Foreign Judgment of Court of General Jurisdiction;
 Complaint on Foreign Judgment of Inferior Tribunal;
 Complaint on Judgment by Assignee;
 Complaint by Purchaser at Sheriff's Sale for Waste Committed Before Conveyance.

JUDGMENTS AND DECREES, REVIVAL OF:

Complaint for Revival of Judgment by Action.

LANDLORD AND TENANT:

Declaration for Rent on Lease;
 Declaration for Rent Due on Agreement To Let;
 Declaration for Rent on Demise, and Use and Occupation;
 Complaint, Lessor Against Lessee for Rent;
 Complaint by Lessor Against Lessee for Injunction and Damages;
 Complaint, Lessor Against Executors for Rent;

Complaint, Lessor Against Assignee for Rent;
 Complaint, Assignee of Rent Against Lessee;
 Complaint, Grantee of Reversion Against Lessee for Rent;
 Complaint, Assignee of Devisee of Reversion, and Rent, Against Assignee of Part of Premises;
 Complaint, Lessor Against Lessee for Deficiency After Re-Entry by Lessor;
 Complaint by Landlord, Having Paid Tax Which Tenant Had Agreed To Pay;
 Complaint Against Landlord for Breach of Covenant for Quiet Possession;
 Complaint Against Tenant on Covenant To Keep Premises in Repair;
 Complaint on Promise To Pay for Surrender of Lease;
 Complaint Against Landlord, Breach of Covenant To Keep in Repair, Special Damages;
 Complaint Against Landlord on Agreement To Complete Demised Premises Well;
 Complaint, Sub-tenant Against His Immediate Lessor;
 Complaint, Heir of Reversioner Against Lessee.

LIBEL AND SLANDER:

Declaration for Libel Charging Perjury;
 Declaration for Slander Charging Robbery;
 Declaration for Irrelevant Libelous Statement Contained in Pleading;
 Complaint, General Form, Where the Words Are Libelous on Their Face;
 Complaint for Words Not Libelous on Their Face;
 Complaint for Libel Relating to Business or Profession;
 Complaint, Where the Libel Was Published in Defendant's Newspaper;
 Complaint for Libel by Signs;
 Complaint for Slander Respecting Plaintiff's Trade, With Special Damage;
 Complaint, Where the Words Are Actionable in Themselves;
 Complaint for Slander of Title.

LIMITATION OF ACTIONS:

Complaint on an Express Promise in Consideration of Precedent Debt;
 Complaint on Debt Barred by Statute

of Limitations, or a Discharge, and Revived by New Promise.

LOGS AND LOGGING:

Declaration in Debt for Penalty, Converting Logs;
Declaration, Injury to Mill Dam by Logs.

MALICIOUS PROSECUTION:

Declaration for Malicious Prosecution;
Complaint for Malicious Prosecution on a Criminal Charge;
Complaint for Obtaining Indictment, on Which a Nolle Prosequi Was Afterwards Entered;
Complaint for Arrest in a Civil Action.

MASTER AND SERVANT:

Declaration for Negligence in Not Providing Safe Place for Employee;
Declaration, Action for Salary Upon Wrongful Discharge;
Complaint by Servant of Railroad Injured by Defective Machinery;
Complaint Against Employer for Breach of Agreement To Employ;
Complaint for Salary and Expenses on Wrongful Discharge;
Complaint Against Third Person for Wrongfully Procuring Plaintiff's Discharge;
Complaint, Wrongful Discharge After Agreement To Employ on Release for Personal Injuries.

MECHANICS' LIENS:

Complaint To Set Aside Fraudulent Lien;
Complaint by Subcontractor, Against Owner and Contractor, for Labor;
Complaint by Contractor for Building Materials.

MINES AND MINERALS:

Complaint, Injury to Surface Support Caused by Mine;
Complaint To Recover Possession of Mine and for Damage After Ouster.

MISTAKE:

Complaint for Money Overpaid by Mistake.

MONEY HAD AND RECEIVED:

Complaint, Money Received, Common Form;
Complaint, Lender Against Borrower;
Complaint, Paid Debt of Another, To Be Repaid on Day Certain;
Complaint for Money Received Contrary to Statute;
Complaint on Account by Assignee of Lender Against Borrower;

Complaint, Paid Debt of Another, To Be Repaid on Demand;
Complaint, Paid Money to Third Person at Defendant's Request.

MONOPOLIES:

Declaration on the Case by Manufacturer Injured by Monopoly.

MORTGAGES:

Complaint on Note and Mortgage (Short Form);
Complaint, Allegation of inadequacy of Security and Demand for Receiver of Rents and Profits;
Complaint by Assignee Against Mortgagor, Mortgagee, Who Guaranteed Payment, Grantee of Equity of Redemption Who Assumed Mortgage, and Junior Incumbrancers;
Complaint by Mortgagee Against Mortgagor and Junior Incumbrancers To Foreclose Upon Default in Interest, Insurance Paid by Mortgagee, Outstanding Judgment;
Complaint by Mortgagee in Possession Against Parties Entitled To Redeem, Seeking an Accounting and Payment, or Strict Foreclosure;
Complaint To Redeem by Mortgagor Against Mortgagee;
Complaint To Redeem by Lessee.

MUNICIPAL CORPORATIONS:

Complaint Against City (General Form);
Complaint Against Municipality, Neglect of Excavation in Street;
Complaint Against City or County for Damage Done by Mob or Riot;
Complaint To Recover Agreed Damages for Property Illegally Taken for Public Improvement;
Complaint To Recover Amount of Interest Coupon.

NEGLIGENCE:

Declaration Against Owner of Coach for Negligence of Servant in Driving Against Chaise;
Declaration Against Bailee for Negligence;
Declaration Against Common Carrier for Losing Box;
Complaint, Negligence of Servant in Driving Against Plaintiff's Vehicle;
Complaint Against Railroad, Crossing Accident;
Complaint Against Railroad for Killing Cattle;
Complaint Against Contractor, Street in Insecure State, Horse Injured;

Complaint for Laying Rubbish in Street, Plaintiff Thrown From Carriage;

Complaint for Keeping Open Dangerous Hatchway Through Which Plaintiff Fell;

NUISANCE:

Declaration for Nuisance Near Dwelling;

Complaint Against Erector of Slaughter House, a Nuisance, Seeking Damages;

Complaint, Prayer for Judgment for Injunction Against Nuisance, and for Damages;

Complaint Against Continuer of Nuisance.

OFFICERS:

Complaint by the Attorney-General;

Complaint by a Single Officer;

Complaint by Board of Officers;

Complaint for an Office Not Elective;

Complaint, Assignment of Breach of Bond of County Treasurer;

Complaint, Assignment of Breach in Sheriff's Bond for Neglect To Levy;

Complaint, Assignment of Breach in Sheriff's Bond, Neglect To Sell;

Complaint, Assignment of Breach in Sheriff's Bond, Neglect To Return;

Complaint, Allegation of Judgment Against Sheriff.

PARENT AND CHILD:

Declaration in Trespass for Debauching Daughter and Servant;

Declaration in Case for Debauching Daughter;

Complaint for Seduction of Plaintiff's Daughter or Servant;

Complaint by Parent for Services of Minor Son.

PARTITION:

Declaration for Partition, Tenants in Common;

Complaint for Partition, General Form;

Complaint for Partition, Setting Forth Sources of Title.

PARTNERSHIP:

Declaration by Surviving Partner;

Count on Promise to Surviving Partner;

Declaration Against Surviving Partner;

Count on Promise by Surviving Partner;

Commencement of Complaint by or Against Partners;

Commencement of Complaint by or Against Partners, Alleging Partnership;

Complaint by Surviving Partner on a Cause of Action Which Accrued to His Firm;

Complaint To Dissolve Partnership;

Complaint for Dissolution of Partnership on Account of Defendant's Misappropriation of Funds;

Complaint To Enjoin Late Partner From Continuing Business After Dissolution;

Complaint by Administrator of Deceased Partner Against Survivor.

PASSENGERS:

Declaration Against Proprietors of Stage Coach for Injuries From Overturning It;

Complaint Against Proprietor of Stage Coach for Loss of Baggage;

Complaint Against Common Carrier of Passengers, by Steamboat, for Injuries;

Complaint Against Railroad for Injuries to Person;

Complaint Against Proprietor of Stage Coach for Injuries to Person;

Complaint, Wrongfully Ejecting Passenger From Train.

PATENTS:

Declaration for Damages for Infringement of Patent.

PAUPERS:

Declaration Against Town for Board of Pauper;

Complaint Against Town for Medical Services to Pauper.

PENALTIES, FORFEITURES AND FINES:

Declaration by a Common Informer;

Declaration in Debt for Violation of Excise Law;

Declaration for Penalty Given by Statute;

Declaration in Qui Tam Action;

Complaint for Penalties, General Form;

Complaint for Selling Liquors Without License; Alleging Both Sales in Small Quantities and Sales To Drink on the Premises;

Complaint for Selling Liquors on Sunday or Election Day;

Complaint by Wife or Husband Against Dealer in Intoxicating Liquors for Illegally Selling to Plaintiff's Husband or Wife;

Complaint for Violation of Ordinance of Board of Supervisors;

Complaint Against a Witness for Disobeying Subpoena.

PHYSICIANS AND SURGEONS:

Declaration as Surgeon, and for Medicines;

Complaint Against Surgeon for Maltreatment;

Complaint, Negligently Performing an Operation.

PLEDGES:

Complaint by Pledgor of Note To Recover Excess;

Complaint Against Pledgee for Injury to Pledge;

Complaint Against Pledgee for Loss of Pledge.

PRAYER FOR RELIEF:

Prayer for Relief to Complaint.

PRINCIPAL AND AGENT:

Declaration Against Shopman for Selling on Credit Contrary to Express Orders;

Declaration by Agent Against Principal for Commission According to Agreement;

Complaint Against Agent for Breach of Instructions as to Sale;

Complaint Against Agent for Money Collected;

Complaint Against Agent for Carelessly Selling to Insolvent;

Complaint Against Agent for Selling for Worthless Bill;

Complaint Against Auctioneer for Selling on Credit;

Complaint Against Agent for Not Using Diligence To Sell Goods;

Complaint Against Auctioneer for Selling Below Seller's Limit;

Complaint Against Auctioneer or Agent for Not Accounting.

PRINCIPAL AND SURETY:

Complaint by Surety Against Principal, for Debt for Goods Sold and Costs of Judgment Thereon Paid by Surety;

Complaint by Surety on Lease Against Principal;

Complaint by Surety Against Principal for Money Paid on Undertaking on Appeal.

QUITTING TITLE:

Complaint To Compel the Determination of Claims to Real Property;

Complaint To Remove a Mortgage Which Is a Cloud Upon Title;

Complaint, Action To Quiet Title;

Cross-Complaint, Setting Up Title in Defendant.

RAILROADS:

Complaint Against Common Carrier for Loss of Goods (a), (b);

Complaint Against Common Carrier for Failure To Deliver in Reasonable Time, With Special Damage;

Complaint by Owner of Goods Against Common Carrier To Re-

cover Back Excess of Freight Exacted;

Complaint, Destruction of Adjoining Property by Sparks From Locomotive.

RECEIVERS:

Complaint by Receiver Alleging Appointment for Dissolved Corporation;

Complaint by Receiver Alleging Appointment Pending Litigation.

RECOGNIZANCES:

Declaration on Recognizance of Bail;

Declaration on Bail Bond by Assignee of Sheriff.

REFORMATION:

Complaint To Reform a Conveyance by Correcting Mistake in Boundary.

REPLEVIN:

Declaration in Cepit et Detinet;

Declaration in Cepit (for taking goods);

Declaration in Detinet (for detaining goods);

Complaint To Recover Goods Taken From Lessee or Bailee;

Complaint for Goods Wrongfully Taken From Plaintiff's Possession;

Complaint To Recover Goods Wrongfully Detained;

Complaint To Recover Goods From One Having Derived Possession Innocently;

Complaint by Seller To Recover Goods From Fraudulent Buyer;

Complaint To Recover Goods From Fraudulent Buyer and His Transferee.

RESCISSION AND CANCELLATION:

Complaint for Rescission of a Contract and Repayment of Advances on the Ground of Fraud;

Complaint To Cancel Contract for Fraud.

RESCUE AND ESCAPE:

Declaration Against Sheriff for Escape on Mesne Process;

Declaration for Rescue;

Complaint for an Escape, Common Form.

REVERSIONS:

Declaration in Case for Injury to the Reversion;

Declaration in Case for Injury to Reversionary Interest in Goods.

REWARD:

Declaration for Reward Advertising for Discovery of Offender;

Declaration for Reward Defendant

Advertised He Would Give, in Civil Case;

Complaint for Reward, Criminal Case.

RIGHT, WRIT OF:

Count in Writ of Right on Demandant's Own Seizin;

Count on Seizin of Demandant's Father.

SALES:

Declaration in Assumpsit, Goods Sold, With Money Counts;

Complaint, Sale and Delivery;

Complaint, Sale and Delivery Where Price Was Agreed on;

Complaint, Sale and Delivery, Upon an Account;

Complaint, Sale to Defendant, and Delivery to a Third Person;

Complaint for Necessaries Furnished to Defendant's Wife or Children;

Complaint Against Fraudulent Buyer, Seeking Injunction Restraining Sale Pending Suit;

Complaint, Sale and Delivery, Anticipating and Avoiding Defense of Payment;

Complaint, Sale and Delivery, Anticipating and Avoiding Defense of an Unexpired Credit;

Complaint Against Seller for Not Delivering;

Complaint Against Buyer for Refusing To Receive Goods;

Complaint Against Seller of Stock for Not Delivering;

Complaint Against Buyer, Contract Made by Broker;

Complaint on Contract To Redeliver Goods or Pay in Reasonable Time;

Complaint Against Buyer for Deficiency After Resale.

SCHOOLS AND SCHOOL DISTRICTS:

Complaint by Teacher To Recover for Services;

SEDUCTION:

Complaint for Seduction.

SERVICE OF PROCESS AND PAPERS:

Affidavit of Service of Declaration on Party;

Affidavit of Service of Declaration on Attorney.

SHERIFFS AND CONSTABLES:

Declaration Against a Sheriff for a False Return;

Declaration Against Sheriff for Neglecting To Levy and Return a Fieri Facias;

Declaration Against Sheriff for Escape Under Capias Ad Satisfaciendum;

Declaration for Money Collected by Sheriff;

Complaint Against Sheriff for Neglecting To Levy;

Complaint Against Sheriff for Neglecting To Pay Over Moneys Collected on Execution;

Complaint Against Sheriff for Neglecting To Return Execution;

Complaint Against Sheriff for False Return;

Complaint by Mortgagee of Chattels Against Sheriff for Selling on Execution Against Third Person;

Complaint Against Sheriff for Escape, on Order of Arrest.

SHIPS AND SHIPPING:

Declaration on Charter Party for Freight and Demurrage;

Declaration on Charter Party for Failure To Furnish Cargo;

Declaration Against Owner of Steamboat for Negligence;

Declaration Against Owner of Vessel for Negligence in Navigation;

Complaint by Ship Owner Against Charterer for Demurrage;

Complaint, Charterer Against Owner for Abandoning Voyage;

Complaint by Ship owner Against Charterer for Not Loading;

Complaint by Shipowner Against Assignee of Cargo;

Complaint for Freight Against Consignor;

Complaint for Freight Against Consignee;

Complaint by Shipowner Against Charterer for Freight, (a), (b);

Complaint for Not Properly Stowing Cargo, Whereby Freight Was Diminished;

Complaint, Averment of Loss in Unloading;

Complaint Against Carriers by Water for Not Regarding Notice To Keep Dry;

Complaint for Negligence in Loading Cargo.

SPECIAL ASSESSMENT:

Complaint To Enjoin a Municipal Corporation From Deeding Land Sold for Illegal Special Assessment.

SPECIFIC PERFORMANCE:

Complaint for Specific Performance, Vendor Against Purchaser;

Complaint for Specific Performance on an Exchange, Parties Having Taken Possession;

Complaint by Creditor for Performance of Agreement To Give a Chattel Mortgage.

SUBROGATION:

Complaint by Fire Insurance Company To Be Subrogated to Insurer's Rights, by Statute;
 Substance of Complaint for Subrogation by Vendor of Land Subject to Mortgage, Compelled To Pay;
 Substance of Complaint for Subrogation by Purchaser, Where Previous Foreclosure Was Set Aside.

SUBSCRIPTIONS:

Complaint on Subscription to Public Object.

SUPPLEMENTAL PLEADING:

Supplemental Complaint in Creditor's Suit To Set Aside Assignment;
 Supplemental Complaint, Allegation of Ignorance, Matters Before Suit;
 Supplemental Complaint in Action To Enjoin Violation of Agreement Not To Continue Trade;
 Supplemental Complaint, Allegation of Ignorance, Matters Before Suit.

SUPPLEMENTARY PROCEEDINGS:

Complaint by Receiver Alleging Appointment in Supplementary Proceedings.

TAXATION:

Complaint for Collection of Personal Tax From Manufacturing Corporation;
 Complaint for Recovery of Tax Paid Under Protest.

TELEGRAPHS AND TELEPHONES:

Complaint by Addressee for Failure To Deliver a Message.

TITLE:

Declaration, Title by Feoffment;
 Declaration, Title by Lease;
 Declaration, Assignment of a Term to the Plaintiff;
 Declaration, Inducement, Seizin in Fee, Husband and Wife in Right of Wife;
 Declaration, Inducement, Seizin for Life;
 Declaration, Title by Surrender of a Leasehold Interest;
 Declaration, Title by Covenant To Stand Seized to Uses;
 Declaration, Inducement That the Grantor or Lessor Was Seized in Fee Simple;
 Declaration, Title by Marriage;
 Declaration, Title by Descent;
 Declaration, Inducement, Estate in Coparcenary;
 Declaration, Inducement, Estate in Joint Tenancy;
 Declaration, Inducement of Tenancy by Curtesy or Dower.

TRADE-MARKS AND TRADE NAMES:

Complaint To Restrain Infringement, Name of a Periodical Publication;
 Complaint To Restrain Infringement of Trade-Mark, and for Damages.

TRESPASS:

Declaration in Trespass for Injury to Personal Property;
 Declaration in Trespass De Bonis Asportatis;
 Declaration in Trespass Quare Clausum Fregit;
 Complaint for Trespass to Land, (a), (b);
 Complaint for Entering House and Injuring It and Goods;
 Complaint for Treble Damages for Injuring Trees;
 Complaint for Trespass to Land for Cutting and Converting Timber;
 Complaint for Trespass to Land for Removing Fence;
 Complaint for Trespass to Land, Where New Fence Was Not on Line;
 Complaint for Malicious Injury;
 Complaint for Malicious Injury, Claiming Increased Damages Under Statute;
 Complaint for Taking Goods, Possession Regained Before Suit;
 Complaint for Taking Goods (Trespass);
 Complaint for Seizing Vessel.

TROVER AND CONVERSION:

Declaration in Case in Trover for Promissory Note;
 Declaration in Case in Trover for Goods, Etc.;
 Complaint for Conversion of a Promissory Note;
 Complaint by Seller Against Fraudulent Buyer of Goods for Damages for Conversion;
 Complaint for Conversion by Administrator;
 Complaint for Conversion;
 Complaint for Conversion by Assignee After Conversion;
 Complaint for Conversion of a Bond by Assignee After Conversion;
 Allegation in Complaint for Goods Received Contrary to Statute;
 Complaint Against Watchmaker for Refusing To Return Watch.

USE AND OCCUPATION:

Declaration, Common Counts for Use and Occupation of Dwelling;
 Declaration, Common Counts for Use and Occupation of Lodging;
 Declaration, Common Counts for Board and Lodging;

Declaration, Common Counts for Necessities Provided for Defendant;

Declaration, Common Count for Hire of Horses and Carriages, Etc.;

Complaint in Action for Use and Occupation, General Form;

Complaint for Fixed Rent;

Complaint for Board and Lodging;

Complaint for Lodgings;

Complaint Against Hirer of Furniture, Etc., for Negligence;

Complaint for Hire of Furniture, Etc., With Damages for Ill-Use;

Complaint for Hire of Pianoforte With Damages for Not Returning It;

Complaint on an Account for Hire of Horses, Carriages, Etc.;

Complaint for Driving on Different Journey From That Agreed, and for Negligence;

Complaint for Pasturing.

VENDOR AND PURCHASER:

Declaration, Common Count for Freehold Estate Sold and Conveyed;

Declaration, Common Count for Leasehold Estate Sold and Assigned;

Declaration Against Vendor for Not Making Good Title;

Complaint on Land Contract for Not Purchasing;

Complaint for the Consideration Money of a Conveyance;

Complaint for Breach of Contract, Purchaser Against Vendor;

Complaint Against Purchaser for Deficiency on Resale;

Complaint, Averment of Defendant's Rescission, as Excuse for Plaintiff's Non-Performance;

Complaint by Vendor Against Executor;

Complaint, Averment of False Representations by Defendant Which Prevented Plaintiff From Fulfilling;

Complaint for Repayment of Deposit on Contract for Purchase of Real Estate, Unfulfilled;

Complaint on Covenant To Maintain Fence;

Complaint on Covenant Against Nuisances, Deed Executed Only by Grantor;

Complaint on Grantee's Covenant To Build;

Complaint for Not Conveying and for Redelivery of Securities.

WAREHOUSEMEN:

Declaration by Warehouseman for Storing Goods;

Complaint Against Warehouseman for Loss of Goods;

Complaint Against Bailee for Not Taking Care of and Returning Goods;

Complaint Against Warehouseman for Refusal To Deliver;

Complaint Against Warehouseman for Injury to Goods by Neglect To Obey Instructions;

Complaint Against Warehouseman for Not Forwarding Goods, According to Agreement.

WARRANTY:

Declaration on Warranty of Horse; Declaration for False Warranty of Horse;

Declaration for Breach of Covenant of Good Title;

Complaint on Warranty of Soundness of Horse;

Complaint on Warranty of Genuineness of Note Sold;

Complaint for Breach of Contract on Warranty of Title of Chattels Sold;

Complaint on Warranty of Amount Due on Judgment Assigned;

Complaint on Covenant, Expressed To Be Subject to Specific Incumbrance;

Complaint on Covenant for Quiet Enjoyment;

Complaint on Covenant of Seizin, or of Power To Convey;

Complaint on Covenant of Warranty of Title;

Complaint on Covenant of Warranty for Deficiency in Quantity;

Complaint on Covenant Against Incumbrances on Real Property.

WASTE:

Declaration in Waste, Voluntary;

Declaration in Waste, Permissive;

Complaint by Lessor for Damages for Waste;

Complaint by Heirs Against Doweress and Her Husband;

Complaint by Devisee for Damages for Waste;

Complaint for Forfeiture and Eviction on Account of Waste.

WATERS AND WATERCOURSES:

Declaration for Damage Caused by Continuing Dam, Flowing Meadow;

Complaint, Allegation of Special Damage to Plaintiff's Land;

Complaint, Allegation Against Continuer of Dam Which Is Nuisance;

Complaint Against Erector of a Dam Which Is Nuisance, Seeking Abatement and Damages;
 Complaint for Erecting a Dam Below Causing Backwater;
 Declaration for Damages for Diversion of Stream;
 Complaint for Diverting Water From Plaintiff's Mill;
 Complaint, Action To Restrain Destroying Water Supply for Irrigation by Mining Operation;
 Complaint, Action for Damages for Interfering With Floating Logs.

WILLS:

Complaint by Creditor of Deceased Against Legatee;
 Complaint Against Devisee by Creditor of Deceased.

WINDING UP CORPORATIONS:

Complaint, Action by Stockholder To Wind Up Corporation.

WORK AND LABOR:

Declaration, Common Counts for Work, Labor and Materials, With Money Counts;
 Declaration for Wages as Hired Servant;
 Declaration for Not Receiving Hired Servant Into Service;
 Declaration for Work With Horses and Carriages;
 Declaration for Work, Journeys, and Attendance;
 Declaration by Undertaker;
 Declaration for Carriage of Goods by Land;
 Declaration by Nurse for Services;
 Declaration for Board and Wages as Hired Servant;
 Complaint for Work and Labor, General Form;
 Complaint by Employee Discharged or Prevented From Fulfilling Contract;
 Complaint for Employee's Refusal To Serve;
 Complaint for Repayment of Advances on Contract for Services Unfulfilled;
 Complaint on Special Contract Completely Fulfilled;
 Complaint for Work and Materials Furnished;
 Complaint for Work and Materials Furnished on an Account;
 Complaint for Tuition Bills;
 Complaint by Proprietors of Newspaper for Advertising;
 Complaint by Advertising Agent for Services and Disbursements;

Complaint for Services in Editing or Compiling Book;
 Complaint for Writer's Services in Editing Newspaper;
 Complaint for Work and Labor Upon an Account;
 Complaint for Goods Made at Defendant's Request and Not Accepted;
 Complaint for Breach of Contract To Manufacture Goods;
 Complaint on Promise To Manufacture Wool;
 Complaint Against Printer on Agreement To Print, and for Injury to Stereotype Plates;
 Complaint for Stabling of Horses;
 Complaint Against Watchmaker for Not Using Due Care and Skill in Repairing;
 Complaint Against Common or Private Carrier on Special Contract for Negligent Loss of Goods;
 Complaint Against Common or Private Carrier on Special Contract for Failure To Deliver at Time Agreed, With Special Damage.

WRIT OF ENTRY:

Declaration on Writ of Entry.

I. Declarations, Commencements.

A. Commencement of Declaration Where Suit is Commenced by Declaration.

Supreme court. Of (May) term (if the narr. is filed in vacation, and the cause of action has arisen after the term, insert here a particular day, thus, to-wit, of the fifteenth day of June), in the year one thousand eight hundred and (forty-six).

County, ss.: A. B., plaintiff in this suit, by E. F., his attorney, comes into this court, according to the form of the statute authorizing the commencement of suits by declaration, and complains of C. D., defendant in this suit, of a plea of trespass on the case upon promises (or as the action may be): For that whereas, etc. (or if in trespass: "For that, etc.," proceeding as in the ordinary forms of declarations). Burr. App. 327, §594.

B. Commencement of Declaration Against Defendant in Actual Custody.

(Title and venue.) A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in the custody of the sheriff of the county of (Kings), by virtue of a certain writ of the people of the

state of New York, called a *capias ad respondendum*, issuing out of the supreme court of judicature of the people of the said state, before the justices of the court aforesaid, at the suit of the said plaintiff, against the said defendant, and returnable in the same court, the (first Monday of May), in this present term of (May) of a plea of (trespass on the case). Burr. App. 330, §594.

C. Declaration, Commencement Against Several Defendants, Some Taken, Etc.

(Title and venue.) A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D. and R. R., defendants in this suit, the said C. D. being in custody, etc., and the sheriff of the county of (Richmond) to whom the writ of *capias ad respondendum* issued in this suit was directed and delivered, having returned the same, as to the said defendant, R. R., not found, of a plea, etc. Burr. App. 330, §594.

D. Commencement of Declaration Where Executor is Plaintiff.

(Title and venue.) A. B., executor of the last will and testament of J. K., deceased, plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea, etc. (or, if commenced by declaration, vary the form accordingly. If the action be debt, omit, in ordinary cases, the words "owes to, and," in the commencement.) Burr. App. 329, §594.

E. Commencement, Where Administrator is Plaintiff.

(Title and venue.) A. B., administrator of all and singular the goods, chattels and credits which were of J. K., deceased, at the time of his death, who died intestate, plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, etc. (as in I, D). Burr. App. 329, §594.

F. Commencement of Declaration Where Executor is Defendant.

(Title and venue.) A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., executor of the last will and testament of J. K., deceased, defendant in this suit, being in custody of, etc. (or according to the case. And as to the commencement in debt, see I. D). Burr. App. 329, §594.

G. Commencement of Declaration Where Administrator is Defendant.

(Title and venue.) A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., administrator of all and singular the goods, chattels and credits which were of J. K., deceased, at the time of his death, who died intestate, defendant in this suit, etc. (as in I, D). Burr. App. 329, §594.

H. Commencement, Where Infant is Plaintiff.

(Title and venue.) A. B. and J. N., who is admitted by the justices of the supreme court of judicature of the people of the state of New York, in the court aforesaid, here to prosecute for the said A. B., who is an infant within the age of twenty-one years, as the next friend of the said A. B., complains of C. D., defendant in this suit, being in custody, etc. (or, if commenced by declaration, vary the form accordingly). Burr. App. 329, §594.

I. Commencement, Where Town is Plaintiff.

(Title and venue.) The town of (New Rochelle), in the county of (Westchester), plaintiffs in this suit, by E. F., their (its) attorney, complain, etc. Burr. App. 328, §594.

J. Commencement, Where Town is Defendant.

(Title and venue.) The town of _____, in the county of _____, was summoned to answer A. B., of a plea of (trespass on the case), and thereupon, the said plaintiff, by E. F., his attorney, complains, etc. Burr. App. 328, §594.

K. Commencement of Declaration Where County is Plaintiff.

(Title and venue.) The board of supervisors of the county of (Dutchess), plaintiffs in this suit, by E. F., their attorney, complain of C. D., etc. Burr. App. 328, §594.

L. Commencement, Where County is Defendant.

(Title and venue.) The board of supervisors of the county of (Orange) were summoned to answer A. B., of a plea of (trespass on the case), and thereupon the said plaintiff, by E. F., his attorney, complains, etc. Burr. App. 328, §594.

M. Declaration, Where Corporation is Plaintiff.

The mayor, aldermen and common-

alty of the city of New York (or otherwise, according to the name of the corporation), plaintiffs in this suit, by J. McK., their attorney, complain of C. D., etc. Burr. App. 327, §594.

**N. Commencement of Declaration,
Where Corporation is Defendant.**

The president, directors and company of the bank of _____ were summoned to answer A. B., of a plea of (trespass on the case upon promises): And thereupon the said A. B., by E. F., his attorney, complains, etc. Burr. App. 328, §594.

O. Declaration, Where Banking Association is Plaintiff.

A. B., president of the N. A. T. and B. Company, an association doing business in the (city of New York), under and by virtue of an act of the legislature of the state of New York, entitled "An act, to authorize the business of banking, passed April 18, 1838," plaintiff in this suit, by E. F., his attorney, complains, etc. Burr. App. 328, §594; 23 Wend. (N. Y.) 103; 25 Wend. (N. Y.) 605.

**P. Commencement of Declaration,
Where Banking Association is Defendant.**

A. B., plaintiff in this suit, by E. F., his attorney, complains, etc. (according to the mode of commencing the suit), of C. D., president of the E. C. bank, an association doing business, etc. (as in I, O), defendant in this suit, etc. Burr. App. 328, §594; 24 Wend. (N. Y.) 345; 6 Hill (N. Y.) 240.

**Q. Commencement of Declaration
Against Defendant by Wrong Name.**

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, who was arrested (or "served with process") by the name of T. D., being in custody, etc. (if commenced by declaration, vary accordingly), of a plea, etc. For that whereas, etc. (the right name throughout the declaration afterwards). Burr. App. 329, §594.

II. Complaints, Common Forms.

**A. Commencement of Complaint,
General Form.**

(Name of court, etc.) A. B., plaintiff, v. Y. Z., defendant. The plaintiff complaining of the defendant alleges: 1 Abb. Forms 134.

B. Complaint, General Form.

I. That his action is founded on an instrument for the payment of money only, made and delivered by defendant to plaintiff, of which the following is a copy: (copy of the instrument).

II. That there is due to the plaintiff thereon from the defendant the sum of _____ dollars (with interest from _____), which he claims, and asks judgment for. 1 Abb. Forms 215.

C. Complaint by One Creditor Suing on Behalf of All Others.

(Name of court, etc.) A. B., plaintiff, against Y. Z., defendant. The plaintiff, complaining on behalf of himself and all others the creditors of M. N., who shall in due time come in and seek relief by, and contribute to the expenses of this action, alleges: (set forth cause of action).

That the said creditors of M. N. are very numerous, to-wit, more than _____ in number, and that some of them are unknown to the plaintiff, and cannot with diligence be ascertained by him, and that it is impracticable therefore for him to bring them all before the court in this action; wherefore he sues for the benefit of all. 1 Abb. Forms 128.

D. Complaint by One Creditor Suing on Behalf of All Others, Particular Class of Creditors.

(Title as above.)

The plaintiff, complaining on behalf of himself and all others the creditors of M. N., who are parties to the deed of trust hereinafter mentioned, who shall come in due time and seek relief by and contribute to the expenses of this action, alleges:

(Continue as above; or add, unless it clearly appears by other allegations): That the question which is the subject of this action is one of a common and general interest of all the said creditors under said trust deed, wherefore the plaintiff sues for the benefit of all. 1 Abb. Forms 129.

E. Complaint by Common Informer.

A. B., the plaintiff, who sues as well for the people (or for the overseers of the poor of the town of _____, in the county of _____), complains against Y. Z., and alleges: 1 Abb. Forms 130.

F. Complaint, Averment of Performance of Conditions Precedent.

(Insert after the copy of the instru-

ment). 11. That the plaintiffs (and the holders thereof) have duly performed all the conditions on their part. 1 Abb. Forms 216.

G. Complaint, Averment of Consideration.

(Insert after the copy of the instrument.) 11. That the defendant made the same for value received (or made the same in consideration of goods theretofore sold and delivered to him by the plaintiff; or of services theretofore rendered to him by the plaintiff, at his request, or otherwise state the nature of the consideration). 1 Abb. Forms 216.

H. Complaint, Averment That Defendants Made Instrument.

I. That on the _____ day of _____, 18—, at _____, the defendants (being then partners under the firm name of Y. Z. & Co.) made their promissory note (or made and sealed their bond) in writing, of which the following is a copy: 1 Abb. Forms 217.

I. Complaint, Common Form for Money Due on Account.

I. That the defendant is indebted to the plaintiffs in the sum of _____ dollars, upon an account for (here state briefly the consideration, e. g., goods sold and money lent), at _____, between the _____ day of _____, 18—, and the _____ day of _____, 18—.

II. That the sum of _____ dollars became payable thereon on the _____ day of _____, but no part thereof has been paid. 1 Abb. Forms 262.

J. Complaint Against Buyer for Not Delivering Note for Goods.

I. That on the _____ day of _____, 18—, at _____, this plaintiff sold and delivered to the defendant merchandise (consisting of various articles of hardware), of the value of _____ dollars.

II. That the defendant then and there promised to give the plaintiff therefor his negotiable promissory note on that day (or on the _____ day of _____, 18—, or on demand, or within a reasonable time thereafter), dated that day (or dated on the _____ day of _____, 18—), for the said sum of _____ dollars, payable in _____ months from said date.

III. That on the _____ day of

_____, 18—, at _____, the plaintiff duly demanded such note from the defendant, but the defendant refused (or: That although a reasonable time for the delivery of such note had elapsed before the commencement of this action, yet the defendant has neglected) to deliver such note, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 375.

K. Complaint on Non-Negotiable, Conditional Note.

I. That on the _____ day of _____, 18—, at _____, the defendant (for value received, or in consideration of, etc.) made and delivered to the plaintiff his promissory note in writing, of which the following is a copy:

\$100. Brooklyn, 1st January, 1856.

For value received, I promise to pay to A. B. one year after date, one hundred dollars, in case the proceeds of the milk-route I have this day bought of him shall exceed the sum of two thousand dollars.

(Signed) Y. Z.

II. That the proceeds of said milk-route did, before the expiration of said year, exceed the sum of two thousand dollars (of which the defendant, on the _____ day of _____, 18—, at _____, had due notice, and payment of said note was then and there duly demanded).

III. That no part of said note has been paid (except, etc.), and there is now due to this plaintiff thereon, from the defendant, the sum of _____ dollars, with interest from, etc. 1 Abb. Forms 315.

L. Complaint on Note Payable in Chattels.

I. That on the _____ day of _____, 18—, at _____, the defendant, for value received (or when the consideration is described in the note, for a valuable consideration therein expressed, or where no consideration is mentioned, for and in consideration of, etc., stating the real consideration, whatever it may have been), made and delivered to the plaintiff his promissory note in writing, of which the following is a copy:

"For value received, I promise to pay Martin Gilbert three hundred and sixty-two dollars and fifty cents in castings, such as said Gilbert shall select and direct, such as are cast at the Middleburgh furnace, which I agree to

deliver at Gilbert's dwelling house at Ghent, in Columbia county, at 4½ cents per pound, to be delivered within or by the first day of March next, and agree to deliver some castings, as it may be convenient for me to deliver, soon; said Gilbert to give timely notice what castings he will select or want; and in default thereof, I agree to pay the money for such part as is not paid in castings.

June 8th, 1843.

(Signed) Thos. P. Danforth.

II. That the plaintiff thereafter duly performed all the conditions of the same on his part.

III. That no part thereof has been paid (except, etc.). 1 Abb. Forms 316

M. Complaint by Assignee of Bill Payable Out of Particular Fund.

I. That on the _____ day of _____, 18—, at _____, one M. N. made his (or certain persons under their firm name, etc., made their) bill of exchange or order in writing, dated on that day, and directed it to the defendant (or to the defendants, under their firm name of, etc.), and thereby required the defendant to pay to one O. P., out of the proceeds of (state fund as in the bill), _____ dollars, _____ days after the date (or sight) thereof (or otherwise), for value received, and delivered it to said (payee).

II. That on the _____ day of _____, at _____ (or then and there), upon sight thereof, the defendant accepted the same, payable, when in funds, from the proceeds of (etc., as in acceptance).

III. That on the _____ day of _____, 18—, at _____, said (payee) fully assigned said bill to this plaintiff.

IV. That on the _____ day of _____, 18—, the defendant had funds of the said (drawer), proceeds of, etc.

V. That payment of said bill was, on the _____ day of _____, 18—, at _____, duly demanded by this plaintiff from the defendant.

VI. That no part thereof has been paid (except the sum of _____, etc.). 1 Abb. Forms 248.

III. Complaints on Undertakings.

A. Complaint on Undertaking To Discharge Attachment.

I. That on or about the _____ day of _____, 18—, an attachment

against the property of M. N. was issued out of the supreme court, by an order duly made by Hon. _____ in an action commenced by A. B., the plaintiff herein, against one M. N., to recover (here briefly designate the cause of action, e. g., first, the proceeds of the sale of certain goods, laces, and embroideries of said plaintiff; second, for money lent by said plaintiff to said M. N. on his own request; and third, for money due by said M. N. to said plaintiff).

II. That afterwards, and on or about the _____ day of _____, 18—, the said M. N. having appeared in said action, and being about to apply for a discharge of said attachment, the defendants herein, W. X. and Y. Z., pursuant to section _____ of the code of procedure, undertook in writing in the sum of _____ dollars, that they would, on demand, pay to the plaintiff the amount of the judgment which might be recovered against said M. N., not exceeding said last mentioned amount (or the defendants herein executed and filed with the clerk of said court a written undertaking, pursuant to section _____ of the code of procedure, of which a copy is annexed as a part of this complaint, and marked Exhibit A).

III. That said attachment was thereupon discharged, and that subsequently, and on the _____ day of _____, 18—, said plaintiff recovered a judgment which was duly given by said court against said M. N. in said action, for _____ dollars, damages and costs, as appears by the record and docket thereof, duly entered and docketed on the _____ day of _____, 18—, in the office of the clerk of _____ county, which judgment has not been paid.

IV. That a demand of payment thereof to the plaintiff was duly made on said defendants, on or about the _____ day of _____, 18—, which they and each of them refused; and that no part thereof has been paid. 1 Abb. Forms 325.

B. Complaint on Undertaking in Claim and Delivery To Secure Return of Property, Etc.

I. That heretofore this plaintiff commenced an action in the _____ court, against (T. C., sheriff of the city and county of New York), to recover possession of specific personal property.

II. That in the course of said action, such proceedings of claim and delivery, under section _____ of the code of procedure, were had, that on the _____ day of _____, 18—, the defendants made and delivered to the coroner (or, usually, the sheriff) for the use of this plaintiff, pursuant to section _____ of the code, their written undertaking, of which the following is a copy: (copy of the undertaking).

III. That the personal property referred to in said undertaking was returned to the said T. C., defendant in said action, pursuant to said undertaking, and to a requisition of said T. C., defendant in said action, made pursuant to section _____ of the code, and said undertaking was thereupon duly delivered to the plaintiff.

IV. That such proceedings were afterwards had, that on the _____ day of _____, 18—, this plaintiff recovered judgment, which was duly given by said court in said action against T. C., the defendant therein, that the plaintiff recover possession of said property, or the sum of _____ dollars, in case a delivery could not be had.

V. That no return of the property has been had, and no part of said judgment has been satisfied.

VI. (State demand, where that is necessary, see paragraph V of III, E, or state execution unsatisfied, as follows): That this plaintiff thereafter caused execution to be issued on said judgment against T. C., the said defendant, which execution has been returned wholly unsatisfied, and that no part of said sum has been paid. 1 Abb. Forms 328.

Note.—This complaint is framed under the provisions of the New York statute.

C. Complaint on Undertaking of Bail.

I. That on the _____ day of _____, 18—, at _____, under an order of arrest theretofore duly granted by K. L., a judge of the _____ court, against one M. N., in an action brought in said court by this plaintiff against the said M. N.; the said M. N. was arrested by the sheriff of the county of O.

II. That on the _____ day of _____, 18—, at _____, the defendants, as the bail of said M. N., executed a written undertaking, pursuant to section _____ of the code of pro-

cedure, of which a copy is annexed as a part of this complaint (or and thereby undertook, in the sum of _____ dollars), that the said M. N. should at all times render himself amenable to the process of the court, during the pendency of the said action, and to such as might be issued to enforce the judgment therein (or otherwise, according to the terms of the undertaking).

III. That thereupon the said M. N. was discharged from said arrest.

IV. That on the _____ day of _____, 18—, judgment in said action was duly given by said court, against him, and for the plaintiff, for _____ dollars, which has not been paid.

V. That on the _____ day of _____, 18—, execution thereon against his property was duly issued to the sheriff of the county in which he was originally arrested, and the same was returned by such sheriff wholly unsatisfied (or, if in part, say how).

VI. That an execution against his body was issued and tested (or dated) on the _____ day of _____, 18—, to the same sheriff, and was on the _____ day of _____, 18—, by him returned, that the defendant could not be found within his county. 1 Abb. Forms 327.

D. Complaint on Undertaking for Costs and Damages on Attachment.

I. That heretofore an action was commenced in this court (or the _____ court) by the defendant Y. Z. (or by one Y. Z.) for the recovery of money against this plaintiff, wherein the said Y. Z. made application to one of the justices of the said court for a warrant of attachment against the property of this plaintiff, whereupon the defendant then and there (or on the _____ day of _____, 18—, at _____) executed and filed with the clerk of said court for the benefit of this plaintiff (or and delivered to this plaintiff), pursuant to section _____ of the code of procedure, a written undertaking, of which the following is a copy: (copy of the undertaking).

II. That pursuant to said application and undertaking, one of the justices of said court issued a warrant of attachment directed to the sheriff of the county of _____, whereby the said sheriff was required to attach and safely keep sufficient property of this plaintiff to satisfy the demand of the

said Y. Z. in said action, to-wit, the sum of _____ dollars, together with costs and expenses.

III. That at the time of the issuing of said attachment this plaintiff was engaged as a merchant in selling dry goods at wholesale and retail, at No. _____ street, in the city of _____,

in said county. That the sheriff of said county, pursuant to said warrant of attachment, entered said store and removed the property of this plaintiff, and kept this plaintiff out of possession of the same for the space of over _____ months; that thereby the business of the plaintiff was utterly broken up, and the goods of the plaintiff became unmarketable and useless, and this plaintiff's credit was greatly injured, to his damage _____ dollars.

IV. That such proceedings were had in the suit aforesaid, that this plaintiff on the _____ day of _____, 18—, recovered judgment therein, which was duly given by said court against the said Y. Z., plaintiff therein, for the sum of _____ dollars, his costs of defending said action, which has not been paid.

V. That on the _____ day of _____, 18—, at _____, this plaintiff duly demanded payment of the said judgment from said Y. Z.; but no part thereof has been paid. 1 Abb. Forms 324.

E. Complaint on Undertaking for Costs and Damages on Arrest.

I. That heretofore an action was commenced in the _____ court by the defendant Y. Z. (or by one Y. Z.) against this plaintiff, wherein the said Y. Z. made application to one of the justices of said court for an order of arrest against this plaintiff, whereupon the defendants then and there (or on the _____ day of _____, 18—, at _____) executed and filed with the clerk of said court, for the benefit of this plaintiff (or, and delivered to this plaintiff), pursuant to section 182 of the code of procedure, a written undertaking, of which the following is a copy: (copy of the undertaking).

II. That thereupon, pursuant to said application and undertaking, an order was made by one of the justices of said court for the arrest of this plaintiff, and thereby the said Y. Z. required the sheriff of _____ county to arrest this plaintiff, and hold him to bail in the sum of _____ dollars.

III. That this plaintiff was, on or about the _____ day of _____, 18—, arrested by the sheriff of the _____, under said order, and was unjustly detained and deprived of his liberty thereunder for the space of _____ days, to his damage _____ dollars.

IV. That such proceedings were afterwards had in said action, that this plaintiff on the _____ day of _____, 18—, recovered judgment therein, which was duly given by said court against the defendant Y. Z. for _____ dollars, this plaintiff's costs and expenses of defending said action, which has not been paid.

V. That on the _____ day of _____, 18—, at _____, this plaintiff duly demanded payment of said judgment and damages from the defendant Y. Z.; but no part thereof has been paid. 1 Abb. Forms 326.

F. Complaint on Undertaking Which Recites Facts.

I. That on the _____ day of _____, 18—, at _____, the defendant made an undertaking, a copy of which is hereto annexed, as a part of this complaint.

II. That thereafter, at _____, judgment was recovered in the action therein mentioned (which was duly given by, etc.) against the plaintiff (or defendant) therein, for the sum of _____ (or otherwise, according to the case), no part whereof has been paid.

III. (Where execution is necessary, it may be alleged thus): That on the _____ day of _____ (a transcript of said judgment was duly filed in the office of the clerk of the county of _____; and on the same day) an execution thereon against the property of _____ was duly issued to the sheriff of said county, which has been duly returned wholly unsatisfied (or unsatisfied as to the sum of, etc.).

IV. (If demand is necessary by the terms of the undertaking, aver it as in III, A.) 1 Abb. Forms 323.

G. Complaint on Undertaking Given on Obtaining Injunction.

I. That on the _____ day of _____, 18—, in an action brought by M. N. against this plaintiff, an injunction, issued out of this court (or the _____ court) was duly served on this plaintiff, by which this plaintiff

was enjoined from (here state briefly the effect of the injunction).

II. That upon the issuing of the said injunction in the said action, the defendants gave an undertaking required by the court (or judge), of which the following is a copy: (copy of the undertaking).

III. That said action so commenced against this plaintiff was prosecuted and carried on, and finally decided by the court, and it was thereby adjudged that the said M. N. was not entitled to the said injunction.

IV. That the damages sustained by this plaintiff, by reason of the said injunction, amounted to the sum of _____ dollars, and interest thereon from the _____ day of _____, which the court on that day awarded to this plaintiff.

V. That no part thereof has been paid. 1 Abb. Forms 331.

Note.—This form is supported by *Loomis v. Brown*, 16 Barb. (N. Y.) 325.

DECREES.

I. Introductory Parts, 360

- A. *English Form*, 360
- B. *Circuit Courts of United States*, 360
- C. *Decree on Motion for Decree*, 360

II. Declaratory Decrees, 361

- A. *On Special Case*, 361
- B. *If Special Case Stands for Judgment*, 361
- C. *Court Declining To Answer One Question*, 361

III. Orders, 361

- A. *On Special Petition*, 361
- B. *On Petition as to Part Adjourned*, 361
- C. *On Special Motion*, 361
- D. *On Cross-Motion*, 361
- E. *Introductory Part on Further Consideration*, 361

IV. Usual Directions, 361

- A. *Reference to Master*, 361
- B. *Where Account Is Directed*, 362
- C. *General Adjournment to Chambers*, 362
- D. *Particular Reference*, 362
- E. *Liberty To State Special Circumstances*, 362
- F. *Master To Make Separate Report*, 362

G. *To Settle Conveyances*, 362

H. *Further Directions To Settle Conveyances*, 362

I. *Reservation of Interest*, 362

J. *Reservation of Costs*, 362

K. *Taxation and Payment of Costs*, 362

L. *Further Consideration Adjourned*, 362

M. *Adjourned With Liberty To Apply in Chambers*, 362

N. *Costs Partly Dealt With*, 362

O. *Payment of Money*, 362

P. *Payment of Interest*, 362

1. *To Life Tenant*, 362

2. *To Trustees*, 363

3. *To Corporation Aggregate*, 363

4. *To Treasurer of Corporation*, 363

5. *To Married Woman*, 363

6. *To Husband*, 363

Q. *Reference, Bill Taken Pro Confesso*, 363

V. *Taxation and Payment of Costs*, 363

A. *One Party to Another*, 363

B. *Plaintiff to One Defendant, Recovery From Other*, 363

C. *Costs of Application, Costs in Cause*, 363

D. *Petition Dismissed With Costs*, 363

E. *Payment Without Prejudice*, 363

F. *No Costs to Either Side*, 364

G. *No Costs to Either Side as to Part of Proceedings*, 364

H. *Plaintiff's and Defendant's Respective Costs*, 364

I. *Plaintiff's Costs Except, Etc.*, 364

J. *Defendant's Costs Except, Etc.*, 364

K. *Costs Except as to Particular Claim*, 364

L. *Costs Up to Particular Time*, 364

M. *For Plaintiff and Defendant for Certain Times*, 365

N. *Costs and Set-Off Against Sum Due*, 365

O. *To Deduct for Unnecessary Length of Papers*, 365

VI. *Costs and Payment Out of Funds in Court*, 365

A. *Payment Out of Funds*, 365

B. *Payment Out of Cash*, 365

VII. *Decrees by Consent*, 366

VIII. *Decrees Confirming Acts Done*, 366

IX. *Reserving Case for Full Court*, 366

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Decree, Settled Accounts To Stand;
Decree Setting Aside Stated Accounts, and for General Account;
Decree for General Account, Injunction Continued;
Decree, Injunction Continued, Judgment as Security;
Decree, Order of Reference to Master;
Decree, Accounts To Be Conclusive, With Leave To Show Errors;
Decree, Direction for Leave To Surcharge and Falsify;
Decree, Release To Stand as to Sums Received, and Account Stated;
Decree, Rests To Be Made by Master;
Decree, Special Circumstances To Be Reported;
Directions, Equities Reserved;
Decree, Direction for Production of Evidence Before Master;
Directions, Rest of Costs Reserved;
Directions, Liberty To Apply;
Decree, Order To Report Facts;
Decree for Account of Freight and Earnings of Ship;
Decree, Balance Found Due To Be Paid, Costs of Setting Aside Stated Account.

ADMIRALTY:

The Caption of Orders and Decrees;
Decree for Wages and Short Allowance for Part of Voyage, and Forfeiture of Residue;
Decree Settling Priority in Distribution of Proceeds in Court, in Several Causes;
Final Decree for Defendant in Possessory and Petitory Suit;
Decree for Libelant on Charter Party;
Decree on the Merits With Reference to Commissioner;
Decree, Order on Default With Reference on Amount of Damage;
Decree, Order of Condemnation by Default and Reference to Commissioner;
Decree for Libelant on Hearing With Reference to Compute;
Decree Overruling Exceptions to an Answer;
Final Decree of Forfeiture on a Libel of Information;
Decree on Special Motion Dismissing Libel When Process Had Improvidently Issued;

Final Decree for Sum Certain, With Costs;
Final Decree on Peremptory Exception to Libel;
Decree of District Court, After Remittitur From Supreme Court.

ANNUITIES:

Decree for Recovery of Annuity.

CONTRIBUTION:

Decree Between Co-Defendants, in Suit by Creditor;
Decree, One Co-surety Unable To Pay His Full Share;
Decree, Reference for Account of Payments by Plaintiff as Surety;
Decree for Contribution Between Co-Sureties and Principal.

COPYRIGHT PROCEEDINGS:

Decree for Perpetual Injunction Upon Printing, Publishing, Etc.

CREDITORS' SUITS:

Decree Discharging One Defendant on Paying Amount Reported to Receiver;
Decree Setting Aside Fraudulent Conveyance, Charging Real Estate With Judgment Debt, and Not Permitting Conveyance To Stand as Security on Account of Intent To Defraud.

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Order for Leave To Discontinue, Without Costs;
Order for Dismissal; Reason Stated; Costs; Without Prejudice to Right To Bring Another's Suit;
Order for Dismissal on Case Agreed;
Order Dismissing for Non-delivery of Copy of Bill;
Order for Dismissal of Bill at the Hearing;
Order for Dismissal of Bill Framed To Prevent Prejudice;
Order for Dismissal of Bill Where Plaintiff Does Not Appear;
Dismissal of Bill With Costs as to Some Defendants and Without Costs as to Others;
Order for Dismissal as to Part of Bill;
Order Dismissing Action Absolutely;
Order Dismissing Action Unless Plaintiff Moves;
Order of Dismissal by Plaintiff Under Statute;

DIVORCE:

Decree of Divorce From Bed and Board, With Alimony, Other Directions, Custody of Child;
Decree of Divorce.

DOWER, PROCEEDINGS TO RECOVER:

Decree for Dower, Master To Assign;

Decree Assigning Dower, Commissioners Appointed;

Decree Assigning Dower and Ordering Inquiry as to Separate Parcels.

EQUITY JURISDICTION AND PROCEDURE:

Order for Decree Pro Confesso Where Defendant Does Not Appear at the Hearing;

Order for Decree Pro Confesso Where Defendant Appears and Waives Objections;

Petition To Enter a Decree Nunc Pro Tunc;

Leave To Enter Decree Nunc Pro Tunc;

Notice of Motion To Vacate Enrolment of Decree;

Notice of Motion for Decree.

FRAUDULENT CONVEYANCES:

Decree, Conveyance in Contemplation of Insolvency Set Aside as Fraudulent;

GUARDIAN AND WARD:

Order on Interlocutory Account;

Decree on Final Account of Guardian.

HEARING:

Decretal Order Retaining Bill, With Liberty To Bring Action at Law.

HUSBAND AND WIFE:

Decree, Sale of Stock and Payment to Wife's Separate Use;

Inquiry Whether Any Settlement, and if Proper, and if Not, Directions for Settlement;

Share Settled by Order, Without Deed, Husband Bankrupt;

Decree Ordering Trustee To Contribute to Support of Insane Wife.

INFANTS:

Decree Nisi Against Infant;

Decree Absolute Against Infant (on coming of age);

Decree, Infants Not Bound, Former Accounts To Be Adopted if Beneficial;

Order for Increase of Maintenance of Infant;

Order Appointing Guardian of Person and Maintenance.

INHERITANCE:

Decree in Favor of Heirs, Declaring Void Deed Obtained of Their Ancestor by Imposition.

INJUNCTIONS:

Decree Making Injunction Perpetual at Hearing;

Decree for Mandatory Injunction,

Enjoining Return of Documents;

Decree To Restrain Use of Real Estate in Violation of Agreement;

Decree, General, Restraining a Town and Its Officers.

INSANE PERSONS:

Order Appointing Guardian of Insane Person.

INTERPLEADER:

Decree To Interplead;

Decree, Action Stayed as to Policy Money, Inquiry as to Who Is Entitled.

JUDGMENT RECORDS:

Enrolment of Final Decree in Equity.

LOST INSTRUMENTS:

Order in Case of Lost Deed With Injunction;

Order in Case of Lost Mortgage Deeds;

Decree for Indemnity Against Lost Bill of Exchange.

MORTGAGES:

Decree for Foreclosure at Hearing; Mortgagor in Possession;

Decree of Final Foreclosure;

Decree for Sale in Default of Payment;

Decree for Foreclosure; Mortgagee in Possession; Costs; Repairs; Improvements and Profits; Reconveyances; Default; Infants;

Order as to Occupation Rents;

Order That Account Be Taken of Repairs and Lasting Improvements;

Order That Profits Be Applied to Discharge of Mortgage Debt;

Order To Inquire as to Deterioration;

Order To Inquire as to Strip and Waste;

Order To Take Account of Insurance Premiums;

Decree for Redemption and Account Against Mortgagee in Possession;

Order for Dismissal of Bill for Redemption on Failure To Pay Amount Found Due;

Final Order, Action for Redemption.

NUISANCE:

Decree Staying Pollution of a Stream;

Decree for Abating and Reducing Mill Dam, Etc., With Injunction;

Interlocutory Decree, Ordering Reference for Experiments as to Extent of Nuisance.

PARTITION:

Decree for Partition and Commission To Issue.

See "How To Use This Volume," Introduction, page v.

PARTNERSHIP:

- Decree for Dissolution of Partnership From Time of Notice;
- Decree for Account of Dealings and Transactions in Partnership;
- Decree Requiring Surviving Partner, Who Has Retained Capital Stock, To Account for Profits;
- Decree; Infants Declared Entitled to Profits Against Survivor of Partnership, Also Executor;
- Decree; House Where Business Was Carried on Declared Partnership Assets;
- Decree Declaring Partnership Realty To Be Personalty.

PATENTS:

- Decree Staying Infringement of Patent as to Machinery;
- Decree Staying Infringing Patent as to Bricks;
- Decree Staying Infringement of Patent After Verdict Establishing Patent;
- Decree, Declaration of Validity of Patent, Infringement, Account, Perpetual Injunction;
- Order, Motion To Stand Over, With Leave To Bring Action and Direction for Inspection; Defendant Keeping an Account.

PLEA IN EQUITY:

- Plea of Decree of Record.

PLEDGES:

- Decree for Redemption of Goods Pledged; Inquiry as to Overpayment.

RECEIVERS:

- Acceptance and Approval of Receiver's Account.

RESCISSION AND CANCELLATION:

- Decree of Rescission and Cancellation;
- Decree, Purchase Completed Through Fraud and Misrepresentation Set Aside;
- Decree, Settlement by Lunatic, Since So Found, Set Aside.

SPECIFIC PERFORMANCE:

- Decree on Bill by Vendor To Enforce Contract for Sale;
- Decree, Declaration of Right on Bill by Vendor, and Inquiry;
- Order To Inquire if Good Title Can Be Made;
- Order for Inquiry, if Part to Which Title Is Not Shown, Is Material;
- Decree on Bill by Purchaser;
- Decree Where Title Accepted at Hearing;
- Decree, Purchaser Having Waived

Title, Indemnity Against Mortgage;

- Decree on Bill by Intended Lessee;
- Decree for Specific Performance of Agreement To Execute Mortgage;
- Decree, With Inquiry if Leases Tendered for Execution Are Proper;
- Decree; Directions for Lease To Contain Particular Covenant;
- Decree Where Title Accepted Subject to Requisitions, and Subject to Compensation;
- Decree, Abatement of Price for Deficiency;
- Decree, Abatement of Price for Delay;
- Decree; Voluntary Settlement Set Aside in Favor of Purchaser;
- Decree Against Specific Performance; Causes Stated.

STAY OF PROCEEDINGS:

- Order by Court of Equity Staying Present and Future Action;
- Order, Leave To Proceed With Action, But Execution Stayed;
- Order To Stay Sale and Withdraw, Where Execution Issued After Notice of Decree.

SUPPLEMENTAL PLEADING:

- Decree To Carry on Proceedings;
- Order To Carry on Suit Against Assignees of Bankrupt or Insolvent Defendant;
- Decree To Carry on Proceedings on Supplemental Bill, Nature of Bill of Revivor, Original Decree Made After Suit Abated.

TRADE-MARKS AND TRADE NAMES:

- Decree Awarding Injunction Against Use of Trade-Mark;
- Decree Awarding Perpetual Injunction on Use of Another's Trade-Marks;
- Decree Awarding Perpetual Injunction Against Shipping Goods With Plaintiff's Trade-Marks.

TRUSTS AND TRUSTEES:

- Decree To Appoint New Trustee;
- Decree for Account and Inquiry as to Trust Funds Under Two Settlements;
- Decree for Scheme for Regulating Charity;
- Extract From Scheme Constituting a Charity as to Appointment of Trustees;
- Order Adopting New Scheme Filed;
- Decree for Costs in a Suit by Trustee To Obtain Instructions, as Between Solicitor and Client; Charging It on Different Funds.

WASTE:

- Decree Awarding Injunction To Stay Waste;
- Decree Awarding Injunction, Trees To Intercept View;
- Decree Awarding Injunction, Trees To Shade or Shelter;
- Decree Staying Waste by Tenants in Common.

WILLS:

- Decree Establishing Will, Where Proved;
- Decree Establishing Will, Where Admitted;
- Decree Declaring Construction of Will;
- Decree, Will Established, Except as to Legacies Partly Failing;
- Decree, Devise Declared Good;
- Decree, Declaration That Real Estate Is Charged With Debts;
- Decree, Directions for Inquiries as to Charities and Their Treasurers;
- Decree, Gifts by Deed and Will in Charity Declared Void;
- Decree Declaring Void Testamentary Papers, Not Being Executed According to Law of Testator's Domicil;
- Decree, Direction for Inquiry as to Exercise of Power To Appoint;
- Decree, Defect of Execution of Appointment by Will Supplied;
- Decree, Forfeiture Declared, Under Terms of Will;
- Decree That a Devise on a Double Contingency Failed;
- Decree, Inquiry as to Employment of Balances;
- Decree, Directions to Executor To Pay Mortgage Out of General Assets, Costs.

I. Introductory Parts.

A. *Decrees in General, Introductory Part (English Form).*
(Date and title.)

Lord Chancellor, or lords justices, or master of the rolls, or Vice-Chancellor Kindersley.

This cause coming on (the _____ day of _____, and) this day to be heard and debated before Rt. Hon. the Lord High Chancellor of Great Britain (or the Rt. Hon. the Lords Justices, or the Rt. Hon. the Master of the Rolls, or this court), in the presence of counsel learned for the plaintiff and the defendants (or, if some of the defendants do not appear, for the plaintiff and the defendants A. and B., no one appearing for the defendants C. and

D., although they were duly served with a subpoena to hear judgment in this cause, as by the affidavit of, etc., filed the _____ day of _____, appears); and the pleadings in this cause being opened, upon debate of the matter and hearing (the said affidavit, etc. Enter the evidence, if any read, and) what was alleged by the counsel on both sides (or for the plaintiff and the said defendants A. and B.), his lordship (or their lordships, or his honor, or this court) doth (or do) order and decree (or doth declare), etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2193.

B. *Decree in General, Introductory Part.*

Circuit courts of the United States. In equity, May term, 1863. G. I. F. v. W. W. G.

This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and, thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

If Standing for Judgment.

This court did order that this cause should stand for judgment; and this cause standing for judgment this day, etc., in the presence of counsel learned for the plaintiff and defendants, this court doth order (and decree), etc.

(Where defendant who has not entered an appearance, or a person not on the record, appears at the hearing, and submits to be bound.)

And X., by his counsel now appearing, and submitting to be bound by the decree and proceedings in this cause, in the same manner as if he had duly entered an appearance to the plaintiff's bill (or had been originally made a defendant in this cause), and the plaintiff (or all parties) by his (or their) counsel consenting thereto, this court doth, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2194.

C. *Decree on Motion for Decree.*

Upon motion this day made unto this court, by counsel for the plaintiff, and upon hearing counsel for the defendants, this court doth order (and decree), etc.

(If standing for judgment.) This court did order that the said motion should stand for judgment, and the said motion standing this day on the _____ for judgment in the presence of counsel for plaintiff and for the defendant, this court doth, etc.

(Decree on interlocutory motion treated as motion for decree.) Upon motion, etc., for (state shortly the purport of the motion as for injunction, or for a receiver in this cause), and upon hearing, etc., and the plaintiff and defendants by their counsel respectively consenting (or having respectively consented) that this motion shall be treated as a motion for a decree, this court, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2195.

II. Declaratory Decrees.

A. Declaratory Decree on Special Case (English).

This special case coming on this day to be heard and debated before, etc., in the presence of counsel learned for plaintiff and defendants, upon debate of the matter, and hearing what was alleged by the counsel on both sides (or for, etc.), this court doth declare that, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2195.

B. Order if the Special Case Stands for Judgment.

This court ordered that this special case should stand for judgment, and the same standing for judgment this day, etc., in the presence of counsel learned for the plaintiff and defendants, this court doth order (and decree), etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2195.

C. Declaratory Decree on Special Case; Court Declining To Answer One of the Questions.

Upon reading the probate of the will of J. M., the testator in the special case named, and hearing what was alleged by counsel on both sides, this court doth, as to the first of the questions submitted for the opinion of the court, declare that the defendant H. M. does take under the will of the said J. M., the testator, besides the legacy of \$——, and the stocks, crops and farming utensils by the said will specifically bequeathed to him, and a life interest in the farm situated, etc., such interest as hereinafter mentioned in the residuary estate of the testator. And this court being of opinion as to the second of the said questions, that such question cannot properly be decided during the life of the defendant H. M., doth decline to decide the same. And this court doth, as to the third of the said questions, declare that the said H. M. does take a ratable interest in the residuary estate of the testator

in respect of the said legacy of \$——, but not in respect of the stock, crops, etc., by the said will specifically bequeathed to him. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2195; 1 Seton Dec. (Eng. ed., 1862) 34.

III. Orders.

A. Order on Special Petition.

Upon the petition of, etc., on the —— day of ——, preferred unto, etc., and upon hearing counsel for the petitioner (and for, etc., name the respondents, if any), and upon reading the said petition, this court doth, etc.

B. Order on Petition as to Part Adjourned.

Upon the petition of, etc., on the —— day of ——, preferred unto, etc., the further consideration whereof was adjourned by the order dated the —— day of ——, and upon hearing counsel for the petitioner and for, etc., and upon reading the said order, etc., this court doth, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2196.

C. Order on Special Motion.

Upon motion this day made unto, etc., by counsel for, etc., and upon hearing counsel, etc., this court doth, etc.

D. Order on Cross-Motion.

Upon motion, etc., by counsel for, etc., that (recite plaintiff's notice), and upon motion, etc., by counsel for, etc., that, etc. (recite the cross notice), upon hearing what was alleged by the counsel on both sides, this court doth, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2196; 1 Seton Dec. (Eng. ed., 1862) 36.

E. Introductory Part of Order on Cause Coming on for Further Consideration.

This cause coming on for further consideration thereof, adjourned by the decree (or order), dated, etc., in the presence of counsel for the plaintiff and defendants, upon opening and debate of the matter and hearing the said order and the master's report, and what was alleged on both sides, this court doth order, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2197; Tripp's Forms (Eng. ed., 1858) 126.

IV. Usual Directions.

A. Order of References to a Master.

It is ordered that it be referred to A. B., esquire, master, etc., to inquire and state to the court, etc. And for

the better discovery of the matters aforesaid, the parties are to produce before the said master upon oath all deeds, or books, papers, and writings in their custody or power relating thereto, and are to be examined, etc., as the said master shall direct. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2197.

B. Order Where Account is Directed.

It is ordered that it be referred to A. B., etc., master, etc., to take an account, etc. And for the better taking of the said account, and discovery of the matters aforesaid, the parties are to produce, etc., and are to be examined, etc., as the said master shall direct, who in taking said account is to make unto the parties all just allowances. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2197.

C. General Adjournment to Chambers.

Let this cause (or matter, or petition, or application) be adjourned for consideration in chambers. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2197.

D. Order for Particular Reference, Accounts and Inquiries.

Let the following accounts and inquiries be taken and made, that is to say: 1. An account, etc. 2. An inquiry, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2197.

E. Order for Liberty to State Special Circumstances.

And the master is to be at liberty to state any special circumstances. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2197.

F. Order That Master May Make Separate Report.

And let the master be at liberty to make a separate report as to any of the matters aforesaid. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

G. Directions to Settle Conveyances, etc., in Case Parties Differ.

And the said master is to settle the said conveyances, in case the parties differ about the same. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

H. Further Directions to Settle Conveyances, etc., in Case Parties Differ.

And this court doth reserve the consideration of all further directions until after the said master shall have made his report. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

I. Reservation of Interest.

And the court doth reserve the consideration of, etc., and of interest, until

after the said master shall have made his report. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

J. Reservation of Costs.

And this court doth reserve the consideration of, etc., and of the costs of this suit, until after the said master shall have made his report. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

K. Order for Taxation and Payment of Costs.

Let the master tax all parties their costs in this suit. And it is ordered that such costs, when taxed, be paid as follows, viz.: the plaintiffs' costs to Mr. ———, their solicitor, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

L. Further Consideration Adjourned; Liberty to Apply.

And let the further consideration of this (matter and) cause be adjourned; and any of the parties are to be at liberty to apply (to this court) as they shall be advised. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

M. Further Consideration Adjourned, With Liberty to Apply in Chambers as to Particular Matter.

And let any of the parties be at liberty to apply in chambers for the appointment of a receiver (or for, or as to, etc., as the case may be), and otherwise (generally) to apply as they may be advised. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

N. Direction if Costs Are Partly Dealt With by the Decree.

And let the further consideration of this cause, and of the costs of this cause not hereinbefore otherwise provided for (or disposed of) be adjourned. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198; 1 Seton Dec. (Eng. ed., 1862) 56.

O. Order for Payment of Money by One Party to Another.

Let the (defendant) A., on or before the ——— day of ——— (or within ——— days after service of this decree [or order]), pay to the (plaintiff) B. the sum of \$——, appearing by, etc. (or certified by, etc.), to be due to him in respect of, etc. (or on the taking the accounts directed by, etc.). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2199.

P. Payment of Interest.

1. Order for Payment of Interest to Life Tenant or His Representatives.

Let the interest during the life of

(the plaintiff) A. to accrue on the, etc., be, from time to time, as the same shall accrue due, paid to (the plaintiff) A. (and if so ordered, or to his legal personal representatives), or until further order. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2199.

2. *Order for Payment to Trustees.*

Let the interest to accrue on, etc., be, from time to time, as the same shall accrue due, paid to the plaintiffs A. B., etc. (or any two of them), upon the trusts of the indenture of the _____ day of _____, until further order. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2199.

3. *Order for Payment of Interest to Corporation Aggregate.*

Let the interest to accrue on, etc., be, from time to time, as the same shall accrue due, paid to the (insert the style or title of the corporation), until further order. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2199.

4. *Usual Directions for Payment of Interest to Treasurer of Corporation.*

Let the interest to accrue on, etc., be, from time to time, as the same shall accrued due, paid to A. as the treasurer of (insert style or title of corporation), and to the treasurer for the time being of the said (corporation), to be verified by affidavit, until further order. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2199.

5. *Payment of Interest to Married Woman for Her Separate Use.*

Let the interest during the life of A., the wife of B., to accrue on, etc., be, from time to time, as the same shall accrue due, paid to the said A. for her separate use, until further order. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2199.

6. *Usual Directions for Payment of Interest to Husband in Right of His Wife.*

Let the interest during the life of A., the wife of B., to accrue on, etc., be, from time to time, as the same shall accrue due, paid to the said B. in right of his said wife, until further order. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2199.

Q. *Decree, Reference Where Bill Taken Pro Confesso.*

"To ascertain and report the amount due the complainant on his said judgment mentioned in said bill of complaint, and the amount due the defendant Sarah A. B. Green on her claims

set up in her answer filed in this cause, and the several amounts due the defendants (the several judgment creditors) upon their respective judgments, and whether the said judgments were obtained for material and labor furnished or performed in and about the erection of the building mentioned in the said bill of complaint, and also to ascertain and report the order and priority of payment of the said judgment and claim." *Anderson v. Huff*, 49 N. J. Eq. 349, 23 Atl. 654.

V. *Taxation and Payment of Costs.*

A. *Order for Taxation and Payment of Costs, One Party to Another.*

Let the plaintiff (defendant) A. pay to the defendant (plaintiff) B. his costs of this cause (suit) [or application], such costs to be taxed by, etc. (in case the parties differ). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2200.

B. *Order That Plaintiff Pay One Defendant's Costs, and Recover Them With His Own From Co-Defendant.*

Tax the costs of the defendant A. of this cause (suit); and let the plaintiff B. pay to the defendant A. the amount of the said costs when so taxed. Tax the costs of the plaintiff of this cause (suit); and let what the plaintiff shall pay for the costs of the defendant A. be added to his own costs when so taxed; and let the _____ certify the total amount thereof; and let the defendant E. pay to the plaintiff B. the amount so to be certified. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2200.

C. *Order That Costs of Application Be Costs in the Cause.*

And let the costs of the plaintiff (or petitioner, or defendant, or applicant, or all parties) of this application be costs in this cause. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2200.

D. *Order That Petition be Dismissed With Costs.*

This court doth order that the said petition be dismissed with costs, to be paid by the petitioner A. to the said B. and C. (name respondents to receive costs), and taxed by the _____ (in case the parties differ). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2200.

E. *Order to Tax and Pay Costs Without Prejudice, etc., Costs Made Charge.*

Tax the costs of the plaintiffs and defendants of this cause (suit); and

let the plaintiff C. pay to the defendants respectively the amount of their said costs, when taxed, without prejudice to any question how such costs are ultimately to be borne; and let the plaintiff's costs, and also the costs which the plaintiffs, or any of them, shall so pay to the defendants, be a lien (charge) on the estate of the testator in question in this cause. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2200.

F. Order Allowing no Costs to Either Side.

The court doth not think fit to give any costs of this cause (or application) on either side. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2200.

G. Order Allowing No Costs to Either Side as to Part of Proceedings.

And this court doth not think fit to give any or either side, as to so much of the costs of this cause (or application) as have been occasioned by, etc. (or as relate to, etc., or so far as such costs have been increased by, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2201.

H. Order for Taxation of Plaintiff's and Defendant's Respective Costs of Parts of Suit, etc., With Set-Off.

Tax the costs of the plaintiff in this cause (suit), except so much thereof as relates to the claim set up by him to, etc.; tax the costs of the defendant, of so much of this cause (suit) as relates to the said claim; and let the taxing master set off the said costs of the plaintiff and of the defendant when so respectively taxed, and certify to which of them the balance after such set-off is due; and let such balance be paid by the party from whom to the party to whom the same shall be certified to be due. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2201.

I. Order for Taxation of Plaintiff's Costs, Except Those Occasioned by, Etc.

Tax the costs of the plaintiff of this suit (cause), except so far as such costs have been occasioned by the plaintiff setting up a claim to the whole of the debt in the bill mentioned. Hardy v. Hull, 17 Beav. 355; 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2201.

J. Order To Tax Defendant's Costs, Except Those Occasioned by, Etc.

Tax the costs of the defendant P (mortgagee) of this cause, except so

far as the same relates to the claim made by him in respect of the sum of \$——— charged by the deeds dated, etc., in the bill mentioned, as a sum advanced to the plaintiff and to H., his wife, since deceased, on the occasion of making and executing the said deeds over and above and beyond the sum of \$——— secured by the two promissory notes dated, etc., in the bill mentioned; tax the costs of the defendants W. and wife of this cause; and let the plaintiff O. pay unto the defendant W. the costs of the said defendant W. and of his said wife when so taxed; and the, etc., is to inquire and certify how much of such costs of the defendant W. and wife (if any) have been occasioned by (relate to) the defendant P.'s said claim in respect to the said sum of \$———, and he is also to tax the plaintiff his costs of this cause so far as the same have been occasioned by (relate to) the said claim of the defendant P. in respect of the said sum; and let such costs of the plaintiff when so taxed, together with what he shall have paid to the defendant W. for the costs of the said defendant W., and of his said wife (if any) occasioned by (relating to) the said claim of the defendant P. in respect of the said sum of \$———, be set off against the said costs of the defendant P. when taxed; and the, etc., is to certify to whom, after such set-off, the balance is due: And let the party from whom such balance shall be certified to be due pay the amount thereof to the other party. Orange v. Pickford (1860), 1 Seton Dec. (Eng. ed., 1862) 88; 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2201.

K. Order to Tax Costs, Except so Far as Increased by Particular Claim.

Tax the costs of the plaintiff (defendant) of this cause (suit), except so far as such costs have been increased by the plaintiff's claim to, etc. (or plaintiff by his bill seeking, etc., or defendant setting up, etc., or claiming, etc.); tax the costs of plaintiff (defendant) of this cause (suit) so far only as the same have been increased by the said claim (or the plaintiff by his bill seeking, etc., or by the defendant setting up, etc., or claiming, etc.). Directions for set-off and payment of balance. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2202.

L. Order to Tax Costs Up to Particular Time.

Let the plaintiff A. pay to the de-

fendant B. his costs of this cause (suit) up to this hearing (or this time, or the _____ day of _____ [when the defendant offered by, etc., in writing, to pay the amount sought to be recovered by the plaintiff, etc.]); such costs to be taxed, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2202.

M. Order to Tax Costs for Plaintiff and Defendant Respectively for Certain Times and Set-Off.

Tax the costs of the plaintiff G. of the first mentioned cause, up to the _____ day of _____, the date of the letter from the solicitor for the plaintiff in the second mentioned cause in his said affidavit referred to; and tax the costs of the defendant L., incurred in the first mentioned cause since the said _____ day of _____, and also his costs of this application; and let the, etc., set off such costs of the plaintiff G. and of the defendant L., respectively, when so taxed, and certify to whom after such set-off the balance is due; and let the party from whom such balance shall be certified to be due pay the amount thereof to the other party. *Gresham v. Luke* (1860), 1 Seton Dec. (Eng. ed., 1862) 89; 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2202.

N. Order to Tax Costs and Set-Off Against Sum Due.

Tax the plaintiff his costs of this cause, etc.; and let such costs, when taxed, be set off against the sum of \$_____, which the plaintiff by his bill admits to be due from him to the defendant under the agreement dated, etc., in the bill mentioned, with \$_____ for interest on the said sum at the rate of \$_____ per cent. per annum, from the _____ day of _____ to the _____ day of _____, the date of the filing of the bill, making together \$_____; and let the, etc., certify to whom, after setting off the said costs when so taxed against the said sum of \$_____, the balance is due; and let the party from whom the balance shall be certified to be due, within _____ months (or days) after the date of the _____'s certificate, pay the amount thereof to the other party. Liberty to apply. *Radley v. Ingram* (1860), 1 Seton Dec. (Eng. ed., 1862) 89; 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2203.

O. Order Directing Master to Take Account of Any Unnecessary Length of Papers and to Deduct From Costs Therefor.

Direction to take account of what is due to petitioner under certain deeds, and to tax his costs of the application. _____, "And in taxing such costs, the taxing master is to look into the said petition and affidavits, and distinguish such parts thereof as shall appear to him to be (what parts thereof are) (improper or) of unnecessary length; and ascertain the costs, if any, occasioned to the respondents by such part or parts thereof as may be distinguished as being (improper or) of unnecessary length; and let such last mentioned costs be deducted from the petitioner's costs of this application; and let the balance be certified, etc. *Re Radcliffe* (1856), 1 Seton Dec. (Eng. ed., 1862) 89, 90; 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2203.

VI. Costs and Payment Out of Funds in Court.

A. Order for Taxation of Costs and Payment to Solicitors Out of Funds in Court (English Form).

Refer it to the taxing master to (or let the taxing master) tax the costs of the plaintiff and the defendants (or all parties) of this cause (suit). (If ordered, as between solicitor and client) (or if ordered as to executor or trustee only, the costs of the defendant A., the executor, or trustee of, etc., as between solicitor and client); and let so much of the £_____ Bank 3l. per cent. Anns. standing in the name of the accountant-general in trust in this cause (the account of, etc.), as with the £_____ cash in the bank, to the credit of this cause (the like account) will raise such costs when taxed, be sold; and let out of the money to arise by such sale and the said cash, such costs be paid as follows, viz., the costs of the plaintiffs to Mr. _____, their solicitor, the costs of the defendant A. to Mr. _____, his solicitor, and the costs of defendant B., etc., to Mr. _____ and Mr. _____, his solicitors, or either of them. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2203.

B. Order for Taxation of Costs of Application, Payment Out of Cash.

Tax the costs of the petitioner (applicant) and of, etc., of this application (if so ordered, and relating thereto, and

consequent thereon). (If so, as between solicitor and client); and let such costs, when taxed, be paid out of the \$—— cash in the ———, to the credit of this cause (the account of, etc.), in manner following, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2204.

VII. Decrees by Consent.

This court, etc., doth by consent order (and decree), etc., or—

And the plaintiff and defendants A. and B. (or all parties) by their counsel consenting to the following decree (or order), this court doth order (and decree), etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2204.

VIII. Decrees Approving and Confirming Acts Done and Agreements Made.

(After reciting the acts and matters agreed upon, proceed): It is therefore ordered, adjudged, and decreed, as and for the final decree in this cause, that the said statement of the said accounts, and of the result of the said accounts, and the payments aforesaid to the said Samuel B. Parsons, and the receipts, releases, and discharges aforesaid, of and by the said Samuel B. Parsons to the said trustees, George Howland, Jr., Matthew Howland, and Edward W. Howland, be, and the same hereby are, approved, ratified, and confirmed. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2204

IX. Reserving Case for Full Court.

Heard on bill, answer, evidence, and exhibits, and reserved thereon for the consideration (and determination) of the full court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2205.

(Another form.) Heard on demurrer (to the bill), and reserved for the consideration of the full court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2205.

DEFAMATION.—See LIBEL AND SLANDER.

DEFAULT.

I. Affidavits Preliminary to Proceedings, 368

- A. *Of No Answer*, 368
- B. *To Proceedings for Judgment or Reference*, 368
- C. *In Case of Publication*, 368
- D. *Of Service of Subpoena to Answer*, 368

II. Entering Default, 369

- A. *Not Pleading*, 369
- B. *Not Replying*, 369

- C. *Not Rejoining*, 369
- D. *Not Surrejoining*, 369
- E. *Not Joining in Demurrer*, 369
- F. *Not Joining in Error*, 369
- G. *Taking Bill as Confessed*, 369
- H. *Entering Defendant's Appearance*, 369

III. Orders for Judgment, 370

- A. *Interlocutory Judgment and Inquiry*, 370
- B. *Final Judgment in Debt*, 370
- C. *Not Replying*, 370
- D. *Not Rejoining*, 370
- E. *Not Surrejoining*, 370
- F. *On Filing Inquisition*, 370
- G. *On Filing Clerk's Report*, 370
- H. *Where Served by Publication*, 370
- I. *For Judgment and for Writ of Inquiry*, 371
- J. *For Judgment and Reference*, 371
- K. *Not Joining in Demurrer*, 371
- L. *Not Joining in Demurrer (for Defendant)*, 371

IV. Notice of Assessment, 371

- A. *Before Clerk*, 371
- B. *Before Jury*, 371

V. Assessment of Damages, 371

- A. *Report of Clerk*, 371
- B. *Report of Referee on Publication*, 372
- C. *Inquisition*, 372

VI. Notice of Application for Judgment, 372

VII. Undertaking for Restitution, Service by Publication, 372

VIII. Judgment Records, 372

- A. *Not Pleading*, 372
- B. *On Writ of Inquiry*, 373
- C. *Not Pleading in Debt*, 374
- D. *Not Joining in Demurrer to Declaration*, 374
- E. *Not Joining in Demurrer to Plea*, 374

IX. Judgments, 375

- A. *Personally Served*, 375
- B. *Complaint Served With Summons*, 375
- C. *On Default of Appearance*, 375
- D. *On Service by Publication*, 375

X. Affidavits To Set Aside, 375

- A. *Default as Irregular*, 375
- B. *Regular Default*, 376
- C. *Inquest as Irregular*, 376
- D. *Regular Inquest*, 376

XI. Notice of Motion To Set Aside, 376

- A. *As Irregular*, 376
- B. *Regular Default*, 376

XII. Orders To Set Aside, 376

- A. *For Irregularity, 376*
- B. *Regular Default, 377*
- C. *Inquest for Irregularity, 377*
- D. *Regular Inquest, 377*

XIII. Entry of Vacatur, 377

CROSS-REFERENCES:

ADMIRALTY:

- Order That Libel Be Taken Pro Confesso;
- Decree, Order of Condemnation by Default and Reference to Commissioner.

CORPORATIONS:

- Order for Judgment Against Corporation.

DECREES:

- Decree, Reference Where Bill Taken Pro Confesso.

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

- Entry of Non Pros. for Not Declaring;
- Entry of Non Pros. for Not Declaring in Replevin;
- Entry of Non Pros. for Not Replying.

INQUIRY, WRIT OF:

- Writ of Inquiry in Ordinary Cases;
- Writ of Inquiry in Debt on Bond;
- Writ of Inquiry on Articles of Agreement;
- Writ of Inquiry on Failure To Answer (Code);
- Return, To Be Indorsed on Writ.

JUDGMENT RECORDS:

- Judgment Record on Default After Pleading in Abatement and Respondeat Ouster;
- Judgment Record in Default for Not Pleading in Assumpsit;
- Judgment Record on Default for Not Pleading in Debt, on Writ of Inquiry, Debt on Bond;
- Judgment Record for Plaintiff on Inquest;
- Judgment Record on Default for Not Pleading by One Defendant;
- Judgment Record on Default for Not Rejoining;
- Judgment Record on Default for Not Pleading, on Writ of Inquiry at Subsequent Term;
- Judgment Record on Non Pros. for Not Replying;
- Judgment Record on Default in Suit on Bail-Bond;
- Judgment Record on Default, in Recognizance of Bail;
- Judgment Record in Ejectment for Plaintiff on Default;
- Judgment Record on Default of

Plaintiff To Plead to Avowry in Replevin;

Judgment Record on Default for Not Pleading in Replevin;

Judgment Record on Default, Non Pros. for Not Declaring in Debt Quia Tam.

JUDGMENTS:

Judgment, Not Pleading in Assumpsit;

Judgment in Debt on Bond, Not Pleading;

Judgment in Ejectment for Plaintiff on Default;

Judgment in Replevin, Not Pleading;

Judgment on Default of Plaintiff To Plead to Avowry in Replevin (with award of retorno habendo and writ of inquiry);

Judgment, Non Pros, Not Declaring in Replevin;

Judgment for Defendant, After Order Sustaining Demurrer;

Judgment for Plaintiff After Order Overruling Demurrer.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias After Scire Facias by Default.

PARTITION:

Judgment Record in Partition by Default;

Order of Judgment by Default and Appointment of Commissioners in Partition.

REFERENCES:

Order of Reference To Take an Account in Case of Default;

Order of Reference To Take Proof of Cause of Action, and Payments, Where Summons Was Served by Publication.

REPLEVIN:

Writ of Inquiry in Replevin, on Default for Not Pleading;

Retorno Habendo for Want of Plea in Bar to Avowry.

SCIRE FACIAS:

Order for Default on Scire Facias;

Judgment Record on Default; Scire Facias To Revive Judgment.

SEQUESTRATION:

Order for Sequestration for Not Answering;

Writ of Sequestration;

Writ of Sequestration To Compel Appearance of Corporation.

SERVICE OF PROCESS AND PAPERS:

Order Taking Bill as Confessed, and Directing a Reference, After Publication of Notice of Order To Appear.

VERDICT:

Postea for Plaintiff, One Defendant in Default;

Postea for Defendant on a Plea of Non-assumpsit, Default by One Defendant;

Postea for Plaintiff, Default at Trial, Inquest Taken;

Postea for Plaintiff, Plea of Non Est Factum in Debt, Default at Trial, Inquest Taken.

WRIT OF ERROR:

Order for Judgment of Affirmance in Default.

I. Affidavits Preliminary to Proceedings.**A. Affidavit of No Answer.**

M. N., plaintiff's attorney (or, managing clerk in the office of M. N., plaintiff's attorney), being duly sworn, says: that no answer or demurrer herein has been served on the plaintiff's attorney (by the defendant, naming which of several is in default). 2 Abb. Forms 510.

B. Affidavit to Proceedings on Moving for Judgment, or for Preliminary Reference.

M. N., plaintiff's attorney herein, being duly sworn, says:

I. That this action is brought (for foreclosure of a mortgage of land situate in _____).

II. That the whole amount of the mortgage is due (or if not all due, say: That _____ dollars of the principal of said mortgage is due, with interest from the _____ day of _____, 18____, and that the residue of the principal is to become due as follows: _____ dollars on the _____ day of _____ next, and _____ dollars one year thereafter).

III. That the summons and complaint herein have been duly served on the defendant W. X., more than twenty days since, as appears by the affidavits of O. P. and Q. R. annexed, and the summons and notice of object of action have been duly served upon the defendant Y. Z., more than twenty days since, as appears by the affidavit of O. P., annexed.

IV. That none of the said defendants have (appeared or) put in an answer or demurrer, and there are no infant defendants (except the defendant Y. Z., who is an infant, and has by his guardian interposed the usual general answer, not controverting any material allegation of the complaint).

V. That none of the defendants are absentees (except the defendant W. X., who has been served by publication as aforesaid).

(VI. That due notice of the pendency of this action, a copy whereof is hereto annexed, was filed in the office of the clerk of _____ (more than) twenty days since, and at or after the time of filing the complaint.) 2 Abb. Forms 520.

C. Affidavit to Proceedings in Case of Publication.

M. N., the plaintiff's attorney in this action, being duly sworn, says:

I. That on the _____ day of _____, 18____, an order was duly made herein for service of the summons upon the defendant Y. Z. by publication, a copy of which order is hereto annexed.

II. That the summons and complaint were, on the _____ day of _____, 18____, duly filed in the office of the clerk of _____, by this deponent (or, as appears by the affidavit of O. P., or, the certificate of said clerk hereto annexed).

III. That the summons was duly served by publication, and by mailing the same with a copy of the complaint (or, by personal service of the same with a copy of the complaint), as appears by the affidavits of O. P. and Q. R. annexed; but that no answer or demurrer herein by said defendant has been served on the plaintiff's attorney, and said defendant has not appeared in the action.

IV. Deponent further says, that on the _____ day of _____, 18____, an attachment against the property of said _____ was duly issued in this action, and delivered to the sheriff of _____, by whom the same was, on the _____ day of _____, 18____, at _____, levied on property belonging to the said defendant, whereof the following is a description: (insert a specific description of the property); and that the value of said property is _____ dollars.

V. Deponent further says, that said defendant is (or, is not, as the case may be) a resident of this state. 2 Abb. Forms 517.

D. Affidavit of Service of Subpoena To Answer.

_____ of _____, in said county, the _____ for the complainant in this cause, being duly

sworn, deposes and says that on the _____ day of _____, and before the appearance day therein mentioned, this deponent personally served upon C. D., the defendant in this cause, the subpoena issued therein, and which is hereto annexed, by showing to the said C. D. the original writ, under the seal of this court, and leaving with him a copy thereof. (If the subpoena cannot be annexed, the affidavit must state its purport, as: tested the _____ day of _____, and requiring the said C. D. to appear personally before the chancellor in the court of chancery on the _____ day of _____ then next, wheresoever the said court should then be, to answer to the bill of complaint exhibited against him [and others] by the complainant in this cause). And this deponent further says, that no appearance has been entered in this cause by the said C. D. to the knowledge or belief of this deponent, and that no notice of appearance on his behalf has been served on him; and that a discovery is necessary from the said defendant as to the matters of the bill of complaint in this cause. And further says not. 2 Barb. Ch. Pr. 364.

II. Entering Default.

A. Order for Default for Not Pleading.

On reading and filing an affidavit of the due service of a copy of the declaration filed in this cause, and a notice to plead endorsed thereon, and on motion of E. F., attorney for the plaintiff, ordered, that the default of the defendant in not pleading be, and the same is hereby entered accordingly. Burr. App. 445, §866.

B. Order for Default for Not Replying.

On reading and filing an affidavit of due service of a copy of the plea (or pleas) filed in this cause, and of notice to reply thereto, and on motion of G. H., attorney for the defendant, ordered, that the plaintiff's default for not replying be, and the same hereby is entered accordingly. Burr. App. 449, §880.

C. Order for Default for Not Rejoining.

On reading and filing an affidavit of the due service of a copy of the replication filed in this cause, and of a notice to rejoin thereto, and on motion of E. F., attorney for the plaintiff, ordered,

that the defendant's default for not rejoining be, and the same hereby is entered accordingly. Burr. App. 449, §883.

D. Order for Default for Not Surrejoining.

On reading and filing an affidavit of the due service of a copy of the rejoinder filed in this cause, and of a notice to surrejoin thereto, and on motion of G. H., attorney for the defendant, ordered, that the plaintiff's default in not surrejoining be, and the same is hereby entered accordingly. Burr. App. 450, §885.

E. Order for Default for Not Joining in Demurrer.

On reading and filing an affidavit of the due service of a copy of the demurrer filed in this cause, and of a notice to join in demurrer endorsed thereon, and on motion of Mr. _____, attorney for the plaintiff (or defendant), ordered, that the plaintiff's (or defendant's), default for not joining in demurrer be, and the same is hereby entered accordingly. Burr. App. 448, §876.

F. Order for Default for Not Joining in Error.

On reading and filing an affidavit showing due service upon the attorney for the defendant in error, of a notice to join in error in this cause, and on motion of G. H., attorney for plaintiff in error, ordered, that the default of the said defendant in not joining in error be, and the same is hereby entered accordingly. Burr. App. 452, §896.

G. Order To Take Bill as Confessed for Not Appearing, Where Personally Served.

On filing due proof of personal service of the subpoena issued in this cause, on all of the defendants, on or before the return day thereof, and more than twenty days having elapsed since said return day, and neither of said defendants having appeared; on motion of J. E., solicitor for complainant, it is ordered that the bill of complaint which is filed in this cause be, and the same is hereby taken as confessed by all of said defendants. 2 Barb. Ch. Pr. 395.

H. Order That Register Enter Defendant's Appearance, or That Bill Be Taken as Confessed.

It is ordered that J. M. D., the

register of this court do enter the appearance of the said C. D. in this cause, pursuant to the statute in such case made and provided. 2 Barb. Ch. Pr. 368.

III. Orders for Judgment.

A. *Order for Interlocutory Judgment and Writ of Inquiry, Default for Not Pleading.*

The default of the defendant for not pleading in this cause having been duly entered, on motion of Mr. E. F., attorney for the plaintiff, ordered interlocutory judgment, and that a writ of inquiry issue. Burr. App. 446, §869.

B. *Order for Judgment on Default in Debt.*

The default of the defendant for not pleading having been duly entered, on motion of Mr. E. F., attorney for the plaintiff, ordered judgment final thereon. Burr. App. 446, §870.

C. *Order for Judgment for Default for Not Replying.*

The default of the plaintiff for not replying to the plea of the defendant in this cause having been duly entered, on motion of G. H., attorney for the defendant, ordered, judgment for the defendant, for his costs. Burr. App. 449, §881.

D. *Order for Judgment on Default for Not Rejoining.*

The default of the defendant for not rejoining in this cause having been duly entered, on motion of E. F., attorney for the plaintiff, ordered, interlocutory judgment, and that the clerk assess the damages (or ordered interlocutory judgment, and that a writ of inquiry issue; or, if the action be debt, ordered judgment final thereon). Burr. App. 449, §884.

E. *Order for Judgment for Not Surrejoining.*

The default of the plaintiff in not surrejoining to the rejoinder of the defendant, filed in this cause, having been duly entered, on motion of G. H., attorney for the defendant, ordered, judgment for the defendant, for his costs. Burr. App. 450, §886.

F. *Order for Judgment on Default on Filing Inquisition.*

On reading and filing a writ of inquiry of damages and inquisition thereunto annexed, whereby it appears that the damages of the plaintiff in this cause are assessed at _____ dollars and _____ cents, besides costs, and on

motion of Mr. E. F., attorney for the plaintiff, ordered, judgment final thereon, etc. Burr. App. 447, §872.

G. *Order for Judgment on Default on Filing Clerk's Report.*

On reading and filing the report of _____, esquire, one of the clerks of this court, whereby it appears that the plaintiff's damages in this cause are assessed at _____ dollars and _____ cents, and on motion of Mr. E. F., attorney for the plaintiff, ordered, judgment final thereon, etc. Burr. App. 446, §871.

H. *Order for Judgment, Where Summons Was Served by Publication.*

The summons and complaint in this action having been filed in the office of the clerk of the county of _____ (or, of the clerk of this court), on the _____ day of _____, 18____, and, the defendant Y. Z. being a foreign corporation, having property within this state (or state other ground for service by publication, as the case may be), service of the summons upon such defendant by publication having been ordered, and, pursuant to said order, the summons having been duly published in the _____, _____ and the _____, once in each week for six successive weeks (or otherwise as the case may be), commencing on the _____ day of _____, 18____; and a copy of the summons and complaint having been duly mailed to (or having been thereafter personally served on) said defendant Y. Z. (addressed to their president M. N., at _____), if there are other defendants who were personally served, or who have appeared, here state the proceedings as to them, in the manner prescribed in the preceding forms); and no answer or demurrer having been served on the plaintiff's attorney, and the defendant having failed to appear, and an attachment having been issued against, and levied upon property belonging to the defendant Y. Z., and proof thereof made by the affidavit of M. N.; and the defendant W. X. being a resident of this state, the plaintiff having now in court made proof of the demand mentioned in the complaint (or, if the defendant is a non-resident, the defendant being not a resident of this state, the plaintiff having now in court made proof of the demand mentioned in the complaint), and M. N. (the agent of) the plaintiff

having now in court been examined on oath respecting any payments that have been made to the plaintiff, or to any one to his use, on account of such demand, whereby it appears that no such payments have been made (or, if any were made, state the amount); and the plaintiff having produced an undertaking with two sureties, approved by the court, that he will make restitution according to the requirement of _____ of section _____ of the code of procedure:

Now, on filing said affidavit of M. N., and said undertaking, and on motion of M. N., plaintiff's attorney, it is ordered that the plaintiff, A. B., recover against the defendant, Y. Z., the sum of _____ dollars, together with his costs, to be adjusted by the clerk. 2 Abb. Forms 518.

I. Order for Judgment, and That Writ of Inquiry Issue To Assess Damages.

(Recitals of proceedings as in other forms, continuing): and it appearing by the complainant that the action is for the recovery of money only (or is for the recovery of specific real property, or, personal property, with damages for the withholding thereof), * now, on motion of M. N. for the plaintiff, it is

Adjudged, that the plaintiff do recover of the defendant the damages by him sustained on account of the cause of action alleged in the complaint (and that he do recover also the possession of the personal property described in the complaint [or the following described personal property]); and, further, it is

Ordered, that said damages be assessed by a jury, and that a writ of inquiry be for that purpose issued, directed, and delivered to the sheriff of (the county where the place of trial is laid). 2 Abb. Forms 514.

J. Order for Judgment, and Reference To Ascertain Damages.

(As in preceding form, to the *, continuing): and the examination of a long account being involved in ascertaining the damages, now, on motion of M. N. for the plaintiff,

It is adjudged, that the plaintiff do recover (etc., stating relief, as in preceding form, concluding): and, further, it is

Ordered, that it be referred to R. F., Esq., of _____ counselor-at-law, to

ascertain and assess the said damages, and report the same with all convenient speed. 2 Abb. Forms 516.

K. Order for Interlocutory or Final Judgment After Default for Not Joining in Demurrer.

(Instead of the words "for not pleading," say, "for not joining in demurrer.") Burr. App. 448, §877.

L. Order for Judgment on Default for Defendant Not Joining in Demurrer.

The default of the plaintiff for not joining in demurrer in this cause having been duly entered, on motion of G. H., attorney for the defendant, ordered, judgment final for the defendant, for his costs. Burr. App. 448, §878.

IV. Notice of Assessment.

A. Notice of Assessment of Damages Before Clerk.

Take notice, that the amount due to the plaintiff upon the instrument mentioned in the complaint, will be assessed (or, if the action is not on a written instrument for the payment of money only, that the amount which the plaintiff is entitled to recover in this action will be ascertained), and his costs and disbursements, the items whereof are herewith stated, will be adjusted by the clerk of _____, at his office, in _____, on the _____ day of _____, 18____, at _____ o'clock in the _____noon. 2 Abb. Forms 509.

B. Notice of Assessment of Damages Before Jury.

Take notice, that the amount which the plaintiff in this action is entitled to recover will be assessed by a jury, before the sheriff of the county of _____, at his office, in _____, on the _____ day of _____, 18____, at _____ o'clock in the _____noon. 2 Abb. Forms 514.

V. Assessment of Damages.

A. Report of Clerk on Assessment of Damages.

I having examined and ascertained, do report, that the plaintiff in this cause ought to recover against the defendant (four hundred and fifty) dollars and (sixty-one) cents damages, besides costs.

_____, clerk.

Dated, _____.
Burr. App. 434, §834.

B. Report of Referee on Publication.
(Title of the cause.)

To the ——— court:

Pursuant to an order of this court, dated the ——— day of ———, 18——, whereby it was referred to me (here state the purport of the order of reference). I respectfully report *:

I. That I have computed the amount due to the plaintiff in this action as aforesaid, and that the amount so due on the said ———, for the principal and interest, up to and including the day of the date of this report, is ——— dollars; and the schedule marked A, hereto annexed as a part of this report, contains a statement and account of the principal and interest moneys due to the plaintiff as aforesaid, the period of the computation of the interest, and its rate.

(Where there are infants having answered generally, or absentee defendants, add): That I have taken proof of the facts and circumstances stated in said plaintiff's complaint, and have examined the said plaintiff (or, and the plaintiff being now abroad in ———, have examined his agent, M. N.) on oath as to any payments which may have been made to him or to any person for his use, on account of the demand mentioned in said complaint, and which ought to be credited thereon, and such proofs except those which are documentary, and such examinations, are annexed as a part of this report, and marked Exhibits A and B, and I am of opinion that the facts and circumstances stated in said complaint are true.

(Signature.)

(Date.)

2 Abb. Forms 522.

C. Inquisition on Default.

State of New York, County of ———,
ss:

An inquisition, taken at the court house, in the city of ———, in the county of ———, on the ——— day of ———, 18——, before O. P., sheriff of the county aforesaid, by virtue of a writ of the people of the state of New York, to him directed and delivered, and to this inquisition annexed, to inquire of certain matters in the said writ specified, by the oath of (here name the jurors), good and lawful men of the said county, who, upon their oath aforesaid, say that A. B., in the said writ named, has sustained

damages, by reason of the premises, in the said writ mentioned, to the amount of ——— dollars.

In witness whereof, as well I, the said sheriff, as the said jurors, have set our seals to this inquisition the day and year above written.

(Signed and sealed by sheriff and jurors.) 2 Abb. Forms 515.

VI. Notice of Application for Judgment on Default.

Take notice, that the plaintiff will apply to this court, at a special term to be held at the city hall in the city of ———, on the ——— day of ———, 18——, at ——— o'clock in the ——— noon, or as soon thereafter as counsel may be heard, for the relief demanded in the complaint. 2 Abb. Forms 513.

VII. Undertaking for Restitution, Where Summons Was Served by Publication.

Whereas, in this action, in which service of the summons upon the defendant Y. Z. was made by publication, the plaintiff is about to apply to the court for judgment upon failure of the defendant to answer:

Now, therefore, we, M. N., of No ———, ——— street, in the village of ———, merchant, and O. P. (stating, in the same way, his residence and occupation, definitely), do hereby, pursuant to the statute, undertake that said A. B., the plaintiff, will abide the order of the court touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under or by virtue of such judgment, in case the defendant or his representatives shall apply and be admitted to defend the action, and shall succeed in such defense. 2 Abb. Forms 517.

VIII. Judgment Records.

A. Judgment Record on Default for Not Pleading.

Pleas before the justices of the supreme court of judicature of the people of the state of New York, at the ———, in the city of ———, of the term of (January), (the term of interlocutory judgment), in the year of our Lord one thousand eight hundred and ———.

Witness, ———, esquire, chief justice.

_____ county, ss.: Be it remembered, that on the (first Monday of January), (the term or day of which the narr. is entitled), in this same term, before the justices of the supreme court of judicature of the people of the state of New York, at the _____ in the city of _____, (place where the court sat at the term of the narr.), comes A. B., by E. F., his attorney, and brings into the said court, before the aforesaid justices thereof, now here, his certain bill against C. D., being in custody, etc., of a plea of trespass on the case upon promises (or as the action is), which said bill follows in these words, to-wit:

_____ county, ss.: A. B., plaintiff this suit, by E. F., his attorney, complains of C. D., defendant, etc. (inserting the declaration to the end, omitting the signature, and then proceed on a new line as follows):

And the said defendant in his proper person (or, by G. H., his attorney), comes and defends the wrong and injury, when, etc., and says nothing in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein undefended against the said defendant: Wherefore, the said plaintiff ought to recover against the said defendant, his damages, on occasion of the premises. And hereupon the said plaintiff prays judgment, and his damages by him sustained on occasion of the non-performance of the said promises and undertakings, in the said declaration mentioned, to be adjudged to him, etc. And because it is suggested and proved, and manifestly appears to the said court now here, that the said plaintiff hath sustained damages on occasion of the premises, to _____ dollars and _____ cents besides his costs and charges by him about his suit in this behalf expended:

Therefore it is considered, that the said plaintiff do recover against the said defendant his damages, by occasion of the premises, to _____ dollars and _____ cents, by the court here assessed, and also _____ dollars, and _____ cents for his costs and charges by the court now here adjudged to the said plaintiff, with his assent: which said damages, costs and charges in the whole amount to _____ dollars, and _____ cents.

And the said defendant in mercy, etc. Burr. App. 134, §262.

B. Judgment Record on Default for Not Pleading, on Writ of Inquiry.

(As in preceding form to the *.) Be it remembered, that on the (first Monday of January), in this same term, before the justices of the supreme court of judicature of the people of the state of New York, at the _____ in the city of _____, comes A. B., by E. F., his attorney, and brings into the said court, before the aforesaid justices thereof now here, his certain bill against C. D., being in custody, etc., of a plea of (trespass on the case upon promises), which said bill follows in these words:

(City and) county of (_____), ss.: A. B., plaintiff in this suit, by E. F., his attorney, etc. (insert the declaration as in last form).

And the said defendant in his proper person (or by G. H., his attorney), comes and defends the wrong and injury when, etc., and says nothing in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein undefended against the said defendant: Wherefore the said plaintiff ought to recover against the said defendant, his damages, on occasion of the premises.

But because it is unknown to the said court, before the aforesaid justices thereof now here, what damages the said plaintiff hath sustained by means of the premises, the sheriff of the said city and county of New York (the venue in the action), is commanded that, by the oath of twelve good and lawful men of this county, he diligently inquire what damages the said plaintiff hath sustained, as well by means of the premises, as for his costs and charges by him about his suit in this behalf expended: and that he send the inquisition which he shall thereupon take, to the justices of the said supreme court of judicature, at the _____ in the city of _____, on the _____ day of _____ next (the return of the writ), under his seal, and the seals of those by whose oaths he shall take that inquisition, together with the writ to him thereupon directed: the same day is given to the said plaintiff, at the same place.

At which day, before the justices aforesaid, at the _____ in the city of _____, comes the said plaintiff, by his attorney aforesaid, and the sheriff, to-wit, _____, esquire, sheriff

of the said (city and) county of _____, now here, returns a certain inquisition indented, taken before him at the _____ of the city of _____, in this said county, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, by the oaths of twelve good and lawful men of his county; by which it is found that the said plaintiff hath sustained damages by means of the premises, to _____ dollars and _____ cents over and above his costs and charges by him about his suit in this behalf expended and for those costs and charges to six cents.

Therefore it is considered, that the said plaintiff do recover against the said defendant his damages aforesaid, by the said inquisition above found, and also _____ dollars for his costs and charges by the said court now here, adjudged of increase to the said plaintiff, and with his assent: which said damages, costs and charges in the whole amount to _____ dollars and _____ cents.

And the said defendant in mercy, etc. Burr. App. 135, §263.

C. Judgment Record on Default for Not Pleading in Debt.

And the said defendant (by his said attorney) defends the wrong and injury when, etc., and says nothing in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein undefended against the said defendant.

Therefore it is considered, that the said plaintiff do recover against the said defendant his said debt, and also (_____ dollars and _____ cents) for his damages which he hath sustained, as well on occasion of the detaining the said debt, as for his costs and charges by him about his suit in this behalf expended, by the said court now here adjudged to the said plaintiff, and with his assent.

And the said defendant in mercy, etc. Burr. App. 137, §265.

D. Judgment Record on Default for Not Joining in Demurrer to Declaration.

And hereupon, on the prayer of the said plaintiff, a day is given to him to join in the foregoing demurrer of the said defendant, to-wit, until the _____ day of _____, in this same term (the day on which the judgment

is entered), before the justices aforesaid, at the (capitol in the city of Albany). The same day is given to the said defendant, there, etc.

At which day and place last mentioned, before the justices aforesaid, comes the said defendant by his attorney aforesaid. And the said plaintiff, although solemnly demanded, comes not, but makes default: nor doth he join in demurrer as aforesaid; nor doth he further prosecute his suit against the said defendant.

Therefore it is considered that the said plaintiff take nothing by his said bill (or writ, or declaration), but that he be in mercy, etc. And that the said defendant do go thereof without day, etc. And it is further considered by the said court now here, that the said defendant do recover against the said plaintiff _____ dollars and _____ cents, for his costs and charges by him about his defense in this behalf expended, by the said court now here adjudged to the said defendant, with his assent; according to the form of the statute in such case made and provided. And that the said defendant have execution thereof, etc. Burr. App. 144, §273.

E. Judgment Record on Default for Not Joining in Demurrer to Plea.

And hereupon on the prayer of the said defendant, a day is given to the said defendant, to join in the foregoing demurrer of the said plaintiff, to-wit, to the _____ day of _____ (the day on which defendant's default is entered), before the justices aforesaid, at the (capitol in the city of Albany). The same day is given to the said plaintiff there, etc.

At which day and place last mentioned, before the justices aforesaid, comes the said plaintiff, by his attorney aforesaid, and the said defendant, although solemnly demanded, comes not, neither doth he join in demurrer as aforesaid, nor say anything in bar or preclusion of the aforesaid action of the said plaintiff thereof against him, etc. Whereby the said plaintiff remains therein wholly undefended against the said defendant. Wherefore the said plaintiff ought to recover against the said defendant his damages (or debt and damages), by occasion of the premises. Burr. App. 144, §275; Yates' Forms 49.

IX. Judgments.

A. Judgment by Default Where Summons Was Personally Served.

The summons herein having been personally served on the defendant Y. Z., on the _____ day of _____, 18—, and he not having demanded a copy of the complaint (or, having appeared by O. P., his attorney, and demanded a copy of the complaint, and the same having been served on said O. P.), and * no answer or demurrer having been served on the plaintiff's attorney (and the clerk having assessed the amount due); now on motion of M. N., the plaintiff's attorney, it is

Adjudged, that the plaintiff A. B. do recover of the defendant Y. Z. _____ dollars (stating the amount, and interest, if any, mentioned in the summons, or assessed by the clerk), together with _____ dollars costs and disbursements, amounting in the whole to _____ dollars.

(If the action is against several defendants jointly indebted upon contract, and only a part of them were served, add): But this judgment can be enforced only against the joint property of all the defendants herein, and the separate property of the said defendants (naming them), who were served as aforesaid (and if they are subject to arrest), and against the persons of the said last named defendants.

(If all were served, and a part only defended, and the others might have been sued without them.) This action being hereby severed, leaving the plaintiff to proceed hereafter against the defendants (naming those not bound by the judgment).

(Date.) (Signature of clerk.)

2 Abb. Forms 510.

B. Judgment by Default, Complaint Served With Summons.

The summons, and a copy of the complaint herein, having been personally served on the defendant Y. Z. more than twenty days before this date, and (continuing as in preceding form from the *). 2 Abb. Forms 511.

C. Judgment on Default of Appearance.

This action having been commenced, on the _____ day of _____, 18—, by the personal service of the summons (with a copy of the complaint) on the defendant (or, defendants, naming them; and if the service has been made on different defendants

on different days, specify the times of each), and due proof having been made and filed of such service, and that no answer or demurrer (or notice of appearance) has been received from the defendant (or, from any of the defendants); and the damages sustained by the plaintiff by reason of the matters alleged in the complaint having been assessed by a referee appointed by the court (or, by a jury under the direction of the court), now, on motion of M. N. for the plaintiff,

It is adjudged, that the plaintiff recover of the defendant (or defendants, naming them) _____ dollars, the damages thus assessed, with _____ dollars cost of the action, making together _____ dollars. 2 Abb. Forms 516.

D. Judgment Where Summons Was Served by Publication.

On motion of M. N., it is hereupon adjudged that the plaintiff A. B. recover against the defendant Y. Z. the sum of _____ dollars, together with _____ dollars costs and disbursements, amounting in the whole, to _____ dollars.

(Date.) (Signature of clerk.)

2 Abb. Forms 520.

X. Affidavits To Set Aside.

A. Affidavit To Set Aside Default as Irregular.

G. H., the attorney for the defendant in the above entitled cause, being duly sworn, deposes and says, that a copy of the declaration in said cause, together with a notice to plead in twenty days, was served upon the said defendant (or upon this deponent) on the _____ day of _____ last (or instant). And deponent further says that as the attorney of said defendant, he did, on the _____ day of _____, file in the office of W. H. P., esquire, one of the clerks of this court, the plea whereof a copy is hereto annexed; and that on the same day he served upon E. F., esquire, the attorney for the plaintiff in said cause, a copy of said plea, by (leaving the same, during office hours, in a conspicuous place in the office of the said E. F., no person being at the time in said office). And deponent further says, that notwithstanding the service of said plea, the said E. F., afterwards, and on the _____ day of _____ instant, entered the default of the said defendant as for not pleading in this cause, and is now pro-

ceeding to judgment thereon, as deponent is informed and verily believes. Burr. App. 23, §45.

B. Affidavit To Set Aside Regular Default.

G. H., the attorney for the above named defendant, being duly sworn, says, that a copy of the declaration filed in this cause was served upon this deponent, by leaving the same in his office, during this deponent's absence therefrom; that the same was in some way mislaid, and did not come to the notice of this deponent until the _____ day of _____ instant; that this deponent immediately thereupon and on the same day last mentioned, filed the plea, the copy whereof is hereto annexed, in the office of the clerk of this court in the city of _____, and delivered the annexed copy to E. F., esquire, the attorney for the plaintiff, but that the said E. F. refused to receive the said plea, and informed this deponent that the defendant's default for not pleading had been entered on the day preceeding. And deponent further says that on the _____ day of _____ last mentioned, he again tendered to the said E. F. the said plea, together with the annexed affidavit, and at the same time offered to pay to the said E. F. the costs of entering the said default (and of any subsequent proceedings), and also offered, if necessary, to accept short notice of trial in said cause, if the said E. F. would consent to waive the said default; but that the said E. F. wholly refused to waive the same, and refused to accept the said plea. (Add a general affidavit of merits in the usual form.) Burr. App. 23, §46.

C. Affidavit To Set Aside Inquest as Irregular.

G. H., the attorney for the defendant in this cause, being duly sworn, deposes and says, that issue was joined in the said cause on the _____ day of _____ last, and notice of trial given for a circuit court appointed to be held at the (court house) in the (town) of _____, in and for the said county of _____, and that upon the receipt of the said notice, an affidavit of merits, of which the annexed is a true copy, was prepared by this deponent, and sworn to by the said defendant, and that the same was thereupon filed in the office of the clerk of this court, at the city of (New York), on the _____ day of _____ last,

being the first day of said circuit; and that a copy of said affidavit was, on the same day, duly served upon the attorney for the plaintiff in this cause,* as by an affidavit of the filing and service thereof, hereto annexed, may more fully appear, and to which this deponent refers. And deponent further says that, notwithstanding the said filing and service of the said affidavit, the attorney for the said plaintiff took an inquest in said cause, out of its regular order on the calendar, on the _____ day of _____ instant, and obtained a verdict for _____ dollars, and further says not. Burr. App. 34, §65.

D. Affidavit To Set Aside Regular Inquest.

G. H., the attorney for the defendant in this cause, being duly sworn, says, that this is an action of (trespass), that issue was joined in the said cause on the (twenty-third) day of (April last), and notice of trial given for a circuit court appointed to be held, etc. (as in last form to the *). And deponent further says that the said cause was entered on the calendar of the said court, and was on the day calendar for the (sixth of August last), and that (here state the taking of an inquest, and the facts excusing the default, and annex a general affidavit of merits in the usual form). Burr. App. 34, §65a.

XI. Notice of Motion To Set Aside.

A. Notice of Motion To Set Aside Default as Irregular.

Sir: Please to take notice that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the _____ in the city of _____, on the first Tuesday of _____ next,* that the default entered against the defendant in this cause, and all the subsequent proceedings therein, be set aside for irregularity with costs. Burr. App. 206, §403.

B. Notice of Motion To Set Aside Regular Default.

(As in preceding form to the *, and then as follows): that the default entered in this cause be set aside on such terms as the court may direct. Burr. App. 207, §403.

XII. Orders To Set Aside.

A. Order To Set Aside Default for Irregularity.

On filing the affidavits in this cause,

and on motion of Mr. H., of counsel for the defendant, after hearing counsel in opposition thereto, ordered, that the default entered in this cause, and all subsequent proceedings therein be, and the same are hereby set aside for irregularity, with ten dollars costs (and that the defendant have twenty days to plead). Burr. App. 455, §903.

B. Order To Set Aside Regular Default.

A motion having been made on the part of the defendant to set aside the default in this cause, and after hearing counsel in support of said motion, as well as in opposition thereto, ordered, that the said default be, and the same is hereby set aside, on payment of _____ dollars costs, and that the defendant have until the _____ day of _____ instant to plead de novo. Burr. App. 455, §904.

C. Order To Set Aside Inquest for Irregularity.

On reading and filing affidavits in this cause, and on motion of K. L., of counsel for defendant, after hearing counsel in opposition (or no one appearing to oppose), ordered, that the inquest taken in this cause be, and the same hereby is, set aside for irregularity, with _____ dollars costs. Burr. App. 464, §940a.

D. Order To Set Aside Regular Inquest.

A motion having been made on the part of the defendant to set aside the inquest taken in this cause, and all subsequent proceedings; after hearing counsel for both parties, ordered, that the same be granted, on payment of the costs of circuit, inquest and all subsequent proceedings, and _____ dollars costs of opposing this motion; the defendant to take short notice of trial for the next circuit; judgment to stand as security (or as the terms of the order may be). Burr. App. 465, §940b.

XIII. Entry of Vacatur When Judgment is Void.

Afterwards, to-wit, on, etc. (the term the vacatur is ordered), before the justices aforesaid, at, etc., comes the said plaintiff (or defendant), by his attorney aforesaid (or come as well the said plaintiff, as the said defendant, by their respective attorneys aforesaid). And because it seemeth to the court now here, before the aforesaid justices

thereof, that the judgment aforesaid, in form aforesaid above given is, in all respects, irregular and void: Therefore the said judgment, for the cause aforesaid, is by the said court now here vacated, annulled, and altogether held for naught; and it is ordered by the said court that a vacatur thereof be entered on the record of the said judgment. And the same is hereby entered accordingly, etc. Burr. App. 97, §189; Yates' Forms 97.

DEFINITENESS.—See CERTAINTY IN PLEADING.

DEMURRER.

I. Demurrer at Common Law, 378

- A. *General Demurrer to Declaration*, 378
- B. *Special Demurrer*, 379
 1. *To Declaration*, 379
 2. *To Plea in Abatement*, 379
 3. *To Plea in Bar*, 379
 4. *To Replication*, 380
 5. *To Rejoinder*, 380
 6. *To Surrejoinder*, 380
- C. *Notice of Argument of Demurrer*, 380
- D. *Order for Judgment*, 380
 1. *For Plaintiff*, 380
 2. *For Defendant*, 380
 3. *For Defendant Where Unopposed*, 380

II. Demurrers Under Code, 380

- A. *Want of Cause of Action*, 380
- B. *Incapacity To Sue*, 381
- C. *For Misjoinder of Actions*, 381
- D. *For Defect of Parties*, 381
- E. *Demurrer to Answer*, 381
- F. *Demurrer to Reply*, 381

III. Demurrers in Equity, 381

- A. *Commencement*, 381
- B. *Conclusion*, 381
- C. *For Want of Equity*, 381
- D. *To Bill for Nuisance*, 381
- E. *Want of Privity*, 382
- F. *To Interpleader, No Affidavit*, 382
- G. *To Interpleader, Want of Claim of Right*, 382
- H. *For Relief From Mandamus*, 382
- I. *For Relief on Lost Bond*, 382
- J. *To Bill of Review and Supplement*, 382
- K. *In Creditor's Suit*, 383
- L. *For Multifariousness*, 383
- M. *To Discovery*, 383

- N. *For Infancy of Plaintiff*, 383
 O. *For Want of Parties*, 383
 P. *Demurrer and Answer*, 383

CROSS-REFERENCES:

ARRAIGNMENT AND PLEA:

- Demurrer to an Indictment or Information;
 Joinder to Demurrer to Indictment or Information;
 Demurrer to Plea in Bar;
 Joinder in Demurrer to Plea in Bar.

BILLS AND ANSWERS:

- Conclusion of Answer, Claim of Defense as in Demurrer.

CERTAINTY IN PLEADING:

- Demurrer to Declaration for Matter of Form.

DUPLICITY:

- Demurrer to Replication for Duplicity.

HEARING:

- Order on Hearing, Demurrer or Plea (a, b).

INJURIES TO PERSONS:

- Demurrer, That Negligence Insufficiently Alleged.

ISSUES IN PLEADING AND PRACTICE:

- Joinder in Demurrer to Plea in Abatement;
 Joinder in Demurrer to Replication to Plea in Abatement;
 Joinder in Demurrer to Declaration or Replication;
 Joinder in Demurrer to Plea (in assumpsit, debt, covenant, or case);
 Joinder in Demurrer to a Plea in Bar to a Cognizance (Replevin).

JOINDER OF ACTIONS:

- Demurrer to a Declaration for Joining Counts in Trover and in Assumpsit;
 Demurrer to Complaint for Misjoinder of Actions.

JUDGMENT RECORDS:

- Judgment Record on Demurrer to Replication to Plea in Abatement, Sustained;
 Judgment Record on Demurrer, Plea in Abatement and Respondeat Ouster;
 Judgment Record on Default After Pleading in Abatement and Respondeat Ouster;
 Demurrer to Declaration or Replication Overruled;
 Judgment Record on Demurrer to Declaration or Replication, Sustained;
 Judgment Record on Frivolous Demurrer;
 Judgment Record on Demurrer De-

cided for Plaintiff, After an Issue of Fact Tried;

- Judgment Record on Demurrer to Plea or Rejoinder Sustained;
 Judgment Record on Demurrer to Plea or Rejoinder Overruled.

JUDGMENTS:

- Notice of Motion for Judgment on Frivolous Demurrer;
 Judgment for Defendant in Bar or on Demurrer;
 Judgment on Demurrer to Declaration or Replication in Assumpsit Overruled;
 Judgment for Defendant, After Order Sustaining Demurrer;
 Judgment for Plaintiff After Order Overruling Demurrer.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

- Fieri Facias on Default of Plaintiff for Not Joining in Demurrer.

JURISDICTION:

- Demurrer for Want of Jurisdiction as to Person;
 Demurrer for Want of Jurisdiction as to Subject.

LICENSES:

- Demurrer, Action To Recover Back License Fee.

LIMITATION OF ACTIONS:

- Demurrer to Plea, Non-assumpsit Instead of Non-Accrevit.

MULTIFARIOUSNESS:

- Demurrer in Equity for Multifariousness (a, b).

OYER AND PROFERT:

- Special Demurrer to Declaration After Oyer.

PARTIES:

- Demurrer in Equity for Want of Parties.

QUO WARRANTO:

- Demurrer for Want of Attorney-General as Party to Quo Warranto.

REPLEVIN:

- General Demurrer to Plea in Bar to Cognizance;
 General Demurrer to an Avowry or Cognizance.

SCIRE FACIAS:

- Judgment Record on Demurrer.

SERVICE OF PROCESS AND PAPERS:

- Affidavit of Service of Demurrer, Plea, Replication or Other Pleading.

I. Demurrer at Common Law.

- A. *General Demurrer to Declaration.*
 And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong (or force) and

injury when, etc., and says that the said declaration (or the said first [or other] count of the said declaration), and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof, against the said defendant; and that he the said defendant is not bound by law to answer the same. And this he is ready to verify. Wherefore, for want of a sufficient declaration (or ——— count of the said declaration), in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him, etc. Burr. App. 394, §730.

B. *Special Demurrer.*

1. *Special Demurrer to Declaration.*

(As in preceding form to end, then continue): And the said defendant, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said declaration (or to the said ——— count of the said declaration), that is to say (here state the particular causes of demurrer thus): For that the said declaration is not entitled of any court, neither does it appear in and by the said declaration in what court the said action is brought against the said defendant; and also for that it doth not appear in or by the said declaration of what term the writ or process upon which the said declaration was founded, was or is returnable; and also for that the said declaration is not entitled of any term whatever; and also for that the said declaration is in other respects uncertain, informal and insufficient, etc. Burr. App. 395, §731.

2. *Special Demurrer to Plea in Abatement.*

And the said plaintiff saith that the said plea of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to quash the said bill (or writ, or declaration), and that he the said plaintiff is not bound by the law of the land to answer the same. And this he is ready to verify. Wherefore, for want of a sufficient plea in this

behalf, the said plaintiff prays judgment, and that the said defendant may answer further to the said declaration, etc.

And the said plaintiff, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said plea, that is to say: (For that the said C. D., by his plea aforesaid, hath admitted himself to be the person named the defendant in and by the aforesaid [bill and] declaration of him the said plaintiff): And also for that the said plea is in other respects informal and insufficient. Burr. App. 397, §734; 3 Chit. Pl. 1254.

3. *Special Demurrer to Plea in Bar.*

And the said plaintiff, as to the said plea of the said defendant, by him (secondly) above pleaded, saith that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against him the said defendant, and that he the said plaintiff is not bound by law to answer the same. And this he the said plaintiff is ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, and his damages, by reason of the not performing of the said several promises and undertakings, in the said declaration mentioned, to be adjudged to him, etc. (If the action be debt, say: "prays judgment, and his debt aforesaid, together with his damages by him sustained on occasion of the detention thereof, to be adjudged to him, etc." If in covenant, say: "prays judgment, and his damages by him sustained on occasion of the said breach of covenant in the said declaration mentioned, to be adjudged to him, etc." If in trespass, say: "prays judgment, and his damages by him sustained on occasion of the committing of the said trespasses [or in case, grievances], to be adjudged to him," etc.).

And the said plaintiff, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said (second) plea, that is to say: For that, etc. (here set out the causes of demurrer according to the case: thus, for not conclud-

ing to the country, "For that the said defendant hath not concluded his said plea, by putting himself upon the country, etc." For pleading nil debet in assumpsit, "For that the said defendant hath not, in or by his said plea, confessed and avoided, or traversed and denied, the making of the several promises and undertakings in the said declaration mentioned; and also for that the said plea is inartificially pleaded, and in other respects uncertain, etc." For pleading nil debet in debt on bond, "For that, although the said plaintiff, in his declaration, hath demanded of and from the said defendant, a sum certain due to him, the said plaintiff, from the said defendant, by virtue of a writing obligatory under his seal; yet the said defendant hath not, in or by his plea, denied the said writing obligatory to be his deed, nor in any manner shown himself to be discharged therefrom, and also for the said defendant should have pleaded that the said writing obligatory was not his deed, and not that he did now owe the debt demanded." And also that the said second plea is, in other respects, uncertain, informal and insufficient, etc. Burr. App. 397, §736; 3 Chit. Pl. 1256, 7.

4. *Special Demurrer to a Replication.*

And the said defendant saith that the said replication of the said plaintiff, to the said (second) plea of him the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against him the said defendant; and that he the said defendant is not bound by law to answer the same, and this he the said defendant is ready to verify; wherefore, for want of a sufficient replication in this behalf, he the said defendant prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc.

And the said defendant, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer in law to the said replication, that is to say: (Here state the causes and conclude thus): And also for that the said replication is, in other respects, uncertain, informal

and insufficient, etc. Burr. App. 399, §739; 3 Chit. Pl. 1262.

5. *Special Demurrer to a Rejoinder.*

(The form of this demurrer resembles the demurrer to the plea, substituting "rejoinder" for "plea" throughout. Burr. App. 400, §741.

6. *Special Demurrer to a Surrejoinder.*

The form of this demurrer is the same as that of a demurrer to a replication, substituting "surrejoinder" for "replication." Burr. App. 400, §742.

C. *Notice of Argument of Demurrer.*

Sir: Please to take notice that the above entitled cause will be brought on for argument, before the justices of this honorable court, at the next term of the said court, to be held at the (city hall in the city of New York), on the (first Monday of May) next, at the opening of the court on that day, or as soon thereafter as counsel can be heard. Burr. App. 209, §412.

D. *Order for Judgment.*

1. *Order for Judgment on Demurrer for Plaintiff.*

This case having been brought to argument, and after hearing Mr. J., of counsel for the plaintiff, and Mr. C., of counsel for the defendant, ordered, judgment for the plaintiff, with liberty however to the defendant to withdraw the demurrer and plead, on payment of costs. Burr. App. 460, §925.

2. *Order for Judgment on Demurrer for Defendant.*

This cause having been brought to argument, and after hearing Mr. M., of counsel for the defendant, and Mr. V., of counsel for the plaintiff, ordered, judgment for the defendant, with leave however for the plaintiff to amend, on payment of costs (or "without costs"). Burr. App. 460, §926.

3. *Order for Judgment on Demurrer for Defendant Where Unopposed.*

On reading and filing notice of argument, and an affidavit of the due service of the same, and on motion of Mr. L. M., of counsel for the defendant, no one appearing to oppose, ordered, judgment for the defendant on the demurrer. Burr. App. 460, §927.

II. Demurrers Under Code.

A. *Demurrer for Want of Cause of Action.*

The defendant demurs (or, if only a part of them join, the defendants,

naming which, demur) to the complaint herein (or to the first, or second, or other, cause of action stated in the complaint herein), for the ground that it appears upon the face of the complaint:*

That the complaint does not state facts sufficient to constitute a cause of action (as to the plaintiff A. B.). 2 Abb. Forms 7.

B. Demurrer for Incapacity to Sue.
(As in II, A, to *.) That the plaintiff has not legal capacity to sue. 2 Abb. Forms 5.

C. Demurrer for Misjoinder of Actions.

(As in II, A, to *.) That several causes of action have been improperly united, one being (very briefly designating it, e. g., thus): a money demand on contract, and the second a claim to recover real property and damages for withholding thereof, and the third a claim to recover damages for injuries to the person. 2 Abb. Forms 7.

D. Demurrer for Defect of Parties.
(As in II, A, to *.) That there is a defect of parties plaintiff (or a defect of parties defendant) in the omission of (designating the omitted party either by name or by the character in which he is referred to in the complaint, e. g.), the maker of the note mentioned in said complaint, or the husband of the plaintiff. 2 Abb. Forms 6.

Demurrer for Defective Parties (b).

The said defendants (also) demur to the said complaint upon the ground that there is a misjoinder of parties plaintiff in the said complaint, in that it appears by the said complaint that the plaintiffs are not united in interest in any demand or demands alleged in said complaint to exist against this (or, these defendants) and in that it appears that the action is brought to recover upon two alleged several demands, one in favor of one of the plaintiffs, and the other in favor of the other, in neither of which several demands existing in favor of one of the said plaintiffs is the other of said plaintiffs interested. *Nagel v. Lutz*, 41 App. Div. 193, 58 N. Y. Supp. 816.

E. Demurrer to Answer of New Matter or Counterclaim.

The plaintiff demurs to the answer of the defendant (or the first, or second defense, or counterclaim contained

in the answer of the defendant) for insufficiency, in not stating facts sufficient to constitute a defense (or counterclaim). 2 Abb. Forms 175.

F. Demurrer to Reply.

The defendant demurs to the plaintiff's reply (or first, or other reply) for insufficiency, in not stating facts sufficient to constitute a reply. 2 Abb. Forms 176.

III. Demurrers in Equity.

A. Demurrer in Equity, General Form, Commencement.

The demurrer of C. D., defendant, to the bill of complaint of A. B., the above named plaintiff.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer sheweth that, etc. (Here set forth the cause of demurrer.) 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2116.

B. Demurrer in Equity, Conclusion.

Wherefore and for divers other good causes of demurrer appearing in the said bill, the defendant doth demur thereto, and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2116.

C. Demurrer in Equity, for Want of Equity.

That the plaintiff hath not in and by his said bill made or stated such a case as entitles him, in a court of equity, to any discovery from this defendant (or these defendants or either of them) or to any relief against him (or them or either of them) as to the matters contained in the said bill or any of such matters. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2116.

D. Demurrer to Bill To Restrain Private Nuisance, Plaintiff Not Having Established His Right at Law.

That the plaintiff has not, by his said bill, shown such a case as entitles him to such relief as is thereby prayed, inasmuch as it does not thereby appear that there was any impediment to an action at law being brought by the

said plaintiff to ascertain his right and that of this defendant, relative to the wall in the said bill particularly mentioned, or that in any trial or action verdict or judgment has been hitherto obtained by the said plaintiff for that purpose, or that there was previously to or at the time the said bill was filed, or now is, any authentic record of such right. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2121.

E. *Demurrer in Equity for Want of Privity. Bill by Unsatisfied Legatee Against Debtor of Testator.*

That it appears by the said plaintiff's said bill, that there is no privity between the said plaintiff and this defendant, to enable the said plaintiff to call on this defendant for payment of any debt due to the estate of the said testator from this defendant. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2121.

F. *Demurrer to Bill of Interpleader, No Affidavit, Want of Equity.*

This defendant by protestation, etc., doth demur in law to the said bill, and for cause of demurrer sheweth that, although the said plaintiff's said bill is upon the face thereof a bill of interpleader, yet the said plaintiff has not annexed to his said bill an affidavit that he doth not collude concerning such matters with any of the defendants thereto, which affidavit ought, according to the rules of this court, as this defendant is advised, to have been made by the said plaintiff and annexed to the said bill; and for further cause of demurrer this defendant further sheweth that the said bill does not contain sufficient matter of equity whereupon this court can ground any decree in favor of the said plaintiff, or give the said plaintiff any relief against this defendant. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2119.

G. *Demurrer to Bill of Interpleader for Want of Claim of Right in Defendant.*

This defendant, by protestation, etc., doth demur, and for cause of demurrer sheweth, that the plaintiff has not in his said bill of interpleader shown any claim or right, title, or interest whatsoever in this defendant in or to the said estate called A. in the said bill particularly mentioned and described, in respect whereof this defendant ought

to be compelled to interplead with C. D., in the said bill named, and the other defendant thereto. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2120.

H. *Demurrer to Bill for Relief From Mandamus.*

As to so much and such part of the said plaintiff's bill as prays an injunction, or order in the nature of an injunction, to stay proceedings on the writ of mandamus, issued to compel the said plaintiff to hold a court, and admit these defendants respectively as tenants thereto, these defendants severally demur, and for cause of demurrer show that it is against the course and practice, and not within the jurisdiction of this court to interfere or afford relief against the said writ of mandamus, or any other proceeding of a criminal or mandatory nature. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2120.

I. *Demurrer to a Bill for Relief on Lost Bond for Want of Affidavit of Loss.*

That the said plaintiff by his said bill, as this defendant is advised, endeavors to entitle himself to a sum of money due upon the bond therein stated to have been entered into by this defendant to the said plaintiff, and suggests for equity that the said bond has been burnt, lost or destroyed; and the said plaintiff has not by affidavit, annexed to and filed with the said bill, made oath that the said bond is burnt, lost or destroyed. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2120.

J. *Demurrer to Bill of Review and Supplemental Bill.*

These defendants by protestation, etc., do demur in law thereto, and for cause of demurrer show that there are no errors in the record and premises, and in the decree of the ——— day of ———, in the said bill of review and supplemental bill mentioned, nor is there any sufficient matter alleged in the said bill of review and supplemental bill to entitle the said plaintiff to reverse the said decree; and for divers other defects and errors appearing in the said bill of review and supplemental bill, these defendants do demur in law thereto; and these defendants, for further cause of demurrer, humbly show that, under the rules of this honorable court, no supplemental

or new bill in the nature of a bill of review, grounded upon any new matter discovered or pretended to be discovered since the pronouncing of any decree of this court, in order to the reversing or varying of such decree, shall be exhibited without the special leave of the court first obtained for that purpose, wherefore and for that the said plaintiff does not allege by the said bill of review and supplemental or new bill that he had first obtained leave of this court for exhibiting the said bill of review and supplemental or new bill, these defendants demur in law thereto, and humbly pray the judgment of the court whether they ought to be compelled to put in any further or other answer to the said plaintiff's said bill of review and supplemental or new bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf, most wrongfully sustained. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2122.

K. Demurrer in Equity in Creditor's Suit.

That the said plaintiff has not alleged, nor does it appear by his said bill that he has sued out execution, and actually taken out a fieri facias on his said judgment, and that until he has so done the goods of A. B., in the said bill named, are not bound by the said judgment, nor the said plaintiff entitled to a discovery thereof. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2121.

L. Demurrer in Equity for Multifariousness.

This defendant, by protestation, etc., doth demur, and for cause of demurrer sheweth that it appears by the said bill that the same is exhibited against the defendant and the several other persons therein named as defendants thereto for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested, or concerned, and that the said bill is altogether multifarious. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2117.

M. Demurrer to Discovery Where it Would Subject Defendant to Pains, Penalties and Forfeitures.

That the said information seeks to discover how this defendant came by the possession of the several goods therein particularly mentioned, whether it was not by fraud, violence, con-

trivance, or other means, etc., etc., but this defendant is advised that any discovery of the manner in which such goods came into this defendant's possession, as an officer of the honorable united company of merchants trading to the East Indies, would or might subject this defendant to fine, or corporal punishment, and the penalties contained in the several acts of parliament for the establishment of the said company, and also to a forfeiture of his rank and office in the service of the said company, and likewise of the said goods. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2122.

N. Demurrer in Equity for Infancy of Plaintiff (No Next Friend).

That the said plaintiff, who appears by his said bill to be an infant under the age of twenty-one years, has exhibited his said bill without any person being therein named as his next friend. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2119.

O. Demurrer in Equity for Want of Parties (a).

And for (further) cause of demurrer show that there are not proper parties to the said information, and that there is not and are not any person or persons, party or parties, to the said information who represents or represent, or has or have a common interest with the persons or class of persons whose interests the said information affects to protect, or for whom relief is thereby prayed. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2118.

Demurrer for Want of Parties (b).

These defendants, by protestation, etc., do demur to the said bill, and for cause of demurrer show that it appears by the said plaintiff's said bill that a personal representative of R. S., the testator therein named, resident within the jurisdiction of the court, is a necessary party to the said bill. Wherefore, etc.

Or thus: That it appears by the said bill that it is necessary that the estate of the plaintiff's late wife, M. N., in the said bill named, should be represented in this suit; but no legal personal representative of the said M. N. is named a party thereto. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2118.

P. Demurrer in Equity, Demurrer and Answer.

The joint and several demurrer of W. L. and J. L. to part, and the joint

and several answer of the same defendants to the residue, of the original bill of complaint of T. A. P. and J. B., plaintiffs.

These defendants to so much of the plaintiffs' bill as prays that they may be decreed to transfer to the said plaintiffs, as the executors of G. M. in the said bill mentioned, the 21-64th shares of the ship called, etc., in the said bill mentioned, and that the said defendant J. L. may be decreed to transfer to the plaintiffs the 21-64th shares of the brig or vessel called, etc., in the said bill mentioned, and to so much of the said bill as prays that an account may be decreed to be taken of all the dealings and transactions between these defendants and the said G. M., with respect or in relation to the said two vessels, and of all sums of money respectively received and paid by these defendants and the said G. M. respectively, or by any other person by their or any of their respective order, or for their or any of their use, and that these defendants should be decreed to pay what should be found due thereon, so far as such dealings and transactions and sums of money, or any or either of them, relate to or concern the said 21-64th shares of the said vessel called, etc., or the said 21-64th shares of the said vessel called, etc., and the freights or freight, or any shares or share of the freights or freight, of such vessels or either of them, and to so much of the said bill as prays further or other relief with respect or in relation to the said shares of the said two vessels respectively or the freight thereof respectively.

(Cause of demurrer.) These defendants do demur and for cause of demurrer show that the said plaintiffs have not made or stated such a case as entitles them in a court of equity to the relief so prayed for, or any part thereof; and these defendants humbly pray the judgment of the court as to such parts of the bill as they have so demurred to as aforesaid.

(Answer to residue of bill.) And as to the residue of the said bill, that is to say, all the discovery, and the rest of the relief, by the said bill prayed, these defendants for answer thereto severally say they admit it to be true that Messrs. C. & N. were in the month of, etc., engaged in building at Liverpool, on their own account, a certain brig or vessel, and that in the month

of, etc., these defendants W. L. and J. L. did carry on business together in partnership as wine merchants and general dealers, etc., etc. 3 Dan. Ch. Pl. & Pr. (Perkins ed.) 2117.

DEMURRER TO EVIDENCE.

- I. Demurrer to Evidence, Damages Assessed, 384
- II. Demurrer to Evidence, Jury Discharged, 385
- III. Judgment Record for Plaintiff, 385
- IV. Judgment Record for Defendant, 385

For other forms, see 7 STANDARD PROC. 28-30.

I. Demurrer To Evidence by Defendant, Damages Assessed Conditionally.

Afterwards, that is to say, on the (first Monday of May, in the year one thousand eight hundred and forty-three), at the (city hall in the city of New York), before (William Kent), esquire, circuit judge, appointed to hold the circuit in and for the (said city and county of New York), according to the form of the statute in such case made and provided, come as well the within named plaintiff as the within named defendant, by their respective attorneys within mentioned; and the jurors of the jury summoned to try the issue within joined, being called, also come; and being chosen, tried and sworn to say the truth of the matters within contained, the said plaintiff, to prove and maintain the issue within joined on his part, shows in evidence to the jury aforesaid, by I. J., a witness duly sworn in that behalf, that, etc. (here state the evidence on the part of the plaintiff). And the said defendant says that the aforesaid matters to the jurors aforesaid in form aforesaid shown in evidence by the said plaintiff, are not sufficient in law to maintain the said issue within joined, on the part of the said plaintiff, and that he the said defendant is not bound by the law of the land to answer the same; and this he is ready to verify: wherefore, for want of sufficient matter in that behalf, shown in evidence to the jury aforesaid, the said defendant prays judgment, and that the jury aforesaid may be discharged from giving any verdict upon the said issue; * and that the said plaintiff may

be barred from having his said action against the said defendant, etc.

(Add the joinder in demurrer, as follows): And the said plaintiff, for that he hath shown in evidence to the said jurors sufficient matter in maintenance of the said issue, which matter the said defendant doth not deny, nor in any manner answer thereto, prays judgment, and his damages by reason of the premises to be adjudged to him, etc. Whereupon it is told to the jurors aforesaid that they shall inquire what damages the said plaintiff has sustained, as well by reason of the matter shown in evidence as aforesaid, as for his costs and charges by him about his suit in this behalf expended, in case it shall happen that judgment shall be given upon the evidence aforesaid for the said plaintiff. And the jurors aforesaid, upon their oath aforesaid, thereupon say that if it shall happen that judgment shall be given for the said plaintiff upon the evidence aforesaid, then they assess the damages of the said plaintiff by him sustained, by reason of the matter shown in evidence as aforesaid, besides his costs and charges by him about his suit in this behalf expended, to (seven hundred) dollars, and for these costs and charges to six cents. And thereupon the said jurors, by the assent of the said parties, are discharged from giving any further verdict upon the premises.

(But because the said court, before the aforesaid justices thereof now here, are not yet advised what judgment to give of and upon the premises, a day is given to the parties aforesaid, before the justices aforesaid, at the (academy in the city of Utica), on the (first Monday of July) next, to hear judgment thereon, for that the said court, before the aforesaid justices thereof now here, are not yet advised thereof, etc.) Burr. App. 79, §149; Till. Forms 181.

II. Demurrer To Evidence by Plaintiff, Jury Discharged.

Afterwards, that is to say, on, etc. (as in 1, *mutatis mutandis*, to the *, after which conclude thus): "and that his damages by reason of the premises within mentioned may be adjudged to him, etc."

(Add the joinder in demurrer as follows): And the said defendant, for that he hath shown in evidence to the jury aforesaid sufficient matter to

maintain the said issue within joined, on the part of the said defendant, and which he is ready to verify: and forasmuch as the said plaintiff doth not deny, nor in any manner answer, the said matter, prays judgment, and that the said plaintiff may be barred from having his aforesaid action against him, and that the jury aforesaid may be discharged from giving their verdict upon the said issue. Wherefore let the jury aforesaid be discharged by the court here, by the assent of the parties, from giving any verdict thereupon.

(Add continuance by *curia advisari vult*, if necessary, as in last form.) Burr. App. 80, §150; Archb. Forms 120; Till. Forms 181.

III. Judgment Record on Demurrer To Evidence for Plaintiff.

(To the order for trial inclusive, then enter the demurrer, joinder and continuance [see I, II], and then continue as follows): At which day, before the justices aforesaid, at the (academy) aforesaid, come the parties aforesaid, by their attorneys aforesaid; and hereupon, all and singular the premises being seen, and by the said court now here fully understood, and mature deliberation being thereupon had, it appears to the said court now here that the aforesaid matters, to the jurors aforesaid, shown in evidence by the said plaintiff, on the trial of the aforesaid issue, * are sufficient in law to maintain the said issue on the part of the said plaintiff. Burr. App. 177, §327.

IV. Judgment Record on Demurrer To Evidence for Defendant.

(As in the last form to the *, and then as follows): are not sufficient in law to maintain the said issue on the part of the said plaintiff.

Therefore it is considered, etc. (judgment of *nil capiat*, etc.). Burr. App. 178, §328.

DENIALS.

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Answer, Denial of Error in Account.

ANIMALS:

Denial of Ownership of Dog;

Denial of Scientist;

Answer, Denial of Injury by Dog.

ANSWERS:

Answer, General Denial (a, b);

- Answer, General Denial of One of Several Causes of Action;
 Answer, Denial of Deed (a, b, c);
 Answer, Denial of Conditional Delivery;
 Answer, Denial of Covenant;
 Answer, Denial of Breach of Covenant;
 Answer, Denial of Breach of Agreement;
 Answer, Denial of Contract;
 Answer, Denial of Indebtedness;
 Answer, Denial of Indebtedness Admitting Part;
 Answer, Denial That Money Was Lent;
 Answer, Denial That Money Was Received;
 Answer, Denial of a Request To Pay, Etc.;
 Answer, Denial of Loss by Common Carrier;
 Answer, Denial of Delivery of Goods to Common Carrier;
 Answer, Denial of Employment as Common Carrier;
 Answer, Not a Common Carrier;
 Answer, Denial of Bailment.
- ARBITRATION:**
 Answer, Denial of Award;
 Answer, Denial of Parol Submission;
 Denial of Performance by Plaintiff.
- ASSAULT AND BATTERY:**
 Answer, General Denial;
 Answer, Denial of Battery.
- ASSIGNMENTS:**
 Answer, Denial of Assignment of Instrument;
- BILLS AND ANSWERS:**
 Statement in Answer, Denial by One, Belief in Denial by Other;
 Statement in Answer, Joint Denial.
- BILLS AND NOTES:**
 Answer, Denial of Indorsement (a, b, c);
 Answer, Denial of Making or Accepting of Note or Bill;
 Answer, Denial of Acceptance, Presentment and Protest;
 Answer, Denial of Notice of Dishonor;
 Answer, Denial of Presentment;
 Answer, Denial of Excuse for Non-presentment;
 Answer, Denial of Guaranty;
 Answer, Qualified Admission of Note and Denial of Plaintiff's Title;
 Answer, Denial of Transfer to Plaintiff.
- BREACH OF PROMISE:**
 Answer, Denial of Promise;
 Answer, Denial of Breach;
- Answer, Denial of Plaintiff's Readiness.
- CORPORATIONS:**
 Answer, Denial of Holding Stock;
 Answer, Denial of Incorporation.
- CREDITORS' SUITS:**
 Answer, Denial of Possession of Assets Belonging to Judgment Debtor;
 Denial That Conveyance Was Fraudulent;
 Answer in Creditor's Suit, Denial of Execution;
 Answer in Creditor's Suit, Denial of Judgment;
 Answer, Denial of Residence Where Execution Issued.
- DIVORCE:**
 General Denial;
 Answer, Denial of Adultery.
- EJECTMENT:**
 Answer, Denial of Title.
- FALSE IMPRISONMENT:**
 Answer, Denial of Want of Probable Cause;
 Answer, Denial of Arrest.
- FRAUD AND DECEIT:**
 Answer, Denial of Scierter;
 Answer, Denial of Falsity;
 Rejoinder Denial of Fraud in Obtaining Judgment.
- GENERAL ISSUE AND GENERAL DENIAL:**
 General Denial of All Allegations;
 General Denial of One of Several Causes of Action;
 General Denial as to Part of Pleading;
 General Denial of Knowledge or Information Sufficient To Form Belief;
 General Denial of Knowledge or Information, Etc., by Several Defendants Answering Together;
 Denial of Knowledge Explaining Ignorance;
- GUARANTY:**
 Answer, Denial of Notice;
 Answer, Denial of Plaintiff's Performance;
 Denial of Plaintiff's Performance, Departure From Guaranty.
- INFORMATION AND BELIEF:**
 Answer, General Denial of Information, Etc., by Several Defendants;
 Answer, Specific Denial of Knowledge or Information Sufficient To Form Belief;
 Answer, Denial of Knowledge, Etc., Explaining Ignorance;
 Answer, General Denial of Knowledge or Information Sufficient to Form a Belief (a, b).

INSURANCE:

Answer, Denial of Policy;
 Answer, Denial of Account of Loss;
 Answer, Denial of Plaintiff's Interest;
 Answer, Denial of Loss.

LANDLORD AND TENANT:

Denial of Hiring;
 Denial of Use and Occupation;
 Denial by Assignee of Occupation.

LIBEL AND SLANDER:

Answer, Denial of Inducement;
 Answer, Justification and Denial of Malice in Charge of Larceny.

MORTGAGES:

Answer, Denial of Mortgage;
 Answer, Denial of Having Assumed Mortgage.

NEGLIGENCE:

Answer, Denial of Ownership of Cause of Injury;
 Answer, Denial of Ownership of Plaintiff.

NUISANCE:

Answer, Denial of Nuisance;
 Answer, Denial of Plaintiff's Title;
 Denial of Act.

PARTNERSHIP:

Answer, Denial of Partnership.

PAYMENT:

Answer, Denying the Promise as to Part, and Payment as to Residue.

PERFORMANCE:

Answer, Denial of Plaintiff's Performance;
 Answer, Traverse of Plaintiff's General Allegation of Performance.

REPLEVIN:

Denial of Taking.

SALES:

Answer, Denial of Sale;
 Answer, Denial That Credit Has Expired;
 Answer, Denial of Plaintiff's Title to Goods When Sold;
 Answer, Denial of Necessaries.

SPECIFIC PERFORMANCE:

Denial of Payment or Tender;
 Denial of Part Performance;
 Denial of Delivery of Possession;
 Denial of Readiness To Convey;
 Denial of Title.

TENDER:

Answer, Denial of Part, Tender of Residue.

TRESPASS:

Answer, Denial of Breaking;
 Answer, Denial of Taking;
 Denial of Plaintiff's Title;
 Answer, Denial of Plaintiff's Title as to Part;

Answer, Denial of Plaintiff's Possession;
 Denial of Plaintiff's Right to Possession.

TROVER AND CONVERSION:

Answer, Denial of Bailment;
 Answer, Denial of Detention;
 Answer, Denial of Conversion;
 Answer, Denial of Plaintiff's Ownership;
 Answer, Denial of Assignment of Cause of Action.

TRUSTS AND TRUSTEES:

Answer by Trustee, With Denial of Having Acted;
 Answer, Denial of Trusteeship.

WARRANTY:

Denial of Representation;
 Answer, Denial of Warranty;
 Answer, Denial of Breach.

WASTE:

Answer, Denial of Waste.

DEPOSIT IN COURT.**I. Notice of Motion, 387**

A. *For Payment Into Court*, 387
 B. *For Payment of Claim, or Delivery of Property*, 388

II. Orders, 388

A. *For Payment Into Court*, 388
 B. *To Satisfy Part of Claim*, 388
 C. *On Paying Money Into Court*, 388
 D. *To Deliver Property*, 388
 E. *Voluntary Payment Into Court*, 388

CROSS-REFERENCE:**TENDER:**

Order for Leave To Pay Money Into Court.

I. Notice of Motion.

A. *Notice of Motion for Payment Into Court.*

Sir: Take notice, that I intend to move this honorable court on the _____ day of _____ next, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the _____ in the city of _____, for an order that the above named defendant may, on or before the _____ day of _____ next, pay into the hands of the register of this court, in trust in this cause, the sum of \$_____, admitted by the answer of the said defendant to be due from him; and that the same, when paid in, may be deposited in trust by the register in such bank, or invested by him in trust in such manner as this court shall direct, with costs. And for such further, or for such other order or relief as the

court may think proper to grant; which motion will be founded on the bill and answer in this cause.

Dated Dec. 5th, 1843.

To W. N., esq., sol. for deft.

Yours, etc.,

J. E., sol. for compt.

2 Barb. Ch. Pr. 432.

B. Notice of Motion for Payment of Part of Claim, or for Delivery of Property.

Take notice, that on the pleadings in this action, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, for an order that (state object as in either II. B, or II. D), and for such other or further relief as may be just (and for the costs of this motion). 2 Abb. Forms 402.

II. Orders.

A. Order for Payment Into Court.

On reading and filing bill and answer in this cause (and due proof of service of notice of this motion) and on motion of J. E., solicitor for the complainant, and on hearing Mr. N. in opposition to said motion (or no one appearing to oppose) it is ordered that the defendant C. D. do, on or before the _____ day of _____ next, pay into the hands of the register of this court, in trust in this cause, the sum of \$_____, admitted by the answer of said defendant to be due from him; and that when such money is paid in it be deposited by said register, in trust, in the Bank of _____ (or invested on bond and mortgage, in trust), to the credit of this cause, there to remain until the further order of this court. 2 Barb. Ch. Pr. 433.

B. Order To Satisfy Part of Plaintiff's Claim.

On the pleadings in this action, whereby it appears that the defendant admits that the plaintiff justly claims from him _____ dollars (and on reading and filing proof of due service of notice of this motion), now on motion of O. P., counsel for plaintiff, after hearing Q. R., counsel for defendant (or, no one appearing), in opposition:

Ordered, that the defendant pay to the plaintiff, within _____ days after service of this order, _____ dollars, with interest from the _____ day of _____, 18____ (and _____

dollars, costs of motion); and that the plaintiff have leave to issue execution against the property (and person) of the defendant for the same, if not so paid. 2 Abb. Forms 403.

C. Order on Paying Money Into Court.

On motion of Mr. G. H., attorney for the defendant, it is ordered, that the defendant have leave to bring into court the sum of _____ dollars and _____ cents, admitted by him to be due the plaintiff in this cause; and that thereupon (unless the said plaintiff shall accept thereof, with costs to be taxed, in full discharge of this action) the said sum shall be struck out of the said plaintiff's declaration in this cause, and the same shall be paid out of court to the said plaintiff or his attorney; and that on the trial of the issue (to be joined) in this cause, the said plaintiff shall not be permitted to give evidence for the sum so brought into court. Burr. App. 447, §875; Yates' Forms 85.

D. Order To Deliver Property.

On the pleading in this action, whereby it appears that the defendant Y. Z. admits that he has in his possession (or, under his control), the property hereinafter mentioned, and that it is the property of the plaintiff (and on reading and filing proof of due service of notice of this motion), on motion of O. P., counsel for plaintiff, after hearing Q. R., counsel for defendant (or, and no one appearing), in opposition:

Ordered, that the defendant Y. Z., within _____ days after the service of this order, deposit in court (specifying the property), subject to the further direction of the court (or, deliver to the plaintiff, specifying the property), (and pay _____ dollars costs of motion). 2 Abb. Forms 402.

E. Order Permitting Voluntary Payment Into Court.

On motion of M'Kinstry & Tallmadge, attorneys for defendant, ordered, that the defendant have leave to bring into court \$60; and thereupon, unless the plaintiff shall accept thereof, with costs to be taxed, in full discharge of this action, the said sum of \$60 shall be struck out of the declaration, and the said sum shall be paid out of the court, to the plaintiff or his attorney; and on the trial of the issue in this cause, the plaintiff

shall not be permitted to give evidence for the sum brought into court. (A copy.) John Keys Paige, clk.
Bank of Columbia v. Southerland, 3 Cow. (N. Y.) 336.

DEPOSITIONS.

I. By Commission, 389

- A. *Notice of Application for Commission*, 389
- B. *Affidavit To Obtain Commission*, 389
- C. *Order for Commission With Stay*, 390
- D. *Order for Commission Without Stay*, 390
- E. *Commission To Examine Witnesses*, 390
- F. *Commission for Purpose of Motion*, 391
- G. *Notice To Settle Interrogatories*, 391
- H. *Interrogatories Under Commission*, 391
- I. *Cross-Interrogatories*, 392
- J. *Stipulations*, 392
 1. *As to Mode of Returning*, 392
 2. *As to Method of Taking*, 392
- K. *Deposition*, 392
- L. *Return to Commission*, 392

II. Depositions on Notice, 393

- A. *Notice of Taking Deposition*, 393
- B. *Caption of Deposition*, 393
- C. *Certificate to Deposition*, 393

III. Letters Rogatory, 394

- A. *To Foreign Court*, 394
- B. *Interstate*, 394
 1. *Letters Rogatory*, 394
 2. *Commission in Response*, 395
 3. *Letters Where Witness Refused*, 395
 4. *Order for Taking Deposition*, 395
 5. *Subpoena*, 396
 6. *Order To Show Cause in Contempt, on Letters Rogatory*, 397
 7. *Commitment for Refusal To Testify on Letters Rogatory*, 397

IV. Affidavit To Suppress Deposition, Notice Signed by Unauthorized Person, 397

CROSS-REFERENCES:

CROSS-BILLS:

Petition To Use Depositions in a Cross-Case.

EQUITY JURISDICTION AND PROCEDURE:

Affidavit for Order To Examine Witness Abroad.

HEARING:

Notice of Motion To Suppress Depositions.

INTERSTATE COMMERCE COMMISSION:

Notice of Taking Deposition Under Rule XII.

I. By Commission.

A. *Notice of Application To Judge for Commission.*

Sir: Please to take notice that on the affidavit, of which the annexed is a copy, an application will be made to (here name the supreme court justice, or circuit judge), at his chambers in _____, on the _____ day of _____, next, for an order that a commission issue in this cause, to be directed to R. S., T. U. and V. W., of _____, merchants (or as the case may be), authorizing them, or any two of them, to examine on oath I. J., of _____, as a witness on the part of the (defendant), on interrogatories to be annexed to the said commission, in which the (plaintiff) will be at liberty to join. Burr. App. 199, §380.

B. *Affidavit To Obtain Commission To Take Deposition.*

"Thomas Cantwell, being duly sworn, says that he is one of the attorneys for the plaintiff in the above entitled action. That this action is brought to recover the sum of \$3,754 from the defendants for the work and labor of Martin T. Lally in constructing a section of the St. Lawrence & Adirondack Railroad. That said Lally made a general assignment to plaintiff. Franklin county is the place of trial. That defendants in the answer allege that they do not owe the plaintiff anything, and that they have paid said Lally and his creditors for all work performed. . . . That said Martin T. Lally has died since the commencement of this action. . . . That William A. Dafter, who resides at Swan River, in the state of Minnesota, and Joseph P. Lally, who resides at Detroit, Michigan, are necessary and material witnesses for the plaintiff on the trial of this action, and each of them is a necessary and material witness on this trial on the following question, viz.: Upon the amount of work and labor performed by said Lally, and upon the amount of payments which the defendants made to said Lally, and upon the damages which said Lally suffered from the unreasonable delays of the defendants. That said Dafter is a civil engineer, and acted as the engineer of the said Martin T. Lally in the construction of said railroad, and in making the estimates

of the amount of work performed, and said Joseph P. Lally was the brother of said Martin, and acted as his confidential man and helper in said work, and said Dafter and said Joseph P. Lally talked with deponent at Malone before they went away, and told deponent what they could swear to, and that they would and could testify as to the amount of work performed by said Lally, and also as to the said delays and damages, all of which are in controversy in this action. That each of said witnesses is a necessary and material witness for the plaintiff on the trial of said action, as deponent has advised the plaintiff, after such statement of said witnesses, and verily believes to be true, and that without the testimony of said witnesses and each of them the plaintiff cannot safely proceed to the trial of this action, as deponent has also advised the plaintiff, after such statement, and verily believes. That neither of said witnesses is now within the state of New York, but the said William A. Dafter is now at or near Swan River aforesaid, and that deponent had a letter from him at that place recently. That said Joseph P. Lally resides at 76 Windsor street, Detroit, Mich., and is not now in the state of New York, as deponent verily believes, because this deponent had a letter from said Joseph P. Lally, dated and postmarked at Detroit not long ago." *Laidley v. Rogers*, 67 Hun 653, 22 N. Y. Supp. 468.

C. Order for Commission With Stay of Proceedings.

On reading and filing affidavits in this cause, and on motion of Mr. H., of counsel for the defendant, and after hearing counsel in opposition thereto, ordered that a commission issue in this cause, to be directed to R. S., T. U., and V. W., of the (city of Boston, in the commonwealth of Massachusetts, merchants), to examine on oath I. J., of the (city of Boston aforesaid, merchant), as a witness in this cause on the part of the defendant, on interrogatories to be annexed to the said commission; and that the plaintiff have leave to join in the said commission; and that the same may be returned by mail, addressed to (the clerk of the county of ———), and that all proceedings in this cause be stayed, until the return of such commission. Burr. App. 462, §932.

D. Order for Commission Without Stay.

On reading and filing, etc., and on motion, etc. (as in I. B), ordered that a commission issue in this cause, without a stay of proceedings, to be directed, etc., in which the plaintiff shall be at liberty to join, etc., and that the same be returned, etc. Burr. App. 462, §933.

E. Commission To Examine Witnesses (a).

The people of the state of New York, by the grace of God, free and independent, to R. S., T. U., and V. W., of the (city of Boston), in (the commonwealth of Massachusetts), merchants, greeting:

Whereas it appears to our justices of our supreme court of judicature for our said state, that I. J., of the (city of Boston), aforesaid, in the said (commonwealth, merchant), (if several witnesses, designate them separately), is a material witness (or are material witnesses), in a certain cause now depending in our said supreme court, between A. B., plaintiff, and C. D., defendant, and that the personal attendance of the said witness (or witnesses) cannot be procured at the trial of the said cause: We, in confidence of your prudence and fidelity, have appointed you, and, by these presents, do appoint you, or any two of you, commissioners to examine the said witness (or witnesses), and therefore we authorize and empower you, or any two of you, at certain days and places, to be by you, or any two of you, for that purpose appointed, diligently to examine the said witness (or witnesses, or such of them as shall be produced before you, or any two of you, and each apart), on the interrogatories annexed to this commission, on his corporal oath (or their respective corporal oaths), first taken before you, or any two of you, and cause the said examination of said witness (or of each of said witnesses), to be reduced to writing, and signed by the same witness, and by yourselves, or any two of you, and then return the same, annexed to the said commission, unto our supreme court of judicature aforesaid, with all convenient speed, enclosed under the seals of you, or any two of you, the said commissioners. Witness, ———, esquire, our chief justice, at the (capitol, in the city of Albany), this (twen-

ty-second day of October), in the year of our Lord one thousand eight hundred and ____.

_____, _____, clerks.

_____, attorney.

Burr. App. 73, §145; Till. Forms 26. *Commission To Examine Witnesses (b).*

That reposing said trust and confidence in your integrity, do authorize and empower you to cause A. B. Long to appear before you at such time and place as you may appoint, and him upon oath to examine touching all such matters and things as he shall know of and concerning a certain matter of controversy in our superior court for the county of Rutherford pending, wherein N. M. Street and others are plaintiffs and D. W. Q. Andrews is defendant. And the deposition in writing by you so taken the same to transmit, sealed with your seal, to our superior court, to be held for said county on the first day of February, 1894.

Witness: J. F. Flack, clerk of said court, at office in Rutherfordton, on the 25th day of January, 1894.

J. F. Flack,

Clerk of the superior court.

Street v. Andrews, 115 N. C. 417, 20 S. E. 450.

F. Commission To Examine Witness for Purpose of Motion.

The people of the state of New York, to W. D. (and T. H.), of the (town of _____, in the county of _____), greeting:

We hereby authorize and empower you (or either of you) to take the testimony of J. T. W., of _____ (residence of witness), to be used on a motion (or other proceeding, stating it briefly), pending before our justices of our supreme court of judicature; for that the said J. T. W. hath refused voluntarily to make his deposition in the premises. We therefore require you diligently to examine him touching the premises (or, if interrogatories are annexed, on the interrogatories hereto annexed), first administering to him an oath well and truly to testify in the premises (or to answer the said interrogatories), and after the same hath been reduced to writing, signed by you (or any one of you), and the said J. T. W., return the same annexed to this commission to our justices of our supreme court of judicature, with all convenient speed, enclosed under

your seal (or seals, or the seal of any one of you).

Witness, Greene C. Bronson, esquire, chief justice, etc. (teste in the usual form).

_____, _____, clerks.

_____, attorney.

Burr. App. 73, §146; Yates' Forms 650.

G. Notice of Attending Judge To Settle Interrogatories.

Sir: Please to take notice that the interrogatories of which the within is a copy will be presented for settlement to (or will be settled before), (here name the officer), at his chambers in _____, on the _____ day of _____, next, at (10 o'clock) in the forenoon. Burr. App. 199, §381.

H. Interrogatories for Examination of Witnesses Under a Commission.
Interrogatories to be administered to I. J., of the (city of Boston), in the (commonwealth of Massachusetts), a witness to be produced, sworn and examined, under and by virtue of the annexed commission, before R. S., T. U. and V. W., merchants, all residing in the (city of Boston), aforesaid, the commissioners therein named, in a certain cause now pending and at issue in the supreme court of judicature of the people of the state of New York, wherein A. B. is plaintiff, and C. D. is defendant; on the part and behalf of the said plaintiff (or defendant).

First interrogatory. What is your name, age, and occupation, and where do you reside?

Second interrogatory. Do you know the parties, plaintiff and defendant, in the title of these interrogatories named, or either, and which of them; and how long have you known them, or either of them, and which of them?

Third interrogatory. (If it relate to a paper to be proved.) Look upon the deed (or paper writing) now produced and shown to you, at this, the time of your examination, marked (A), purporting to be (state briefly the purport). Was or was not such deed (or paper writing) executed in your presence? If yea, by whom, when and where?

Fourth interrogatory. (Proceed with the interrogatories, according to the circumstances of the case.)

Lastly. Do you know any other matter or thing, touching the matters in

question, that may tend to the benefit or advantage of the said plaintiff (or defendant)? If yea, declare the same fully and at large, as if you had been particularly interrogated thereto.

E. F., attorney, and of counsel for plff.
Burr. App. 131, §258.

I. Cross-Interrogatories for Examination of Witnesses Under a Commission.

Interrogatories to be administered by way of cross-examination, to I. J., etc. (as in the title of interrogatories in the last form):

First cross-interrogatory. Do you, etc. (proceeding with each cross-interrogatory, in a separate paragraph, as in the last form).

Attorney, and of counsel for (dft.)
Burr. App. 132, §259.

J. Stipulations.

1. Stipulations as To Mode of Returning Commission.

It is hereby stipulated by and between the parties plaintiff and defendant in this cause, that either of the said parties (or their attorneys) may receive the commission, interrogatories, cross-interrogatories and depositions in said cause from the commissioners executing the said commission, or either of them, duly sealed up, and deliver them, thus sealed, to the clerk of (naming the clerk), and that the affidavit of such party (or attorney) that he did so receive and deliver the package unopened shall be evidence, and of like effect, as if the commission were returned pursuant to the rule of court granting the same. Burr. App. 478, §971.

2. Stipulation as To Method of Taking.

"It is stipulated by the parties that the deposition of the witness shall be taken in shorthand and the stenographic notes signed by him, and that the deposition shall be written out on typewriter and the transcript signed by the notary public before whom the deposition was taken, which shall have the same effect as if the same were written out in longhand, or typewritten and signed by the witness himself." Columbus R. Co. v. Patterson, 143 Fed. 245, 73 C. C. A. 603.

K. Deposition Pursuant To Commission.

"State of Delaware, Kent county, ss. By virtue of the annexed commission, I, John Fisher, one of

the commissioners therein named, together with Arthur Johns, the clerk by me appointed, have, this ninth day of October, in the year 18—, met at the house of Abner Harris, in the county aforesaid, at the hour of 3 o'clock in the afternoon, as by appointment and notice thereof given, and having taken the oath annexed to the said commission, a certificate whereof is hereunto annexed, proceeded to the execution of the same commission. Whereupon Philip D. Feddeman, a witness produced by the defendant in this commission named, being duly sworn true and perfect answers make to all such interrogatories as to him should be put in this cause, and therein to speak the truth, the whole truth, and nothing but the truth. To the first interrogatory, this deponent answereth, and saith, That, etc. Then follow the answer which the deponent signed, etc. 'Taken, sworn and subscribed, this 9th day of October, 18—, before

John Fisher, Comr.'"

Walkup v. Pratt, 5 Har. & J. (Md.) 51.

L. Return To Commission (a).

"I beg leave to return to the honorable the judges of Queen Anne's county court, of the state of Maryland, that in virtue of the annexed commission, to me directed, having first myself taken the oath aforesaid to the said commission annexed, and presented for me to take, and having also administered to Arthur Johns, the person by me appointed clerk of the said commission, the oath to the said commission annexed, and presented for him to take, I have caused Philip D. Feddeman, a witness, to be sworn, and his deposition fairly and truly to be written down, as by the said commission I am directed; all which, together with the said commission, I return, closed, to your honorable court, under my hand and seal, this 9th day of October, 18—, as by the said commission I am directed.

John Fisher, Comr. (S. L.)."

Walkup v. Pratt, 5 Har. & J. (Md.) 51.

Return to Commission (b).

Pursuant to the annexed commission to me directed, I, B. M. Edney, commissioned under the authority thereof, on the 30th day of January, 1894, at the residence of A. B. Long, Sr., in Logan's Store Township, in Rutherford

county, N. C., defendant D. W. Q. Andrews present, plaintiff N. M. Street absent, proceeded to take the deposition of A. B. Long, Sr., who, being first duly sworn on the Holy Evangelist to speak the truth, the whole truth and nothing but the truth between the parties named in said commission, deposes as follows:

The foregoing deposition of A. B. Long, Sr., was sworn to and subscribed before me at the time and place mentioned in the caption.

B. M. Edney,
Commissioner.

Street v. Andrews, 115 N. C. 417, 20 S. E. 450.

Note.—Held deposition improperly suppressed. "There was no evidence offered that it was not taken between the hours mentioned in the notice, and there is no presumption that it was not."

Return to Commission (c).

By virtue of the commission hereto annexed, I have this 7th day of October, 1854, at the office of Clarke & Terrell, in the town of Dayton in said county, cause the above named E. D. Connor (or Wm. G. Lancaster), the witness in said commission named, who is personally known to me, to come before me; who, after being duly sworn, deposed as set forth above in his answers to the annexed interrogatories; that his said answers, as above set forth, were reduced to writing, read over to, approved, and signed by said witness in my presence. Given under my hand and seal, etc. Roberts v. Fleming, 31 Ala. 683.

Note.—Held in compliance with code.

II. Depositions on Notice.

A. Notice of Taking Deposition (a).

"Take notice that on Monday, the third day of February, A. D. 1862, at the hour of 10 o'clock a. m. of said day, before G. P. McClimans, esq., a justice of the peace, at his office in Sandoval, Illinois, we shall take the deposition of D. H. Stead, a witness to be examined on the part of said plaintiff, and which said deposition will be read in evidence at the trial of said cause, and when and where you may appear and cross-examine said witness, if you see proper." Illinois Central R. R. Co. v. Cowles, 32 Ill. 116, 118.

Notice of Taking Deposition (b).

Take notice, that on Monday, the third day of February, A. D. 1862, at

the hour of 10 o'clock a. m. of said day, before G. P. McClimans, esq., a justice of the peace, at his office in Sandoval, Illinois, we shall take the deposition of D. H. Stead, a witness to be examined on the part of said plaintiff, and which said deposition will be read in evidence at the trial of said cause, and when and where you may appear and cross-examine said witness, if you see proper. Illinois Cent. R. Co. v. Cowles, 32 Ill. 117.

B. Caption of Deposition on Notice (a).

"The deposition of William S. Rayner, taken before the undersigned commissioner of affidavits in and for the southern district of Mississippi, at the clerk's office of the circuit court of the United States for the southern district of Mississippi, in the town of Jackson, between the hours of eight o'clock a. m., and three p. m., on the 3rd day of May, A. D. 1843, according to a notice by me issued and hereto annexed; said deposition to be read as evidence on the part of the defendant (de bene esse) in the trial of a certain action at law, depending and mentioned in the circuit court of the United States for the southern district of Mississippi, wherein Benjamin D. Harris is plaintiff, and Winter and Wall defendants." (Then follows the deposition, to which is attached the following certificate:)

"United States of America, Southern District of Mississippi, set." Harris v. Winter, 7 Wall (U. S.) 693, 12 L. ed. 875.

Caption of Deposition (b).

Deposition of D. W. Stead, a resident of Marion county, state of Illinois, aged about thirty years, a witness on the part of the plaintiff in the above entitled suit, now pending before Joseph B. Smith, justice of the peace in and for the county of Stephenson, and state of Illinois, aforesaid, produced, sworn and examined before George P. McClimans, a justice of the peace in and for said county of Marion, on the 3d day of February, A. D. 1862, at the office of said justice, in the town of Sandoval, taken by virtue of the annexed notice. Illinois Cent. R. Co. v. Cowles, 32 Ill. 117.

C. Certificate to Deposition on Notice (a).

"I, George W. Miller, commissioner of affidavits, etc., in and for the south-

ern district of Mississippi, do hereby certify that the foregoing deposition of William S. Rayner was taken, subscribed, and sworn to before me, and by me reduced to writing in the presence of said witness, at the time and place mentioned in the caption thereof, at the time of which I was attended by James M. Wall, one of the defendants, and William M. Rives, esq., attorney for plaintiff, who declined putting any interrogatories to said witness. I further certify that I am not a counsel for either party, or interested in the event of said cause.

"Given under my hand and seal at Jackson, this 3rd day of May, A. D. 1843.

"Geo. W. Miller, U. S. commissioner."

Harris v. Winter, 7 Wall. (U. S.) 693, 12 L. ed. 875.

Certificate of Deposition (b).

State of Illinois, Marion county, ss.

I, the subscriber, a justice of the peace in and for said county, do certify that the above deposition was taken at the time and place mentioned in the caption thereof; that the said witness was first duly sworn; that the said deposition was first carefully read to him and signed by him.

Dated this 3d day of February, A. D. 1862.

G. P. McClimans, J. P.

Illinois Cent. R. Co. v. Cowles, 32 Ill. 117.

Note.—Held that the hour of taking the deposition might be supplied from the annexed notice by reference in the caption. See II, A, (b), B, (b), above.

III. Letters Rogatory.

A. Letters Rogatory to Foreign Court.

United States. District of Pennsylvania. Sect.

The president of the United States, to any judge or tribunal having jurisdiction of civil causes at Havana, greeting:

Whereas a certain suit is pending before us in which John D. Nelson, Henry Abbott and Joseph E. Tatem, are the claimants of the schooner Perseverance and cargo, and the United States of America are the defendants; and it has been suggested to us, that there are witnesses, residing within your jurisdiction, without whose testimony, justice cannot completely be done between the said parties. We therefore request you, that in furtherance of justice, you

will, by the proper and usual process of your court, cause such witness or witnesses, as shall be named or pointed out to you by the said parties, or either of them, to appear before you, or some competent person, by you for that purpose to be appointed and authorized, at a precise time and place by you to be fixed, and there to answer on their oaths and affirmations, to the several interrogatories hereunto annexed; and that you will cause their depositions to be committed to writing, and returned to us under cover, duly closed and sealed up together with these presents. And we shall be ready and willing to do the same for you in a similar case when required. Witness, etc." Nelson v. United States, Pet. C. C. 235, 17 Fed. Cas. No. 10,116.

B. Interstate.

1. Letters Rogatory, Interstate.

"Whereas a certain suit, as above stated is pending before our court of common pleas aforesaid in which the Shannon Manufacturing Company is the plaintiff and George W. McCaulley & Son Co. is the defendant and it has been suggested to us that there are witnesses residing within your jurisdiction, without whose testimony justice cannot completely be done between the said parties.

"We therefore request you that in furtherance of justice you will by the proper and usual process of your court cause such witness or witnesses as shall be named or pointed out to you by the said parties or either of them, to appear before you or some competent person by you for that purpose to be appointed or authorized, at a precise time and place by you to be fixed there to answer on their oaths and affirmations, to the several interrogatories hereunto annexed, and that you will cause their depositions to be committed to writing and returned to us under cover and sealed up together with these presents. And we shall be ready and willing to do the same for you in a similar case when required.

"Witness the Honorable Isaac Johnson, president judge of our said court of common pleas at Media in said county of Delaware this 29th day of November, A. D. 1902.

"George M. Hannum,
"Deputy prothonotary."

(Seal.)

(Interrogatories followed.)

See "How To Use This Volume," Introduction, page v.

Shannon Mfg. Co. v. George W. McCaulley & Son Co. (Del.), 56 Atl. 367

2. *Commission in Response to Letters Rogatory.*

"And now, to-wit, this 13th day of December, in the year of our Lord 1902, the foregoing letters rogatory having been presented to the superior court of the state of Delaware in and for New Castle county, in response to the request therein contained it is ordered that a commission do issue directed unto Clifford V. Mannering, of the city of Wilmington and state of Delaware, giving and granting unto him for full power and authority to call and summon before him at a certain day and place by him to be appointed for that purpose such witness or witnesses as shall be named or pointed out to him by the parties in the said cause in the court of common pleas of Delaware county, in the state of Pennsylvania, or either of them, and then and there to examine such witness or witnesses upon oath or affirmation on the several interrogatories annexed to the said letters rogatory, and that the said Clifford V. Mannering do cause the depositions of the said witnesses to be committed to writing, and when he shall have so done to send the same to the said court of common pleas of Delaware county, in the state of Pennsylvania, under cover and sealed up together with these presents, as soon as may be convenient after the taking of the said testimony." Shannon Mfg. Co. v. George W. McCaulley & Son Co. (Del.), 56 Atl. 367.

3. *Letters Rogatory Where Witness Refused on Commission.*

"To the circuit court within and for the county of Multnomah, in the state of Oregon, or any judge or tribunal having jurisdiction of civil cases in the city of Portland, in the county of Multnomah:

"Whereas in our superior court in the case of Annie B. Everett v. John Stetson, the plaintiff filed in said court interrogatories to take the deposition of Jonathan Bourne, Jr., of said Portland; and whereas after due notice the defendant filed certain cross-interrogatories, and thereupon a commission to take the deposition of said Bourne was issued by this court, with the several interrogatories and cross-interrogatories thereto annexed, and afterwards A. C. Emmons, esq., of said Portland, a duly authorized notary public, com-

missioned and authorized to take the said deposition in pursuance of said commission, issued his subpoena to said Bourne to appear before him and give answer to the said interrogatories, and said Bourne, although duly served and his fees paid him, refused to appear or show any cause why he did not appear at the time and place fixed, and said commissioner doubting his authority to compel the attendance of said Bourne, has returned said commission into our superior court; and it appearing to us that without the testimony of said Bourne, justice cannot completely be done between the parties; we therefore request you that in furtherance of justice you will afford your aid in the examination of said witness by said commissioner upon said commission upon the interrogatories thereto annexed; that you will by the usual and proper process of your court cause the said Bourne to appear before said commissioner at a time and place by you to be fixed, and him examine on oath, or affirmation to the several interrogatories to said commission annexed, and that you will cause his deposition to be committed to writing and returned and duly closed and sealed up and returned with these presents; and we shall be ready and willing to do the same for you in a similar case when required.

"Witness: Albert Mason, esq., justice of our said superior court, at Boston, in said county of Suffolk, this fifth day of August, A. D. 1891.

"Jos. A. Willard, clerk."

(Seal of the superior court.)

State v. Bourne, 21 Ore. 218, 27 Pac. 1048.

4. *Order for Taking Deposition Pursuant to Letters Rogatory.*

"And now this day, upon presentation of this court of letters rogatory from the superior court of Suffolk county, Massachusetts, setting forth among other things the issuance out of said court of a commission in a cause therein pending between Annie B. Everett as plaintiff and John Stetson as defendant, directed to A. C. Emmons, esq., of Portland, notary public, as commissioner to take the deposition of Jonathan Bourne, Jr., of Portland, in answer to interrogatories and cross-interrogatories attached to said commission, and setting forth that said Bourne refused to appear before said commissioner but made default, and

representing that without the testimony of said Bourne justice cannot be completely done between said parties, and requesting us that in furtherance of justice we afford our aid in the examination of said witness by said commissioner, upon said commission, under said interrogatories, and that by the usual proper process of our court we cause said Bourne to appear before said commissioner at a time and place by us to be fixed, and him examined on oath or affirmation to the several interrogatories to said commission annexed, and that we cause his deposition to be committed to writing and returned and duly closed, and sealed up and returned with said letters, and offering to do the same favor for us in a similar case when required; it is therefore ordered, that in accordance with said request a writ in due form issue out of this court directed to the sheriff of this county, and reciting the above facts and directing said sheriff to summon said Jonathan Bourne, Jr., to appear before said A. C. Emmons, esq., notary public, commissioner, at his office in the city of Portland, First National Bank Building, corner First and Washington streets, upon Monday, September 21, A. D. 1891, at 10 o'clock a. m., and upon said further time or times to which the taking of said deposition may be adjourned by said commissioner, then and there to testify before said commissioner in answer to said interrogatories, and that said commissioner apply to this court for any further aid he may need in the premises, and that said deposition be by him committed to writing, and that when taken the same be duly closed and sealed up and returned with said letters rogatory to said court from which the same issued." *State v. Bourne*, 21 Ore. 218, 27 Pac. 1048.

5. *Subpoena Pursuant to Letters Rogatory.*

"In the circuit court of the state of Oregon, for the county of Multnomah. State of Oregon, county of Multnomah, ss.: In the name of the state of Oregon:

"Whereas a commission was duly issued out of the superior court for Suffolk county, Massachusetts, addressed to A. C. Emmons, esq., a notary public for the state of Oregon, to take the deposition of Jonathan Bourne, Jr., of Portland, in this state, to be used

in a suit pending in said superior court between Annie B. Everett as plaintiff and John Stetson, defendant, upon interrogatories and cross-interrogatories to be propounded to said witness; and whereas said Bourne was duly notified and summoned to appear before said notary public, commissioner, and give answer to said interrogatories and cross-interrogatories to be propounded to said witness; and whereas said superior court of said Suffolk county has requested us by proper and usual process of our court to cause said Jonathan Bourne, Jr., to appear before said A. C. Emmons, esq., commissioner, at a time and place to be by us fixed for examination on oath or affirmation to said interrogatories to said commission annexed, and that we cause his deposition to be committed to writing and returned, and duly closed and sealed up and returned to said court and that we afford our aid in the examination of said witness by said commissioner upon said commission and offering to do the same for us in a similar case when desired; now, therefore, we command you that you summon the said Jonathan Bourne, Jr., to appear before A. C. Emmons, esq., notary public, commissioner, aforesaid, upon Monday, the twenty-first day of September, 1891, at 10 o'clock a. m., and at such further time or times to which the taking of said deposition may be adjourned by said commissioner at his office in the city of Portland, in the First National Bank building, corner First and Washington streets, then and there to testify in said cause in answer to said interrogatories to be propounded to him under said commission; and that you return this writ with your doing herein to this court.

"Witness the seal of said court and the hand of the clerk thereof affixed at Portland, Oregon, the seventeenth day of September, 1891.

"Jno. R. Duff, clerk,

"By V. A. Fryer, deputy."

(Seal of circuit court.)

State v. Bourne, 21 Ore. 218, 27 Pac. 1048.

6. *Order To Show Cause in Contempt for Disobedience to Subpoena on Letters Rogatory.*

"In the circuit court of the state of Oregon, for the county of Multnomah, —The State of Oregon, plaintiff v.

Jonathan Bourne, Jr., defendant.

"And now this day the affidavit of A. C. Emmons, esq., having been filed in this court, in the matter entitled, 'In the matter of letters rogatory from the superior court of Suffolk county, Massachusetts, in the case of Annie B. Everett v. John Stetson, pending therein'; and it being shown to the court by said affidavit that the above-named Jonathan Bourne, Jr., has disobeyed the process of this court duly served upon him, requiring him to appear and testify before said A. C. Emmons, notary public, as commissioner, under commission from the superior court of Suffolk county, Massachusetts, in said case of Everett v. Stetson, pending therein, by failing to appear before said commissioner at the time and place named in said process, upon motion of Annie B. Everett by W. M. Gregory, her attorney, it is therefore ordered that said Jonathan Bourne, Jr., be required to be and appear before this court at 1:30 o'clock p. m. of this day, or if service hereof be not so soon made upon him, then forthwith upon service hereof, then and there to show cause why he should not be arrested to answer for contempt of this court, in disobeying the lawful process of this court as above mentioned duly served upon him. It is further ordered that a duly certified copy of this order be forthwith served upon said Jonathan Bourne, Jr.

"Dated September 24, 1891.

"E. D. Shattuck, judge."

State v. Bourne, 21 Ore. 218, 27 Pac. 1048.

7. Commitment for Contempt, Refusal To Testify on Letters Rogatory.

"That the defendant Jonathan Bourne, Jr., be and he is hereby committed to the jail of Multnomah county, state of Oregon, for contempt of this court, in disobeying the lawful process of this court, requiring him to appear before said A. C. Emmons, esq., notary public, commissioner, as herein recited, and that he be there kept in close confinement until he be ready to and do appear before said commissioner to testify as required by said process of this court." State v. Bourne, 21 Ore. 218, 27 Pac. 1048.

Affidavit of Age of Witness To Obtain Examination De Bene Esse.

I, A. B., etc., solicitor for the above-

named plaintiff in this cause, make oath and say:

1. That C. D., of, etc., is a very material witness for the said plaintiff in this cause, and that he cannot without the evidence of the said C. D., as I am advised and verily believe, safely proceed to a hearing of this cause.

2. The said C. D. is now of the age of seventy years, as I have been informed by him and verily believe (and he appears to this deponent to be very weak and infirm, and in a declining state of health; on which account, and from his advanced years, he is, in all probability, not likely to live long). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2183.

IV. Affidavit To Suppress, Notice Signed by Unauthorized Person in Name of Solicitor.

That annexed is the only notice of taking testimony ever served on the deponent on the part of the defendant, Harriet C. Laing, in this cause. That the same was handed to deponent by a colored man that he did not then know, and who was then an entire stranger to him. Deponent further says that S. T. Parsons, Esq., is the solicitor for the defendant, Harriet C. Laing, and the only solicitor of record of such defendant, and he is also well acquainted with the handwriting of S. T. Parsons, the said defendant's solicitor. That on the receipt of said notice deponent examined the signature, and he was then, and is now, well satisfied that said notice and the signature thereto is not the handwriting of said S. T. Parsons. That he is not acquainted with other signatures attached to said notice. Deponent further says, that from the way said notice was served, and from an examination of the signatures thereto, he came to the conclusion that the same was not made by any person authorized to take proceedings in the cause, and he gave it no attention, and he so believed until on his way to Flint, on the 29th day of June, 1868, at Gaines, deponent met Mr. Charles Draper, who informed deponent that he had been called upon to take testimony under said notice. McClintock v. Laing, 22 Mich. 212.

DESCENT AND DISTRIBUTION. —
See DECEDENTS' ESTATES; INHERITANCE.

DETINUE.

- I. Declaration in Detinue, 398
 II. Declaration in Detinue, House on Land of Another, 398

I. Declaration in Detinue.

A. B. (the plaintiff in this suit), by E. F., his attorney (or, in his own proper person), complains of C. D. (the defendant in this suit), who has been summoned to answer the said plaintiff (or, who has been arrested at the suit of the said plaintiff), in an action of detinue: For that whereas the said plaintiff heretofore, to-wit, on the _____ day of _____, in the year of our Lord _____, delivered to the said defendant certain goods and chattels, to-wit, forty bushels of wheat, of the said plaintiff, of great value, to-wit, the value of _____ pounds, of lawful money of Great Britain, to be redelivered by the said defendant to the said plaintiff when he the said defendant should be thereto afterwards requested: Yet the said defendant, although he was afterwards, to-wit, on the _____ day of _____, in the year aforesaid, requested by the said plaintiff so to do, hath not as yet delivered the said goods and chattels, or any of them, or any part thereof to the said plaintiff, but so to do hath hitherto wholly refused, and still refuses, and still unjustly detains the same from the said plaintiff, to the damage of the said plaintiff of _____ pounds; and therefore he brings his suit, etc. Steph. Pl. 38.

II. Declaration in Action of Detinue for House on Land of Another.

In a plea of detinue for that whereas the plaintiff heretofore, to-wit, on the first day of July, 1856, at Farmington aforesaid, was lawfully possessed of a certain house and a certain barn, both situated on the land of the said Daniel Dame, being the house built by the plaintiff in the year 1842, said house being about thirty-six feet long, and about twenty-six feet wide, and one story and one-quarter high, and of the value of \$300; and said barn being about twenty-four feet long and about twenty feet wide, and of the value of \$200, situated between the house of Eleazer Rand and the house now owned by Benjamin Chesley, on the left hand side of the road leading from the Bay road, so called, to the Ten Rod road, so called,

as one goes toward the Ten Tod road, as of his own house and barn, and being so possessed, the said plaintiff afterward, to-wit, on the third day of July, 1856, casually lost the same out of his possession, which thereafter, to-wit, on the same day, came into the hands and possession of the said Daniel Dame, by finding; and the plaintiff further saith, that although the said Daniel Dame well knew that the said house and barn were the proper house and barn of the plaintiff, and although requested by the said plaintiff, to-wit, at said Farmington, on the nineteenth day of May, 1860, to deliver the same to the plaintiff, yet the said Daniel Dame hath not delivered up the said house and barn to the plaintiff, but wholly refuses so to do, and still unlawfully detains the same. Dame v. Dame, 43 N. H. 37.

Note.—The fiction of "finding" usually pertains to trover.

DILATORY PLEAS.—See ABATEMENT, PLEAS OF.

DISABILITY, PLEAS TO. — See ABATEMENT, PLEAS OF.

DISCLAIMER.

- I. Answer and Disclaimer, 398
 II. Answer (Code), 398
 III. Disclaimer in Ejectment, 399

I. Answer and Disclaimer (Equity).

I have never received any part of the estate or effects of the testator or in any wise intermeddled therein, and I have never assented to or in any manner accepted the said devise made to me by the said will jointly with the said _____, and I have never in any manner consented to become a trustee of the said will or in any manner acted or interfered in the trusts thereof; and, in fact, I have at all times refused to accept, and do now refuse to accept, the office of trustee of the said will; and I have always disclaimed, and do hereby disclaim and renounce the said devise made to me by the said will, and all and singular the estates and property which could or might pass under or by virtue thereof, and all estate and interest therein, and also the trusts of the said will and the office or duty of executing the same. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2141.

II. Answer (Code).

Says that he disclaims all right, title

and claim to any estate of inheritance or of freehold in the premises described. 2 Abb. Forms 168.

III. Disclaimer in Ejectment to Entire Property.

1. That she is not in possession of said premises mentioned in said plaintiff's petition under any claim in her own right, but only as a member of the family of the said defendant James M. Mason, and under his direction and control, without any voluntary act of her own; that in her own right she sets up no right, claim, or title, or demand to the said premises, save and except that which behooves her and is proper as the wife of the said James M. Mason, specially disclaiming any other right, title or interest therein; that whenever the court renders a decree against the said J. M. Mason, or a judgment herein for possession of said premises, and he departs therefrom, so she will do likewise.

2. That except as above, said defendant Annie Mason says that she denies each and every allegation in said petition contained.

3. Said defendant further says that she denies that she is a proper party to this suit.

4. Said defendant denies that she is a necessary party thereto, and prays the court that the said action be dismissed as to her, and she recover her costs in this behalf expended of and from the said plaintiffs. *Wilkins v. Tourtellott*, 42 Kan. 176, 22 Pac. 11.

Note.—Disclaimer properly belongs to equity pleading and code pleading in equity but it is sometimes allowed in ejectment.

DISCONTINUANCE.—See DISMISSAL, DISCONTINUANCE AND NONSUIT.

DISCOVERY.

I. Bill for Discovery, 399

II. Answers to Bills of Discovery, 400

- A. *Objections to Particular Interrogatories*, 400
- B. *Statement To Prevent Production of Documents*, 401
- C. *Statement To Prevent Production of Confidential Communication*, 401

III. Production of Documents, 401

- A. *Affidavit Objecting to Production*, 401

- B. *Affidavit as to Production*, 401

- C. *Order for Inspection*, 401

- D. *In Actions at Law*, 402

- 1. *Notice To Produce at Trial*, 402

- 2. *Order for Production and Deposit*, 402

- 3. *Order for Production and Delivery*, 402

- 4. *Order for Leave To Inspect*, 402

- E. *Petition for Order Requiring Production*, 402

- F. *Order To Produce on Petition*, 403

- G. *Order Requiring Books Deposited With Referee*, 403

IV. Examination of Party Before Trial, 403

- A. *Affidavit*, 403

- B. *Order for Examination*, 404

- C. *Notice of Examination*, 405

- D. *Summons to Party*, 405

For other forms, see 7 STANDARD PROC. 637, 638.

CROSS-REFERENCES:

BANKRUPTCY:

Examination of Bankrupt or Witness.

BILLS AND ANSWERS:

Prayer for Production of Deeds and Papers.

DEMURRER:

Demurrer to Discovery Where It Would Subject Defendant to Penalties, Etc.

PLEA IN EQUITY:

Plea That Discovery Sought Is Privileged.

I. Bill for Discovery.

Humbly complaining, show unto your honors your orator P. M., of, etc., J. A., of, etc., and J. R., of, etc., that by an indenture of assignment bearing date _____, and made between J. G. and J. W., therein described, of, etc., of the first part, the several persons who had thereunto set their hands and affixed their seals, creditors of the said J. G. and J. W., as co-partners as aforesaid, or of the said J. G. on his own separate account, of the second part, and your orators of the third part, they the said J. G. and J. W. (amongst other things), bargained, etc (setting out that part showing the assignment of the plaintiffs, and particularly the clause which gives them power to sue), as in and by, etc. And your orators further show unto your honors that at the time of the execution of the said indenture there was justly due

and owing to the said J. G. and J. W., on their partnership account, from R. K., of, etc. (the defendant hereinafter named), the sum of \$———, being the balance of an account between the said J. G. and J. W., the particulars whereof are set forth in the schedule hereto. And your orators further show that they have repeatedly applied to the said R. K. to pay to them as such trustees as aforesaid the said sum of \$———, with which just and reasonable request your orators well hoped the said defendant would have complied, as in justice and equity he ought to have done.

But now so it is, etc., he has absolutely refused so to do; and your orators have therefore been compelled to commence an action in the names of the said J. G. and J. W., against the said defendant to compel the payment of the said balance; and your orators charge that the said defendant has pleaded a set-off in the said action, and has delivered a particular of such set-off, which, as far as it extends, to the date of the said assignment to your orators, corresponds in substance with the creditor's side of the account set forth in the schedule hereto; but the said defendant had added thereto three articles for copper delivered in the year ———, for which he claims credit in the said action. Whereas your orators charge that the said defendant at or about the time of the execution of the said assignment to your orators was apprised thereof, or had some reason to know, believe or suspect, and did know, believe, or suspect that the said J. G. and J. W. had made such assignment, or some assignment of their co-partnership property to your orators, or to some trustees for the benefit of their creditors. And your orators further charge that the said copper was delivered at ———, which had belonged to the said J. G. and J. W. and had been comprised in the said assignment to your orators, and had been afterwards sold by your orators to the said J. G.; and the said J. G. applied to the said defendant to purchase the said copper on his the said defendant's credit, or to guaranty the payment for the said copper to the person from whom it was bought, by reason that the circumstances of the assignment to your orators being known, the said J. G. could not obtain credit for the said copper in his own name alone; and the said

defendant for that reason lent his credit to the said J. G. for the purchase of the said copper, or guaranteed the payment thereof, trusting to the personal responsibility of the said J. G. And your orators further charge that the said defendant has also added to his said particular of set-off a sum of \$———, for a year and a half's wages for one J. D. C. Whereas your orators charge that the said defendant has no just right to any such demand against your orators as trustees under said assignment; and the said defendant refuses to set forth how he makes out such his claim, and when and up to what time he computes the said wages. And your orators charge that they are advised that they cannot safely proceed in the said action so commenced by them as aforesaid in the names of the said J. G. and J. W., without a discovery of the circumstances hereinbefore stated from the said defendant. To the end, therefore, etc.

And that the said defendant may set forth how he makes out such his said claim, and when and up to what time he computes the said wages, and whether your orators can safely proceed in the said action so commenced by them as aforesaid, in the names of the said J. G. and J. W., without a discovery of the circumstances hereinbefore stated from the said defendant. And that the said defendant may make a full and true discovery of all and every the matters aforesaid, may it please, etc.

(Pray subpoena against R. K.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2076.

II. Answers To Bills of Discovery.

A. *Objections in Answer To Particular Interrogatories.*

As to the several interrogatories numbered 18, etc., and as to such of the other interrogatories (or parts of interrogatories, if any) as I may not have answered, I am advised and humbly submit that I am not bound to answer the same, and I therefore decline to answer the said interrogatories (and parts of interrogatories); and I claim the same benefit of the objection as if I had demurred to the same or to the discovery sought thereby.

And I also humbly submit that the plaintiffs are not entitled in this suit to the relief sought in and by the 3d, etc., paragraphs of the prayer of the supplemental bill, or for the pur-

pose thereof to have any accounts, directions or inquiries taken, given or made; and I claim the same benefit of the objection as if I had demurred to the relief so sought. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2142.

B. Statement in Answer To Prevent Production of Certain Documents.

I have now in my possession or power the several letters, papers and writings relating to the matters in the bill mentioned, or some of them; and I have in the schedule hereto, which I pray may be taken as part of this my answer, set forth a list or schedule of all the said letters, papers and writings; but I deny that thereby or otherwise, if the same were produced, the truth of the matters in the said bill mentioned, or any of them, would appear, further or otherwise, than as the same is hereinbefore admitted.

Such of the said letters, papers and writings as are set forth in the first part of said schedule are of great importance to the claim made by me in my said action, and are or contain the evidence on which I am advised and intend mainly to rely at the trial of the said action; and the said letters, papers, and writings, as well those in the second and third parts as those in the first part of the said schedule, or any of them, do not nor does, as I am advised and verily believe, contain any evidence whatever in support of or tending to support the plaintiff's pleas in the said action, or any of such pleas, and are not, nor is, in any manner, material to the plaintiff's case. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2142.

C. Statement in Answer To Prevent Production of Confidential Communication.

Such of the said letters, papers and writings as are set forth in the second part of the said schedule were and are private and confidential communications between me and my solicitors or legal advisers in the ordinary course of professional business, and all and every of them relate to the matters in dispute between me and the plaintiff in the said action; and the plaintiff has not, as I am advised and verily believe, any right or title to the production of, or any interest whatever in, the letters, papers and writings in the said schedule

mentioned, or any of them. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2143.

III. Production of Documents.

A. Affidavit as To Production of Document Objecting To Production of Part.

I, _____, of _____, make oath and say as follows:

1. I say I have in my possession or power the documents relating to the matters in question in this suit set forth in (the first or second parts of the) first schedule hereto annexed.

2. I further say that I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. I further say, _____ (state upon what grounds the objection is made, and verify the facts so far as may be).

4. I further say that I have had, but have not now, in my possession or power, the documents relating to the matters in question in this suit set forth in the second schedule hereto annexed.

5. I further say that the last mentioned documents were last in my possession or power on (state when).

6. I further say, _____ (state what has become of the last mentioned documents, and in whose possession they now are).

7. I further say, etc. (proceed as in III, B).

Note.—If the party denies having any, he is to make an affidavit as in the following form, omitting the exception. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2179.

B. Affidavit as To Production of Documents Pursuant To Decree.

I, C. D., the defendant above named, make oath and say that neither I, this deponent, nor any person or persons, for my use, to my knowledge or belief, nor with my privity or consent, have or has, nor ever had, in my, his or their custody or power, any deeds, papers or writings, or books of account relative to the matters in question in this cause, save and except the several deeds, books of account, papers and writings mentioned and contained in the schedule hereunto annexed. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2179.

C. Order for Inspection of Documents Out of Court (With Leave To Seal Up).

It is ordered that the plaintiff, his

solicitors and agents, be at liberty at all reasonable times, upon giving reasonable notice, to inspect at the office of ——— (usually the defendant's solicitors), situate at ———, the several documents mentioned in the answer of the defendant A., filed the ——— day of ———, and in the schedule thereto, and admitted to be in his possession or power, and to take copies and abstracts thereof, and extracts therefrom, as he shall be advised, at his expense (but previously to the said inspection, the said defendant is to be at liberty to seal up such parts of the said documents as according to an affidavit to be made by him do not relate to the matters in question in this cause); and it is ordered that the said defendant produce the said document upon any examination of witnesses in this cause, and at the hearing thereof, as the plaintiff shall require. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2347; 2 Seton Dec. (Eng. ed., 1862) 1040.

D. In Actions at Law.

1. Notice To Produce Paper at Trial.

Sir: Please to take notice that you are hereby required to produce on the trial of this cause a certain paper writing (or deed), bearing date on or about the ——— day of ———, made and executed between I. J., of the one part and K. L., of the other part, by which, etc. (here describe as near as may be the contents of the instrument); or a certain promissory note (or receipt), made (or signed) by J. K. (here describe the paper), or, in default thereof, parol (or secondary) evidence will be given of its contents. Burr. App. 200, §385.

2. Order for Production and Deposit of Books.

On reading and filing petition and affidavit in this cause, and on motion of Mr. F., of counsel for the plaintiff, ordered that the defendant in this cause produce and deposit with (William P. Hallett), esquire, one of the clerks of this court, within (ten) days after service upon him, or his attorney, or a copy of this rule (here describe the books ordered to be produced), and that the said books, on being so produced and deposited, remain with the said clerk, for the space of (ten) days; or that the said defendant show cause (on the first day of the next special term of this court), why he should not produce

and deposit the same. Burr. App. 463, §935.

Note.—If order absolute is desired omit last clause.

3. Order for the Production and Delivery of Papers, or To Show Cause.

On reading and filing petition and affidavit in this cause, and on motion of E. F., of counsel for the plaintiff, ordered that the defendant produce and deliver to the plaintiff, or his attorney, a sworn copy of (here describe the paper), or show cause on (the first day of the next special term of this court) why the same should not be so delivered. Burr. App. 462, §934.

4. Order for Leave To Inspect Books.

On reading and filing affidavits in this cause, and on motion of Mr. H., of counsel for the defendant, and after hearing counsel in opposition thereto, ordered that the defendant have leave to inspect and examine (here designate the books and in whose custody), and to take copies of such entries in said books as may relate to the subject-matter of this suit; and that the said (the party having possession of the books) permit the same to be inspected and examined accordingly. Burr. App. 463, §936.

E. Petition for Order Requiring Production of Documents.

The petition of James Seligman respectfully shows to the court:

I. That he is one of the plaintiffs in the above entitled action.

II. That this action is brought by your petitioner and his co-plaintiff, constituting the firm of J. & W. Seligman & Co., on a certain agreement made by the defendant company with the plaintiffs, set out in the complaint herein, to which reference is made as a part of this petition, and that the complaint alleges that the defendant wrongfully delivered to T. C. Bates, mentioned in said agreement, the stock, bonds and coupons therein mentioned, without receiving from him, for account of the plaintiffs, the payment of the sum therein mentioned.

III. That the defendant's answer sets up among other things (at folios 15-18 thereof) that the bonds mentioned in said agreement were on or about February 21, 1885, delivered by defendant's then president to the said Bates, mentioned in said agreement,

in pursuance among other things of a certain certificate, bearing date September 23, 1882, and made with the knowledge of the plaintiffs by the person who at the date thereof was secretary of the defendant.

IV. That neither your petitioner, nor so far as he can discover after inquiry, any person connected with the said firm of J. & W. Seligman & Co., had, at the time of its date, or at any time thereafter, any knowledge or information of the making, existence or contents of the said certificate dated September 23, 1882.

V. That the said plaintiffs have, through their attorney in this action, requested of defendant's attorney to be furnished with a copy of the said certificate dated September 23, 1882, which request has been refused.

VI. That it is necessary and material for your petitioner, in order to prepare this action for trial, and to try this cause, to obtain the discovery and production of said certificate dated September 23, 1882, and an inspection and copy, or permission to take a copy, of the same; and that as your petitioner is informed, and believes, the said certificate is in the possession or control of defendant herein, or its attorneys, and that annexed hereto, and marked "Exhibit A," is a copy of the correspondence in respect thereto between the attorneys of the parties.

VII. That your petitioner cannot obtain production or inspection or a copy of the said certificate except from the defendant or his attorneys.

Wherefore your petitioner prays that this court may grant an order that the said defendant produce and discover the said certificate dated September 23, 1882, or give your petitioner an inspection or copy thereof, or permission to take a copy thereof, and that your petitioner may have such other and further relief as may be proper. *Seligman v. Real Estate T. Co.*, 20 Abb. N. C. (N. Y.) 210.

F. Order To Produce Documents on Petition Therefor.

An order having been heretofore on November 26, 1886, entered in this action directing the defendant herein to allow the plaintiffs herein on or before November 30, 1886, to inspect a certain paper or certificate dated September 23, 1882, referred to in the

petition on which said order was granted, and to take a copy of said paper or certificate, or in default thereof to show cause before this court why such inspection with copy should not be allowed; and the said defendant having appeared and failed to show sufficient cause why such inspection with copy should not be allowed.

Now on reading and filing copies of said order to show cause and of the petition on which the same was granted, and on the pleadings and proceedings herein, and after hearing John E. Burrill, esq., of counsel for the said plaintiffs, in support of said motion, and George W. Wickersham, of counsel for the said defendant in opposition thereto:

It is on motion of George W. Seligman, attorney for said plaintiffs:

Ordered that the said defendant produce at the office of the said plaintiffs' said attorney, at No. 15 Broadway, in the city of New York, on November 28, 1886, at 12 o'clock in the noon, the aforesaid paper or certificate, and there allow plaintiffs or their said attorney to inspect the same, and to take a copy thereof.

And it is further ordered, that the said defendant pay to the said plaintiffs \$10 of the costs of this motion. *Seligman v. Real Estate T. Co.*, 20 Abb. N. C. (N. Y.) 210.

G. Order Requiring Books Deposited With Referee.

That the plaintiff have a full discovery and inspection of all the books of account containing entries relating to the business and matters in controversy in this action, with leave to take a copy of any and all thereof, and for such purpose that the defendant forthwith produce and deposit with Alfred Erbe, esq., referee, at his office, etc., the following books, papers and documents, to-wit: ledger, journal, day-book, cash-book, receipt and delivery books kept by plaintiff and defendant, or either of them, in the said business and now in the possession or under the control of defendant; there to remain for the period of thirty days. 1 N. Y. Civ. Proc. 185.

IV. Affidavit for Examination of Party Before Trial.

A. Affidavit.

(Allegation of corporate existence.)

That the general nature and object of the action is to compel the defendants

Ashland Power Company, Ironwood and Bessemer Railway & Light Company, Gogebic Street Railway Company, and Gogebic & Iron Counties Railway & Light Company and A. E. Appleyard, Manuel M. Reid, William H. Burgess, and Howard W. Lang, to transfer, or cause to be transferred, to plaintiff a one-third of the stock in the corporations last mentioned, and in each of them, and one-third of the profits which accrued upon the organization and consolidation of said corporations, and the construction and improvement of the equipment of each of them, and one-third of the profits which accrued upon the sale or exchange of the stock and bonds in each of said corporations. That discovery is necessary, and is sought by the examination of said defendants as to certain facts within their knowledge, and not within plaintiff's knowledge, in order to enable plaintiff to prepare his complaint herein. That the defendant A. E. Appleyard planned the organization of said Ashland Power Company, Gogebic Street Railway Company, Gogebic & Iron Counties Railway & Light Company, and the Ironwood & Bessemer Railway & Light Company, and outlined the scope and functions of each of them. That plaintiff took an active part in promoting the organization of all of said last named companies under an agreement with said A. E. Appleyard, and it was due chiefly to plaintiff's services that the franchises were obtained for said companies. That plaintiff's said services were so performed with the knowledge, consent and acquiescence of the then stockholders in said companies. That, under said agreement, plaintiff was to receive for his services a reasonable amount of stock and bonds of each of said corporations, and of the profits which accrued from the consolidation thereof and the sale of stock and bonds. That stock and bonds to the amount of several thousand dollars have been sold for said corporations by the defendants William H. Burgess and Howard W. Lang, under their firm name of Burgess, Lang & Co., since the month of February, 1908, the amount of such stock and bonds so sold or the commissions paid on such sales, or the proceeds of such sales, being unknown to plaintiff. That said A. E. Appleyard, as plaintiff is informed and verily believes, has exercised, and now exer-

cises, complete dominion over all the corporations named through his ownership of a majority of the stock of said companies held for him and in his interest by third persons whose names are unknown to plaintiff, and said Appleyard has so manipulated the records and books of account of each of said corporations as to conceal its pecuniary condition or the correct amount of moneys received and disbursed by it, and said defendants William H. Burgess and Howard W. Lang, as plaintiff believes, have been in privity with said Appleyard in thus attempting to conceal the true state of affairs, to the prejudice of bondholders and innocent stockholders in said corporations, and to the profit and benefit of said A. E. Appleyard, William H. Burgess, and Howard W. Lang. That the points on which discovery is desired are: (1) The amount of stock and bonds issued and sold by each of the above named corporations, respectively, since February, 1908, and the proceeds received and the disposition of such proceeds in each instance. (2) The commissions paid on sales of all of said stock and bonds. (3) The names of the stockholders and directors in each of said corporations at all times since February, 1908. (4) The actual cost of all assets purchased and the actual cost of all improvements and repairs made by each of said corporations since March 1, 1908. (5) The specific nature of the assets now owned by each of said corporations, the value thereof, and the amount of indebtedness of each of them. (6) Whether the defendant Montreal & Bad River Improvement Company is a corporation, a joint stock company, or a copartnership, and if a corporation, under the laws of what state or country organized, the amount of its capital stock, the names of stockholders, and its business, and, if a partnership, the names of the individual members. *Sullivan v. Ashland Light, P. & St. R. Co.*, 152 Wis. 574, 140 N. W. 316.

B. Order for Examination of Party.

On the annexed affidavit:

Ordered that the defendant Y. Z. appear before me, at my office, in the city of _____, to be examined as a witness in the above entitled action, on the _____ day of _____ instant, at _____ o'clock in the _____ noon of that day, and that this

order be forthwith served upon the said defendant. 2 Abb. Forms 432.

C. Notice of Examination of Party.

Take notice that A. B. (one of the plaintiffs) in this action, will be examined as a witness on behalf of the (defendant Y. Z.), before Hon. D. P. I., a justice of this court (or county judge of the county of _____), at _____ on the _____ day of _____, at _____ o'clock in the _____ noon. 2 Abb. Forms 432.

D. Summons (Subpoena) To Party To Attend Examination.

To Y. Z. (defendant).

You are hereby summoned and required personally to appear before me, at _____, on the _____ day of _____ next, at _____ o'clock in the _____ noon, to give your testimony as a party, before the trial, in an action between (A. B., plaintiff, and yourself and W. X., defendants), pursuant to the provisions of the code of procedure (and of the statute "Of Taking Conditionally the Testimony of Witnesses Within this State," and the acts amending the same).

For a failure to attend you will be punished according to law. 2 Abb. Forms 433.

Note.—Usual witness fees must be paid.

DISMISSAL, DISCONTINUANCE AND NONSUIT.

I. Entry of Nolle Prosequi, 406

- A. *At Trial*, 406
- B. *To a Particular Count*, 406
- C. *As Contained in Replication*, 406
- D. *To One of Several Defendants*, 407

II. Discontinuance, 407

- A. *Order for Leave*, 407
- B. *Notice of Order*, 407
- C. *Order for Judgment*, 407
- D. *Judgment Record*, 407
- E. *Judgment Record in Replevin*, 407
- F. *Consent to Discontinuance*, 408

III. Nonsuit, 408

- A. *Order for Judgment*, 408
- B. *Notice of Motion for Judgment as in Case of Nonsuit*, 408
- C. *Order for Judgment as in Case of Nonsuit*, 408
- D. *Judgment, Dismissal on Nonsuit, Costs Against Surety*, 408
- E. *Record on a Nonsuit*, 408

F. *Record on Nonsuit Ordered by Court*, 408

G. *Notice of Motion To Set Aside*, 408

H. *Petition Stating Nonsuit, Action Without Consent of Part of Plaintiffs*, 409

IV. Non Pros., 409

A. *Entry of Non Pros. for Not Declaring*, 409

B. *For Not Declaring in Replevin*, 409

C. *For Not Replying*, 409

V. Dismissal, 409

A. *Affidavit, Neglect To Try*, 409

B. *Affidavit, Neglect To Serve Complaint*, 410

C. *Affidavit, Unreasonable Neglect To Serve Other Defendants*, 410

D. *Affidavit, Swing Without Leave*, 410

E. *Order Dismissing Absolutely*, 410

F. *Order Dismissing Unless Plaintiff Moves*, 410

G. *Judgment of Dismissal on Motion of Plaintiff as to One Defendant*, 410

H. *Judgment of Dismissal on Compromise*, 411

I. *Special Motion by One Defendant To Dismiss for Want of Jurisdiction of Person*, 411

J. *Order of Dismissal by Plaintiff in Vacation, Under Statute*, 411

VI. Dismissal in Equity, 411

A. *Notice of Motion for Want of Prosecution*, 411

B. *Orders*, 411

1. *For Non-delivery of Copy of Bill*, 411

2. *At Hearing*, 411

3. *On Case Agreed*, 411

4. *Reasons Stated, Without Prejudice*, 412

5. *Framed To Prevent Prejudice*, 412

6. *Where Plaintiff Does Not Appear*, 412

7. *With Costs to Some Defendants*, 412

8. *As to Part of Bill*, 413

CROSS-REFERENCES:

ADMIRALTY:

Decree on Special Motion Dismissing Libel When Process Had Improvidently Issued.

APPEALS:

Notice of Motion To Dismiss Appeal;

Motion by Appellant Dismissing Appeal (a, b);

Motion To Dismiss Appeal;

Order Dismissing Appeal.

BILLS OF PARTICULARS:

Notice of Motion for Judgment of Dismissal for Not Furnishing Bill of Particulars;

Order To Serve Bill of Particulars, or That Defendant May Dismiss Complaint.

PLEAS:

Motion To Dismiss, Failure To File Pleading.

JUDGMENT RECORDS:

Judgment Record on Nolle Prosequi;
Judgment Record on Nolle Prosequi to Some Counts;

Judgment Record on Nolle Prosequi to Some Defendants;

Judgment Record on Nolle Prosequi After Issue of Law;

Retraxit, Entry of;

Judgment Record on Discontinuance;

Judgment Record on Nonsuit Ordered by the Court;

Judgment Record on Non Pros. for Not Declaring;

Judgment Record on Default, Non Pros. for Not Declaring in Debt Qui Tam;

Judgment Record on Default, Non Pros. for Not Replying;

Judgment Record as in Case of Nonsuit.

JUDGMENTS:

Judgment on Nonsuit at the Trial;

Notice of Motion for Judgment Dismissing Action;

Notice of Motion for Judgment on Failure To Reply;

Judgment on Non Pros. for Not Declaring in Replevin;

Judgment on Default of Plaintiff To Plead to Avowry in Replevin;

Judgment on Non Pros. for Not Declaring;

Judgment on Nolle Prosequi to Some Defendants;

Judgment on Order Dismissing Action;

Judgment Dismissing Complaint (Non Pros.) for Failure To Furnish Particulars.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias on Default of Plaintiff for Not Joining in Demurrer;

Fieri Facias on a Judgment of Nonsuit;

Fieri Facias on Non Pros. for Not Replying;

Fieri Facias on Case as of Nonsuit;

Fieri Facias on Discontinuance;

Fieri Facias on Judgment of Nolle Prosequi;

Capias Ad Satisfaciendum on Non Pros. for Not Declaring;

Capias Ad Satisfaciendum on Non Pros. for Not Replying;

Capias Ad Satisfaciendum on Judgment as in Case of Nonsuit;

Capias Ad Satisfaciendum on Nonsuit.

NEW TRIAL:

Order Setting Aside Nonsuit and for New Trial.

NOLLE PROSEQUI:

Judgment Record on Nolle Prosequi in Criminal Case.

REFERENCES:

Report of Referee in Case of Voluntary Nonsuit.

REPLEVIN:

Retorno Habendo on Non Pros.

I. Entry of Nolle Prosequi.

A. *Nolle Prosequi, as Entered at the Trial.*

At which day, that is to say, on, etc., at, etc. (the time and place of trial), before, etc. (the circuit judge) come the parties aforesaid, by their attorneys (aforesaid). And hereupon the said plaintiff freely here in court confesses that he will not further prosecute his suit in this behalf against the said defendant I. S., but that the said I. S. may go quit thereof, etc. (Therefore let the said defendant I. S. be acquitted of the premises in the said declaration mentioned, and go thereof without day, etc.) Burr. App. 82, §155; Yates' Forms 790.

B. *Entry of Nolle Prosequi To a Particular Count.*

(After the issue, proceed thus): And hereupon the said plaintiff freely here in court confesses that he will not further prosecute his suit against the said defendant, in respect of the premises in the said (first) count of the said declaration mentioned. Therefore, as to the premises in that count mentioned, let the said defendant be acquitted and go thereof, without day, etc. Burr. App. 81, §152; Till. Forms 213.

C. *Entry of Nolle Prosequi as Contained in Replication.*

(After the replications to pleas to other counts, proceed as follows): And as to the said plea of the said defendant, by him (lastly) above pleaded, as to the (sixth and last) counts of the said declaration, the said plaintiff saith

that he will not further prosecute his suit against the said defendant, in respect of the (promises and undertakings) in the said (sixth and last) counts of the said declaration, or any of them. Therefore, as to the said (promises and undertakings) in the said (sixth and last) counts of the said declaration, let the said defendant be acquitted and go thereof without day, etc. Burr. App. 81, §153; Arch. Cr. Pl. 559.

D. Entry of Nolle Prosequi to One of Several Defendants.

(After replication to pleas of other defendants, add the following): And as to the plea of the said defendant I. S., by him above pleaded, the said plaintiff saith that he will not further prosecute his suit against the said defendant I. S. Therefore let the said defendant I. S. be acquitted of the premises in the said declaration mentioned, and go thereof without day, etc. Burr. App. 81, §154; Arch. Cr. Pl. 559.

II. Discontinuance.

A. Order for Leave To Discontinue Without Costs.

On reading and filing affidavits in this cause, and on motion of E. F., of counsel for the plaintiff, after hearing counsel in opposition, ordered that the plaintiff have leave to discontinue this suit, without costs. Burr. App. 458, §916.

B. Notice by Plaintiff of Order To Discontinue.

Please to take notice that a rule has this day been duly entered in this cause, in the office of the clerk of this court, at the city of New York, that this action be discontinued, on payment of the defendant's costs (or without costs to either party, or otherwise, according to the rule). Burr. App. 198, §371.

C. Order for Judgment of Discontinuance.

On reading and filing an affidavit of (G. H., attorney for the defendant), showing due service upon the plaintiff's attorney, of a notice to declare in this cause before the end of ——— term last, and that no copy of a declaration has been served upon the defendant's attorney, ordered, that judgment of discontinuance be, and the same hereby is entered against the said plaintiff. Burr. App. 445, §865.

D. Judgment Record on Discontinuance.

(The record being brought down to the period of discontinuance, proceed as follows): Afterwards, to-wit, on the (first Monday of May), in the term of (May), in the year one thousand ——— (the term of entering judgment), before the justices aforesaid, at the ———, in the city of ———, comes the said defendant, by his attorney aforesaid, and the said plaintiff doth not further prosecute his said suit against the said defendant, but voluntarily permits the same to be discontinued. Burr. App. 145, §277; Till. Forms 213.

E. Judgment Record on Discontinuance in Replevin, Etc.

The people of the state of New York sent to their sheriff of the county of ———, their writ close in these words, to-wit. The people of the state of New York, to the sheriff, etc. (here insert the writ of replevin verbatim).

At which day and place, to-wit, on the (first Monday of January), in the year one thousand ——— (the return day of the writ), before the justices aforesaid, come the parties aforesaid, to-wit, the said plaintiff, by E. F., his attorney aforesaid, and the said defendant, by G. H., his attorney; and the said sheriff now here makes return to the said writ as follows: (Here state the return.) And thereupon the said defendant offers himself against the said plaintiff in the plea aforesaid.

And hereupon the said plaintiff prays that a day may be given to him, until the ——— day of ——— next, at the (capitol in the city of Albany), (the next term after the plaintiff's default), before the justices aforesaid, to justify and perfect his sureties, given by him to the said sheriff of ——— county on the issuing of the said writ of replevin, or to put in new sureties thereupon, because the said defendant hath excepted to the sufficiency of the said sureties, etc., and it is granted to him, etc. The same day is given to the parties aforesaid there, etc.

At which day and place, before the justices aforesaid, comes the said defendant by his attorney aforesaid. And the said plaintiff, although solemnly demanded, comes not, nor hath he justified and perfected his sureties afore-

said, nor hath he put in new or other sureties in their stead, nor doth he further prosecute his said writ of replevin, but therein makes default, and voluntarily permits his suit to be discontinued. Burr. App. 146, §278; Yates' Forms 563.

F. Consent to Discontinuance.

I hereby consent that the above entitled cause be discontinued, without costs (or each party paying his own costs). Burr. App. 74, §146b.

III. Nonsuit.

A. Order for Judgment on Nonsuit.

On filing a copy of the pleadings and minutes of trial in this cause, and on reading the minutes, whereby it appears that the plaintiff was non-suited, on motion of G. H., attorney for the defendant, ordered, judgment for the defendant. Burr. App. 451, §890.

B. Notice of Motion for Judgment as in Case of Nonsuit.

Sir: Please to take notice, that, on the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol of the city of Albany, on the first Tuesday of (April) next, for judgment as in case of nonsuit in this cause, by reason of the plaintiff's failing to proceed to trial, according to the statute in such case made and provided, and to the rules and practice of this court. Burr. App. 212, §421.

C. Order for Judgment as in Case of Nonsuit.

A motion having been made by Mr. L., of counsel for the defendant, for judgment as in case of nonsuit in this cause, and after hearing counsel in opposition thereto, ordered, judgment accordingly, unless the plaintiff stipulate and pay (ten dollars) costs (or, if the rule be for judgment absolute, say, ordered, judgment accordingly, with ten dollars costs). Burr. App. 464, §938.

D. Judgment, Dismissal on Nonsuit, Costs Against Surety.

R. T. Sauls v. Carmichael & Allen. April 27, 1859.

Came the parties, by their attorneys; and the plaintiff makes known to the court that he will take a nonsuit. It is therefore considered by the court, that the plaintiff be nonsuited, and that the defendants be discharged; and James M. Pruitt having acknowledged himself security for costs in this

behalf, it is further adjudged, that defendants recover of said plaintiff, Sauls, and also of said Pruitt as his security, the costs in this behalf expended. Sauls v. Carmichael & Allen, 37 Ala. 87.

E. Record on a Nonsuit.

Afterwards, that is to say, on the day and at the place last above mentioned, before (John W. Edmonds), esquire, one of the circuit judges of the state of New York, according to the form of the statute in such case made and provided, come as well the above named plaintiff as the above named defendant, by their respective attorneys above mentioned; and the jurors of the jury, summoned to try the said issue, being called also come; who, to speak the truth of the matters above contained, being chosen, tried and sworn, evidence was given to them thereupon by the above named plaintiff, which being insufficient to maintain the said issue on his part, and the said plaintiff being thereupon solemnly called to produce further evidence to support and maintain the said action, the said plaintiff comes not, but makes default, nor doth he further prosecute his suit against the said defendant. Burr. App. 428, §827.

F. Record on Nonsuit Ordered by Court.

At which day and place, before (John W. Edmonds), esquire, one of the circuit judges of the state of New York, according to the form of the statute in such case made and provided, come as well the said plaintiff as the said defendant, by their respective attorneys aforesaid; and the jurors of the jury, summoned to try the said issue, being called, also come, who to speak the truth of the matters aforesaid, being chosen, tried and sworn, evidence was thereupon given to them by the said plaintiff, which being insufficient to maintain the said issue on his part, and the said plaintiff being thereupon solemnly called, to produce further evidence to support and maintain his said action, the said plaintiff comes not, but makes default, nor doth he further prosecute his suit against the said defendant. Burr. App. 150, §287.

G. Notice of Motion To Set Aside Nonsuit, and for New Trial.

Sir: Please to take notice, that, upon the case, with a copy whereof you are herewith served, this honorable court will be moved, at the next term of the

said court, to be held at the ——— in the city of ———, on the ——— (Monday) of ——— next, at the opening of the court on that day, or as soon thereafter as counsel can be heard, that the judgment of nonsuit entered in this cause, be set aside, and a new trial granted. Burr. App. 213, §427.

H. Petition Stating Nonsuit, Action Without Consent of Part of Plaintiffs.

Strafford, ss. Court of Common Pleas, January term, 1851.

To the honorable justices of said court: We the undersigned, finding ourselves named as plaintiffs in the action of Richard Caverly and others against Peletiah Jones, Benjamin Durgin and Stevens Durgin, now pending in said court, respectfully represent, that said action was commenced, and our names used as plaintiffs, without our consent, knowledge or authority; and we object to the prosecution of said action in our names, and do hereby forbid the attorneys of said plaintiffs further prosecuting the same; that we have no doubt that the said Peletiah Jones, at the time the alleged trespasses were committed, was the lawful owner of the land upon which said supposed trespasses were committed, that we make no claim, and never have made any claim, to the land described in the plaintiffs' writ, and are fully satisfied that our ancestor, Stephen Pendergast, or his executors, sold and conveyed said land to William Laskey, under whom the said Jones claims title thereto; we therefore become nonsuit in said action, and pray the court so to order, and to protect us in the premises.

(Signed)

Daniel Meserve,
John P. Meserve,
J. D. Meserve.

Caverly v. Jones, 23 N. H. 573.

IV. Non Pros.

A. Entry of Non Pros. for Not Declaring.

And the said C. D., at the same day, duly appeared by G. H., his attorney (and put in special bail) at the suit of the said A. B. (according to the form of the statute in such case made and provided). And the said A. B. hath not yet declared against the said C. D., in the said court, before the aforesaid justices thereof, as he ought to have done, according to the rules

and practice of the said court; but hath therein wholly made default. Burr. App. 132, §260; Till. Forms 204.

B. Entry of Non Pros. for Not Declaring in Replevin.

And hereupon the said C. D. in his proper person offers himself on the return of the said writ, against the said A. B., in the plea aforesaid. And the said A. B., although solemnly called, comes not, nor hath he declared against the said C. D. in this behalf, nor doth he further prosecute his writ against the said C. D., but therein makes default. Burr. App. 133, §261; Yates' Forms 566; Archb. Forms 413.

C. Entry of Non Pros. for Not Replying.

And hereupon the said defendant prays that the said plaintiff may reply to the plea of him, the said defendant, above pleaded: Whereupon, a day is given by the court here, to the said plaintiff, before the justices aforesaid, until the ——— day of ——— in this same term (the day on which the judgment is entered), at the (capitol in the city of Albany); that is to say, for him, the said plaintiff, to reply to the plea aforesaid. The same day is given to the said defendant, at the same place.

At which day, before the justices aforesaid, at the (capitol) aforesaid, comes the said defendant, by his attorney aforesaid, and the said plaintiff, although solemnly called, comes not; nor hath he replied to the aforesaid plea of the said defendant, nor doth he further prosecute his said suit against the said defendant, but therein makes default. Burr. App. 142, §270; Yates' Forms 800.

V. Dismissal.

A. Affidavit To Move for Dismissal, for Neglect To Try.

M. N., the attorney for the defendant in this action, being duly sworn, says:

I. That the place of trial herein is the county of ———; and that issue was joined as to all the defendants on the ——— day of ——— last.

II. That a circuit court was held at ———, in and for said county (or a trial term of this court was held), on the ——— day of ——— last past; and that the said plaintiff did not notice the action for trial (or that said plaintiff having noticed the action for

trial, did not proceed and try the same) then, according to the practice of this court.

III. That this action has not been noticed for trial by the defendant.

IV. That issues of a later date were tried at the said circuit, in the regular order of the calendar. 2 Abb. Forms 501.

B. Affidavit To Move for Dismissal, for Neglect To Serve Complaint.

I. That this action was commenced by personal service of the summons on the defendant, Y. Z., upon the ——— day of ———, 18——, as he is informed and believes, a copy of which is hereto annexed*.

II. That a notice of appearance and demand of a copy of the complaint herein was served on the plaintiff's attorney, on the ——— day of ——— last, by this deponent (or as appears from the affidavit of O. P., annexed hereto); but no copy-complaint has been served to the knowledge or belief of deponent. 2 Abb. Forms 502.

C. Affidavit To Move for Dismissal, for Unreasonable Neglect To Serve Other Defendants.

(As in preceding form to the *, continuing):

II. That the defendant W. X., is a necessary party to a complete determination of the matters in controversy, and to the protection of the rights of this defendant, as appears by the complaint (and the answer of this defendant).

III. That although the said W. X. might have been served with the summons in this action by reasonable diligence, the plaintiff has wholly omitted to serve him; and, as deponent is informed and believes, has made no efforts to do so, and said defendant W. X. has not appeared in the action, although ——— days (or, months) have elapsed since the service of this defendant, and (here state briefly the stage to which the cause has arrived). 2 Abb. Forms 502.

D. Affidavit To Move for Dismissal, for Suing Without Leave.

(After commencing as in V, A, state facts showing that leave was necessary, e. g., as follows):

I. That the defendant is a receiver duly appointed by this court (or by the court of ———), by an order of which a copy is hereto annexed.

II. That this action is brought against him as such receiver to recover an alleged debt due from said, etc., as appears by the complaint in this action on file.

III. That this action was, as this deponent is informed and believes, commenced without leave, contrary to the rules and practice of this court. 2 Abb. Forms 503.

E. Order Dismissing Action Absolutely.

On reading and filing the annexed affidavits (and proof of due service of the notice of this motion), and on motion of M. N., of counsel for defendant, and after hearing O. P., of counsel for plaintiff (or no one appearing), in opposition:

Ordered, that the plaintiff's complaint in this action be dismissed (as against the defendant Y. Z.), with costs, in favor of the said defendant, but without prejudice to a new action by, etc.; and that a judgment be entered accordingly; and that the plaintiff pay to said defendant ——— dollars, costs of this motion. 2 Abb. Forms 503.

F. Order Dismissing Action Unless Plaintiff Moves.

(Add to the above): unless the plaintiffs shall, within twenty days after the service of this order on them or their attorney, serve the summons on said W. X. (or give notice of a motion that leave to bring the action be granted *nunc pro tunc*. And if notice of such action is given, then all proceedings of both parties are hereby stayed until the hearing and decision thereof). 2 Abb. Forms 504.

G. Judgment of Dismissal on Motion of Plaintiff as to One Defendant.

And now, on this 6th day of April, 1886, this cause being called, comes the plaintiff George Bolch, and moves the court to dismiss this cause as to the defendant P. J. Norton, as per stipulation on file herein, and the court being fully advised in the premises, sustains said motion. It is therefore considered, ordered and adjudged by the court that this action be and the same hereby is dismissed as to the defendant P. J. Norton. It is further ordered and adjudged (costs pursuant to a stipulation). Norton v. Lawrence, 39 Kan. 458, 18 Pac. 526.

H. Judgment of Dismissal on Compromise.

"Wednesday, September 2d, A. D. 1885.
The United States v. Frank Mouillerat, et al.

And now comes the plaintiff, by William H. De Witt, esq., United States attorney, whereupon the plaintiffs dismissed their suit herein, the same having been compromised, and eight hundred dollars paid by the defendants.

It is therefore considered by the court that the defendants go hence without day, and recover against the plaintiffs their costs incurred herein, taxed at \$———. "In re Mouillerat's Est., 14 Mont. 245, 36 Pac. 185.

Note.—Held not a judgment for \$800, but of dismissal only.

I. Special Motion by One Defendant To Dismiss for Want of Jurisdiction of Person.

Essex, ss.: C. C. P., December term, 1857. Wright v. Hayward, et al.

And now Spaulding Boynton, named defendant in this action, comes into court specially to move the honorable court here, that the action as to him be dismissed, because he says he is not, and never has been, an inhabitant of the commonwealth of Massachusetts, and that no personal service, within the jurisdiction of said commonwealth, has been made upon him, and there has been no actual and effectual attachment of his property, and for no other purpose.

By Otis P. Lord, his attorney for that purpose only.

Wright v. Boynton & Hayward, 37 N. H. 9.

Note.—Held that such special appearance did not confer personal jurisdiction of non-resident.

J. Order of Dismissal by Plaintiff in Vacation, Under Statute.

Stephen Hardwick v. James St. John. No. 8. Action on note, now pending in the Hendricks circuit court.

The above named plaintiff hereby dismisses the above entitled suit, now pending in said court, at his own costs, and directs the clerk of that court to enter this order of dismissal upon the order book of the said court, according to the statute in such case made and provided.

January 29, 1859.

(Signed.) Stephen Hardwick, plaintiff.
State of Indiana, Hendricks county, ss.

I, John Irons, clerk of the circuit

court of said county, certify that the above dismissal was filed in my office on January 29, 1859.

John Irons.

St. John v. Hardwick, 17 Ind. 180.

VI. Dismissal in Equity.**A. Notice of Motion That Bill Be Dismissed for Want of Prosecution.**

Take notice, etc., etc., that the bill filed in this cause may stand dismissed out of court, with costs to be taxed, etc., for want of prosecution. Dated, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2152.

B. Orders.**1. Order Dismissing for Non-Delivery of Copy of Bill.**

On reading and filing due proof of the service upon the complainant's solicitor, more than twenty days since, of notice of the order of this court, made on the ——— day of ——— last, requiring the complainant to deliver to the defendant's solicitor a copy of the bill of complaint in this cause within twenty days after service of such notice, or that in default thereof said bill be dismissed with costs, and that no copy of such bill has been served upon the defendant's solicitor; on motion, etc., ordered that the bill in this cause be dismissed with costs, to be paid by the complainant, for want of prosecution. 2 Barb. Ch. Pr. 401.

2. Order for Dismissal of Bill at the Hearing.

This cause coming on, etc., this court doth order that the plaintiff's bill do stand dismissed out of this court (if there are other defendants who do not appear, or if dismissed against one of several defendants, as against the defendant B.), with costs to be paid by the plaintiff A. to the said defendant B.; and to be taxed by the, etc. (in case the parties differ). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2348.

3. Order for Dismissal on Case Agreed.

"This cause having been submitted upon a case agreed by the parties, and upon the arguments of counsel thereon, as well on the part of the defendants, as of the plaintiffs, and due deliberation thereupon had, and it appearing that the plaintiffs are not entitled to the personal estate, either of the late Sir William Pulteney, or of the late Countess of

Bath, in the pleadings mentioned, in exoneration of the land from the mortgage debt in question; it is thereupon ordered, etc., that the plaintiffs' bill be dismissed, and that no costs be charged by either party as against the other." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2350.

4. Order for Dismissal; Reasons Stated; Costs; Without Prejudice to Right To Bring Another Suit.

"It is declared, that nothing appears to impeach the consideration, or validity of the judgment in the pleadings mentioned, in favor of the defendant H., nor his right and title to the proceeds of the personal estate of the G. Manuf. Co., sold under his execution, and paid to him, nor his right and title to collect the residue of the judgment by the means provided by law; and that the G. Manuf. Co., as well as other debtors, were authorized to give preferences among creditors for a debt justly due. It is therefore ordered, etc., that the bill as to the defendant H. be dismissed, with costs. And it is further declared, that the plaintiffs were not entitled, at the time of filing their bill, to question, in this court, the dispositions of their personal property, inasmuch as, at the time of filing their bill, they had not acquired a lien at law upon the real estate, as judgment creditors, nor have they, as yet, acquired, as execution creditors, a legal preference to the personal property, by means of an execution duly issued and levied or returned, nor shown that they cannot obtain satisfaction of their debt by having tried in vain the ordinary process of such execution at law. And it is further declared, that though the defendants, who are trustees of the said company, and purchased in the personal property of the said company, under the execution of the defendant H., may be liable to have that property redeemed and resold, for the benefit of the creditors seeking the same, after deducting the price they gave, and the just expenses incurred thereon; yet none but an execution creditor at law is entitled to ask for such assistance from this court, in respect to the personal estate. It is thereupon further ordered, etc., that the bill as to all the other defendants who have answered be dismissed without costs, and without prejudice to the right of the plaintiffs to bring a new suit for the purpose

aforesaid in the proper character of judgment executive creditors." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2350.

5. Order for Dismissal of Bill Framed To Prevent Prejudice.
Supreme Court of United States.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of ———, and was argued by counsel; on consideration whereof this court is of opinion that the decree of the circuit court ought to have shown that the bill was dismissed, because the deed therein mentioned being void at law for matter apparent on its face, the plaintiff had not shown any circumstances which disclosed a case proper for the interference of a court of equity to relieve against such void deed. And this court is further of opinion, that so much of the said decree as dismisses the bill with costs, is erroneous and ought to be reversed. This court doth therefore reverse and annul the said decree, and direct that the case be remanded to the said circuit court with directions to modify the same according to the principles of this decree. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2351; Piersoll v. Elliott, 6 Pet. 95, 101, 8 L. ed. 332.

6. Order for Dismissal of Bill Where Plaintiff Does Not Appear.

This cause coming on this day to be heard before this court, etc. (if set down by defendant, at the request of the defendant), in the presence of counsel learned for the defendant, no one attending for the plaintiff, although the plaintiff has been served (or although the plaintiff has been duly served) with a subpoena to hear judgment in this cause (at the request of the defendant), as by affidavit (now produced) appears, and upon hearing what was alleged by the counsel for the defendant, and upon reading the said affidavit, etc.; this court doth order that the plaintiff's bill do stand dismissed out of this court with costs, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2349.

7. Dismissal of Bill With Costs as to Some Defendants, and Without Costs as to Others.

This court doth order that the plaintiff's bill stand dismissed out of this court, without costs, as against the defendants A. B., etc., and with costs as against the defendants D., E.,

etc., such costs to be taxed, etc., and paid by the plaintiffs (names) to the said defendants D., E., etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2349.

8. *Order for Dismissal as to Part of Bill.*

This court doth order that so much of the plaintiff's bill as seeks, etc., do stand dismissed out of this court, with costs, etc.; and as to the rest of the relief sought by the plaintiff's bill, etc.; it is ordered, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2348.

DISORDERLY CONDUCT.

- I. Indictment for Disorderly Conduct, Drunkenness, 413
- II. Complaint for Using Vulgar Language in Hearing of Children, 413
- III. Complaint for Disturbing Peace by Noise and Profanity, 413
- IV. Information for Loud and Indecent Language, 413
- V. Complaint, Peeking in Window of Dwelling, 413
- VI. Complaint, Language Likely To Cause Breach of Peace, 414
- VII. Complaint for Discharging Firearms in Corporate Limits, 414
- VIII. Indictment for Being a Street Walker, 414
- I. Indictment for Disorderly Conduct, Drunkenness.

The indictment charges that "one George Waggoner was then and there found in a public street, highway and sidewalk, situate in Greene county and state of Indiana, unlawfully in a state of intoxication." *State v. Waggoner*, 52 Ind. 481.

Note.—Sustained under statute providing that "any person of sound mind found in any public place in a state of intoxication, shall be deemed guilty of a misdemeanor."

II. Complaint for Using Vulgar Language in Hearing of Children.

The complaint charges that "defendant (petitioner), on the nineteenth day of October, 1880, at Watsonville, in the county of Santa Cruz, state of California, committed a misdemeanor, as follows, to-wit: The said T. K. Foley, at the time and place aforesaid, did use vulgar and indecent language within the hearing of children, in a loud and boisterous manner, wilfully and unlawfully, all of which is contrary to the form of the stat-

ute." etc. *Ex parte Foley*, 62 Cal. 508.

III. Complaint for Disturbing the Peace by Noise and Profanity.

"On the 23d day of September, 1885, in the county of Washington and state of Kansas, one Louisa Burns, did then and there unlawfully and wilfully disturb the peace and quiet of one Silas Blodgett and of the family of said Silas Blodgett, by making loud and boisterous noises and by uttering profane and vulgar oaths, and by rude and indecent behavior, contrary to the statutes in such cases made and provided, and against the peace and dignity of the state of Kansas." *State v. Burns*, 35 Kan. 387, 11 Pac. 161.

Note.—Statute reads "wilfully disturbing the peace and quiet of any person, etc."

IV. Information, Loud and Indecent Language.

"Comes J. H. Duncan, assistant prosecuting attorney, within and for the county of Greene, state of Missouri, under his oath of office informs the court that one William Brumley, on or about the thirty-first day of March, 1891, at the said county of Greene, state of Missouri, did then and there unlawfully and wilfully disturb the peace of the family of Celina Schoner, and did then and there use loud, offensive and indecent conversation, and by quarreling and threatening, and drawing a stick to strike and fight. And against the peace and dignity of the state." *State v. Brumley*, 53 Mo. App. 126.

Note.—Sufficient under statute.

V. Complaint, Peeking in Window of Dwelling House.

"On the 8th day of September, 1895, at the city of Grand Rapids aforesaid, and within the corporate limits of said city, one George Williams was then and there guilty of indecent, insulting, and immoral conduct and behavior, by peeking in the windows of a house on the corner of Wenham avenue and Lagrave street, said house being then and there occupied by persons living therein, and not being the residence of said Williams, and was then and there found in a state of intoxication, to the evil example of all others in like case offending, contrary to the provisions of section 1 of an ordinance of said city, entitled 'An ordinance relative to dis-

orderly persons." *City of Grand Rapids v. Williams*, 112 Mich. 247, 70 N. W. 517.

Note.—Held sufficient under an ordinance which reads: "All persons who . . . shall be engaged in any illegal or improper diversion, or shall use any indecent, insulting, or immoral language, or shall be guilty of any indecent, insulting, or immoral conduct or behavior, in any public street or elsewhere in said city, . . . shall be deemed to be disorderly persons, and, upon conviction thereof, shall be punished," etc.

VI. Complaint, Language Likely To Cause Breach of the Peace.

"James Redshaw did act in a disorderly manner upon one of the highways of the borough of Homestead by calling scab, and damned scab, to affiant and two other non-union workmen, who were then passing along said highway, with intent to provoke said non-union workmen, and to cause a breach of the public peace, and tending to a breach of the public peace." *Com. v. Redshaw*, 12 Pa. Co. Ct. 91.

VII. Complaint for Discharging Fire arms in Corporate Limits.

"On or about the 25th day of April, 1883, J. A. Smith, within the corporate limits of the city of Cottonwood Falls, Chase county, Kansas, the same being a city of the third class, then and there being, did then and there shoot and discharge a pistol, commonly called a revolver, the said shooting not being done in any public display or in commemoration of any extraordinary event, and that the said J. A. Smith was not then and there an officer of said city or state, or United States; contrary to, and in violation of section one, ordinance No. 8, of said city." *Cottonwood Falls v. Smith*, 36 Kan. 401, 13 Pac. 576.

Note.—Sufficient under ordinance pursuant to statute.

VIII. Indictment for Being a Street Walker.

"The grand jury . . . further charges that . . . Nora Stokes was a common night-walker, and did walk and ramble in the streets and common highways in the city of Montgomery, in said county and state, at unreasonable hours of night, without having any lawful business, and without any necessity therefor, for the unlawful purpose of picking up men for lewd inter-

course; against good morals and good manners, to the common nuisance of all good people of the county, against the peace," etc. *Stokes v. State*, 92 Ala. 73, 9 So. 400.

DISORDERLY HOUSE.

- I. Indictment for Keeping Disorderly House, 414
- II. Indictment for Keeping House for Fighting Cocks, 415
- III. Indictment for Keeping Bawdy House, 415
- IV. Information for Keeping Disorderly House, 415
- V. Indictment for Leasing Property for Disorderly House, 416

For other forms, see 7 STANDARD PROC. 709.

I. Indictment for Keeping Disorderly House (a).

That the defendant "unlawfully did keep and maintain a certain common, ill-governed, and disorderly house, and in the said house, for its own lucre and gain, certain persons, as well men as women, of evil name and fame and of dishonest conversation, then, and on the said other days and times, there unlawfully and willingly did cause and procure to frequent and come together; and the said men and women in the said house of it, the said Linden Park Blood Horse Association, at unlawful times, as well in the night as in the day, then and on the said other days and times, there to be and remain drinking, tippling, fighting, whoring, and misbehaving themselves, unlawfully and wilfully did permit, and yet does permit," etc. *Linden Park Blood Horse Assn. v. State*, 16 Crim. L. Mag. 29.

Indictment for Keeping Disorderly House (b).

"The grand jury of said county charge that before the finding of this indictment, A. Cahn, whose Christian name is to the grand jury unknown, did keep a disorderly, public and ill-governed house, and did then and there unlawfully cause and procure certain persons, as well women as men, of evil name and fame, to frequent and come together, in his said house at many unlawful times, as well in the night as in the day, and did permit them there to be and remain, drinking, tippling, carousing, swearing, indecently dancing, and misbehaving themselves,

to the great damage and common nuisance and evil example of all the citizens, not only the neighborhood, but all the citizens of the county, and against the peace and dignity of the State of Alabama." *Cahn v. State*, 110 Ala. 56, 20 So. 380.

Indictment for Keeping Disorderly House (c).

"Georgia, Sumter County.

"The grand jurors, sworn, chosen and selected for the county of Sumter, to-wit: . . . In the name and behalf of the citizens of Georgia, charge and accuse Malta Scarborough and Harriet Scarborough, of the county and state aforesaid, with the offense of keeping a lewd house; for that the said Malta Scarborough and Harriet Scarborough, on March 20th, 1872, in the county aforesaid, did then and there, unlawfully, by themselves and by others, maintain and keep a lewd house, or a place for the practice of fornication or adultery, or fornication and adultery, contrary to the laws of said State, the good order, peace and dignity thereof." *Scarborough v. State*, 46 Ga. 26.

II. Indictments for Keeping Disorderly House for Fighting Cocks, Etc.

That G. H., late of, etc., and I. K., late of, etc., on, etc., and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at the parish aforesaid, in the county aforesaid, did keep and maintain, and yet do keep and maintain a certain common ill-governed and disorderly house, and in the said house for his own lucre and profit, certain evil and ill-disposed persons of ill name and fame, and of dishonest conversation, to frequent and come together, then, and the said other days and times, there unlawfully and wilfully did cause and procure, and the said persons in the said house then, and the said other days and times there to be and remain, fighting of cocks, boxing, playing at cudgels, and misbehaving themselves, unlawfully and wilfully did permit, and yet doth permit, to the great damage and common nuisance of all the subjects of our said lord the king, inhabiting near the said house, and against the peace of our said lord the king, his crown and dignity. 3 Chit. Cr. L. 673.

III. Indictment for Keeping Bawdy House.

That C. D., late of, etc., on, etc., and

on divers other days and times between that day and the day of taking this inquisition, with force and arms, at, etc., aforesaid, a certain common bawdy house, situate, etc., unlawfully and wickedly did keep and maintain; and in the said house, for filthy lucre and gain, divers ill-disposed persons, as well men as women, and whores, on the days and times aforesaid, as well in the night as in the day, there unlawfully and wickedly did receive and entertain, and in which said house, the said evil disposed persons and whores, by the consent and procurement of the said C. D. on the days and times aforesaid, there did commit whoredom and fornication, whereby divers unlawful assemblies, riots, routs, affrays, disturbances, and violations of the peace of our said lord the king, and dreadful filthy and lewd offenses in the same house, on the days and times aforesaid, as well in the night as in the day, were there committed and perpetrated, to the great damage and common nuisance of all the liege subjects of our said lord the king, in manifest destruction, ruination, and subversion of youth, and other people, their manners, conversation, estate, and obedience, and against the peace, etc. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. D., on, etc., aforesaid, and on the other days and times aforesaid, with force and arms, at, etc., aforesaid, a certain common, ill-governed, and disorderly house, unlawfully and wilfully did keep and maintain, and in the said house, for filthy lucre and gain, certain evil-disposed persons, as well men as women, of evil name, fame, and conversation, to frequent and come together on the days and times aforesaid, there unlawfully and wickedly did cause and procure, and the said persons in the said house at unlawful times, as well in the night as in the day, on the days and times aforesaid, there to be and remain drinking, tippling, cursing, swearing, quarreling and otherwise misbehaving themselves, unlawfully and wickedly did permit and suffer, etc. 2 Chit. Cr. L. 39.

IV. Information for Keeping Disorderly House.

"The State of Florida. In the name and by the authority of the State of Florida: In the circuit court of the first judicial circuit of the state of

Florida for Escambia county, at the fall term thereof, in the year of our Lord one thousand eight hundred and seventy-seven. Escambia county, to-wit:

Be it remembered that William H. Milton, state attorney for the first judicial circuit of the state of Florida, prosecuting for said state, being present in said court on the 27th day of September, 1877, gave the court to be informed and understand that one Melissa King, late of the county of Escambia aforesaid, in the circuit and state aforesaid, on the first day of September, in the year of our Lord one thousand eight hundred and seventy-six, then and there being in the county of Escambia, then and there at said time and on divers other days and times between that day and the filing of this information, then and there being, then and there unlawfully did keep a house of ill-fame resorted to for prostitution and lewdness, and the said Melissa King certain persons as well men as women of evil name and fame and of dishonest conversation, then and on the said other days and times there unlawfully and willingly did cause and procure to frequent and come together, and the said men and women in the said house of her, the said Melissa King, at unlawful times, as well in the night as in the day, then and on the said other days and times there to be and remain drinking, tipping and whoring and misbehaving themselves, unlawfully did permit and yet do permit, against the form of the statute in such cases made and provided, to the evil example of all others in the like case offending and against the peace and dignity of the State of Florida, wherefore the said William H. Milton, the State Attorney as aforesaid, prosecuting for said State as aforesaid, prays the advice of the said court in the premises, and that the said Melissa King may be arrested and held for trial under the foregoing information, and that a capias may issue forthwith for her arrest.

W. H. Milton,
State Attorney for the First Judicial
Circuit of the State of Florida
prosecuting for said state.”
King v. State, 17 Fla. 183, 188.

V. Indictment for Leasing Property for Disorderly House.

The jurors, etc., do on their oath,

See "How To Use This Volume," Introduction, page v.

present that Martin Smith, late, etc., on the second day of September, 1845, with force and arms, at, etc., unlawfully, wilfully, and knowingly, did let a certain house, there situate, of him the said Martin Smith, to one Dorcas Smith, with an intent that the said Dorcas Smith should afterwards, and during the continuance of such lease thereof, then keep and maintain the said house as a common bawdy house; and that afterwards, and during the continuance of such lease thereof, to-wit: on the day and year aforesaid, and on divers other days and times, between that day and the day of taking of this inquisition, at the city of Baltimore aforesaid, the said Dorcas Smith did actually keep and maintain the said house, as a common bawdy house; to the great scandal of all the liege inhabitants of the said state, to the evil example of all others in the like case offending, and against the peace, government, and dignity of the State. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Martin Smith afterwards, to-wit: on the second day of September, in the year of our Lord, 1845, with force and arms, at the City of Baltimore aforesaid, unlawfully and knowingly, did let out a certain other house, there situate, which said last mentioned house, he the said Martin Smith, then and there had the control of, and the power of letting out, to one Dorcas Smith, with intent that the said Dorcas Smith should afterwards, and during the continuance of such lease thereof, there keep and maintain the said last mentioned house, as a common bawdy house; and that afterwards, and during the continuance of such lease thereof, to-wit, on the day and year aforesaid, and on divers other days and times, between that day and the day of taking this inquisition, at the City of Baltimore aforesaid, the said Dorcas Smith actually did keep and maintain the said last mentioned house as a common bawdy house, to the great scandal of all others, in the like case offending, and against the peace, government and dignity of the State. *Smith v. State*, 6 Gill (Md.) 425.

DISTRESS.—See REPLEVIN; TRESPASSING ANIMALS.

DISTRIBUTION.—See DECEDENTS' ESTATES; INHERITANCE.

DISTRINGAS.—See CORPORATIONS.

DISTURBING THE PEACE.—See AFFRAY; BREACH OF THE PEACE; DISORDERLY CONDUCT; DISTURBING PUBLIC ASSEMBLIES; PUBLIC DRUNKENNESS.

DISTURBING PUBLIC ASSEMBLY.

I. Indictment for Disturbing Congregation, 417

II. Indictment for Disturbing by Riotous Conduct, 417

III. Indictment for Disturbing Religious Worship, 417

IV. Indictment for Disturbing Religious Meeting in Private House, 418

V. Indictment for Disturbing Meeting of Salvation Army, 418

For other forms, see 7 STANDARD PROC. 715, 716.

I. Indictment for Disturbing Congregation.

That C. B., the elder, late of, etc., and C. B., late of, etc., on, etc., with force and arms, at, etc., did during the time of divine worship, unlawfully, wilfully, maliciously, and contemptuously disquiet and disturb a certain congregation of protestant dissenters from the church of England, being then and there lawfully assembled for the purpose of religious worship, in a certain chapel, situated, standing, and being, in the parish aforesaid, in the county aforesaid, the said chapel being then and there duly certified and registered, pursuant to the statute in such case made and provided, in contempt of public worship, to the evil example, etc., against the form of the statute, etc., and against the peace, etc. 2 Chit. Cr. L. 27.

II. Indictment for Disturbing Meeting by Riotous Conduct.

That C. D., late of, etc., E. F., late of, etc., G. H., late of, etc., and divers other evil-disposed persons, to the number of forty and more, to the jurors aforesaid as yet unknown, being rioters, routers, and disturbers of the peace of our lord the now king, and not regarding the laws and statutes of this kingdom, on, etc., with force and arms, at, etc., unlawfully, riotously, routously, and tumultuously did assemble and meet together to disturb the peace of our said lord the king, and being so assembled together, did then and there unlawfully, riotously, routously, and tumultuously disturb several of the liege

subjects of our said lord the king, peaceably assembled and met together for the purpose of hearing divine service in a certain dissenting meeting-house there situate, by riotously and routously shouting, hallooing, and making a great noise, whereby the said divine service was greatly interrupted; and that the said C. D., one I. L., who was then and there attending the said divine service in the said meeting-house, and in the peace of God and our said lord the king, then and there being, unlawfully and riotously did beat, wound, and ill-treat, so that his life was greatly despaired of, to the great disturbance of, and terror of divers of his majesty's subjects, to the great damage of the said I. L. and against the peace, etc. 2 Chit. Cr. L. 28.

III. Indictment for Disturbing Religious Worship (a).

The grand jury of Faulkner county, in the name and by the authority of the state, etc., accuse Lucius Hinson of the crime of disturbing a religious congregation committed as follows, viz: The said Lucius Hinson, on the 13th day of August, A. D. 1876, in the county and state aforesaid, said day being the Sabbath day, unlawfully and contemptuously did disturb the congregation then and there assembled for religious worship in Cypress Valley Church, by acting and talking in a manner that was calculated to disturb, insult and interrupt said congregation. Such acting and talking being in the presence and hearing of said congregation, then and there assembled for religious worship, against the peace, etc. State v. Hinson, 31 Ark. 638.

Indictment for Disturbing Religious Worship (b).

State of N. Carolina, Franklin County. Superior Court of Law, Spring Term, 1833.

The jurors for the state upon their oaths present, that Henry N. Jasper, late of the county of Franklin aforesaid, on the third day of March (the said third day being the Sabbath day), in the year one thousand eight hundred and thirty-three, and during other days and times, both before and after the day aforesaid, being a person regardless of the duties and solemnities of the public worship of God, and of the due observation of the Lord's day at a certain Baptist meeting house, commonly called "Haywood's meeting

house" in the county aforesaid, did wilfully interrupt and disturb a certain assembly of people there met for the public worship of God, within the place of their assembly, to-wit, within the meeting house aforesaid, in the county aforesaid, on the third day of March aforesaid, the same being on the Sabbath day in the year last aforesaid, and on the said other days and times, by then and there talking and laughing in a loud voice, and by then and there making divers ridiculous and indiciant actions and grimaces, and otherwise misbehaving himself, during the performance of divine service in said meeting house to the great disturbance and insult of the orderly people there, and on the said other days and times, then and there assembled, and against the peace and dignity of the state.

R. M. Saunders, Atty. Gen.
State v. Jasper, 15 N. C. 323.

IV. Indictment for Disturbing Religious Meeting in Private House.

The jurors for the state upon their oath present, that on the twelfth day of August, 1839, in the county of Rowan aforesaid, a number of the citizens of said county were peacefully assembled at the house of Joseph Weant, in said county, for religious worship, and for the purpose of offering prayers to Almighty God; and the said persons being then and there so assembled together for the purpose aforesaid, and actually engaged in divine worship, Peter R. Swink and Johnson E. Swink, well knowing the purpose of the said meeting, with force and arms, did then and there enter into said house, and by loud and abusive language, then and there, with profane oaths and violent actions, did disturb wantonly and intentionally the worship of the Almighty, and did disturb and molest the citizens then and there assembled for divine worship, to the great contempt of religion, to the common nuisance of the citizens of the state then and there being, and against the peace and dignity of the state. State v. Swink, 20 N. C. 358.

V. Indictment, Disturbing Meeting of Salvation Army.

"Comes now Milo A. Root, county and prosecuting attorney for Thurston county, Washington, and the court being in session and the grand jury not being in session, and gives the court

to understand and be informed that Otto Stuth is guilty of the offense of disturbing a religious society, and the members thereof when met together for public worship, committed as follows, to-wit:

"He, the said Otto Smith, at Olympia, in Thurston county, Washington, on or about the 13th day of February, 1894, in and near a room then occupied by a large number of persons belonging to a religious society, known as the 'Salvation Army,' did use loud and profane language, and did smoke a cigarette, and did refuse to leave said room when requested so to do by the officer of said society in charge, and did by said language and conduct, disturb said 'Salvation Army' and the members thereof, they then and there being met for public worship." State v. Stuth, 11 Wash. 423, 39 Pac. 665.

Note.—Held sufficient, the statute not containing the word "wilful."

DIVORCE.

I. In Equity Courts, 419

- A. *Bill To Dissolve Marriage*, 419
- B. *Order of Reference on Bill*, 420
- C. *Master's Report on Bill To Dissolve Marriage*, 420
- D. *Petition for Alimony and Expenses*, 420
- E. *Decree From Bed and Board*, 421
- F. *Decree for Divorce*, 421

II. Under Codes, 421

- A. *Complaints for Divorce*, 421
 1. *Adultery*, 421
 2. *Limited Divorce for Cruelty*, 422
 3. *On Account of Non-age*, 423
 4. *On Ground of Lunacy*, 423
 5. *On Ground of Fraud by Husband*, 423
 6. *On Ground of Fraud by Wife*, 424
 7. *Physical Incapacity*, 424
 8. *Allegation of Wilful Absence*, 424
 9. *Allegation of Drunkenness*, 424
 10. *Allegation of Imprisonment*, 424
- B. *Answers*, 424
 1. *General Denial*, 424
 2. *Denial of Adultery*, 424
 3. *Condonation of Adultery*, 424
 4. *Counterclaim, Plaintiff's Adultery*, 425
- C. *Alimony*, 425
 1. *Notice of Motion*, 425
 2. *Order Allowing*, 425
- D. *Custody of Children*, 425
 1. *Petition for*, 425

2. *Order Confiding Custody*, 425
- E. *Judgments*, 426
1. *Recital on Usual Reference*, 426
2. *Limited Divorce*, 426
3. *Absolute Divorce*, 426
4. *For Divorce, Alimony Reserved and Referred*, 427

For other forms, see 7 STANDARD PROC. 757, 767. And see 768.

CROSS-REFERENCES:

REFERENCES:

Order of Reference Preliminary to Judgment in Divorce.

SERVICE OF PROCESS AND PAPERS:

Order, Where Action Is for Divorce.

Affidavit of Publication in Action for Divorce;

I. In Equity Courts.

A. *Bill To Dissolve Marriage.*

Your orator J. A. D., of the town of Saratoga Springs, in the county of Saratoga, and state of New York. That on or about the _____ day of _____, in the year of our Lord one thousand eight hundred and twenty-five, your orator intermarried with C. B. (now C. D.), at the town of Hague, in the county of Warren, and state aforesaid; and that your orator continued to live with the said C. as his wife until about the _____ day of _____; and that from the time of the said marriage they have been, and at the time and times of the commission of the several acts of adultery hereinafter set forth, were, and now are, inhabitants of this state.

And your orator further sheweth unto your honor that during the time he lived and cohabitated with the said C. as his wife, she had five children, to-wit: A., aged about seventeen; M., aged about fifteen; H., now deceased; D., aged about ten; and M. E., aged about four. But your orator charges that he is not the father of the said M. E., she being illegitimate.

And your orator further sheweth unto your honor that he is informed and believes, and charges the truth to be, that the said C., disregarding the solemnity of the marriage vow, hath since the marriage of your orator with her as aforesaid, committed adultery at divers times and places, and especially that the said C., on some day or days during the year 1835, but on what particular day or days your orator is ignorant, at the town of _____, in the county of _____, and state aforesaid, did commit adultery and have

carnal connection with one D. M. and one J. L.; and that the said C., at various other times during the said year 1835, committed adultery, and had carnal connection with the said D. M. and the said J. L., at the town and county last aforesaid, or at some place or places within the said county.

And your orator further sheweth unto your honor that he is informed and believes, and therefore charges the truth to be, that the said C., so disregarding the solemnity of the marriage vow as aforesaid, hath since your orator's said intermarriage with her, committed adultery, at divers times and in various places, and especially that the said C., on the _____ day of _____, in the year _____, at the village of _____, did commit adultery and have carnal connection with one M. W.; and that the said C. did at various other times during the year 1837 commit adultery and have carnal connection with the said M. W. at the place last aforesaid, or at some other place or places within the said county of _____.

And your orator further shows that he was wholly and entirely ignorant of the commission of the aforesaid acts of adultery by the said C., or any or either of them, until about the _____ day of _____ last. That five years have not elapsed since he discovered the fact that such adultery had been committed by her; that he has not voluntarily cohabited with her since the discovery thereof; and that such adultery was committed by her without his consent, connivance, privity or procurement.

And your orator further sheweth that he is informed and believes and therefore charges the truth to be, that the said C. is now, and for some time past has been, living with one L. N., in open and notorious adultery, at _____, and that five years have not elapsed since the commencement of such adulterous intercourse was discovered by your orator. And your orator charges that such adulterous intercourse between the said C. and the said L. N. was begun and is continued without his consent, connivance, privity or procurement.

In consideration whereof, and to the end that the said C. may full, true and perfect answer make to all and singular the premises, and that as fully and particularly as if the same were here

again repeated and she interrogated thereto; and that the marriage between your orator and the said C. may be dissolved, and a divorce decreed, according to the statute in such case made and provided, and that the said M. E. may be declared to be illegitimate. And that your orator may have such further relief, or such other relief, in the premises as shall be equitable.

May it please (prayer for process of subpoena). 2 Barb. Ch. Pr. 680.

B. Order of Reference on Bill To Dissolve Marriage.

On reading and filing due proof that the bill of complaint in this cause has been taken as confessed by (or the facts charged in the bill of complaint in this cause having been admitted by the answer of) the defendant, and on reading and filing the affidavit of regularity required by the rule of this court, on motion of R. S., solicitor for complainant, ordered that it be referred to one of the masters of this court residing in the county of _____, to take proof of all the material facts charged in the said bill, and to report such proof to the court, with his opinion thereon. 2 Barb. Ch. Pr. 682.

C. Master's Report on Bill To Dissolve Marriage.

To the chancellor of the state of New York:

In pursuance of an order of this court made in the above cause, and dated the _____ day of _____, by which it was referred to one of the masters of this court residing in the county of _____ to take proof of all the material facts charged in the bill of complaint in this cause, and to report such proof to this court with his opinion thereon; I, the subscriber, one of the masters of this court residing in the county of _____, to whom the execution of said order was confided, do hereby certify and report:

That I have taken proofs in this cause on the part of the complainant, and that such proofs are hereto subjoined and made a part of this my report.

And I do further certify and report as required by the said order, that in my opinion all the material facts charged in the complainant's bill in this cause are true, and have been sufficiently proved before me; and that the said defendant has committed the

several acts of adultery charged in the said bill of complaint.

And I do further certify and report that I am of opinion that all the children of the defendant named in the bill are legitimate except M. E., and that she the said M. E. is not the child of the complainant, but is illegitimate.

All which is respectfully submitted.

J. A., master in chancery.

2 Barb. Ch. Pr. 682.

Depositions Annexed To Report.

Depositions taken this _____ day of _____, in the year of our Lord one thousand eight hundred and _____, in the above cause, on the part and behalf of the complainant, before J. A., a master in chancery. Mr. R. C. appears as counsel for the complainant; no one appearing for the defendant.

M. F., a witness produced, was duly sworn by said master, and on being orally examined by the counsel for the complainant, deposeth as follows: I am _____ years of age, and upwards. I reside in the town of _____, in the county of _____. I am acquainted with both the parties in this suit, etc., etc.

M. F.

Subscribed and sworn to this _____ day of _____, 18—, before me.

J. A., master in chancery.

2 Barb. Ch. Pr. 683.

D. Petition for Alimony and Expenses.

To the chancellor of the state of New York:

The petition of the above defendant respectfully sheweth, that the said complainant A. B. has lately filed his bill in this court against your petitioner to obtain a decree dissolving the marriage solemnized between him and your petitioner, because of the alleged physical incapacity (or adultery) of your petitioner. That your petitioner being served with a subpoena for that purpose has caused her appearance to be entered in the said cause. And that she has put in her answer to the bill of complaint, on oath, denying the said physical incapacity (or adultery) with which she is charged in the said bill; as by reference to the said master will more fully appear.

And your petitioner further sheweth that she is wholly destitute of the means of supporting herself during the pendency of this suit, or of carrying

on her defense and defraying the costs and expenses attending the same. That your petitioner has been informed and verily believes the said complainant has real estate and personal property to a large amount, and amply sufficient to enable him to advance thereout to your petitioner such sums as may be necessary for the above mentioned purposes. That your petitioner is informed and believes that the said complainant is the owner of property to the amount of more than \$———, and that his annual income is about \$———.

Your petitioner therefore prays that the said complainant may, by an order of this court, be required to pay to your petitioner a reasonable sum for her support and maintenance during the pendency of this suit, and such sum or sums of money as may be necessary to enable your petitioner to carry on her defense in this suit and to defray the necessary costs and expenses thereof.

And for such other or further relief in the premises as to your honor may seem meet.

And your petitioner, etc. 2 Barb. Ch. Pr. 689.

E. Decree of Divorce From Bed and Board, With Alimony, Other Directions, Custody of Child.

"It appearing from the pleadings and proofs that the defendant has been guilty of cruel and inhuman treatment of the plaintiff, by repeated acts of personal violence, so as to render it unsafe and improper, under existing circumstances, for her to cohabit with him, or to be under his dominion and control, it is thereupon ordered, etc., that plaintiff and defendant be separated from bed and board forever, provided, however, that the parties may, at any time hereafter, by their joint and mutual, free and voluntary act, apply to the court for leave to be discharged from this decretal order. And it is hereby declared to be the duty of each of them to live chastely during their separation, and that it will be criminal, and an act void in law, for either of them, during the life of the other, to contract matrimony with any other person. And it is further ordered, etc., that the plaintiff, according to the prayer of her bill, shall be entitled to, and be charged with, the custody, care and education of the infant son of the parties in the pleadings

mentioned, provided always that this order for the custody, care and education of the said infant may, at any time hereafter, be modified, varied or annulled, upon sufficient cause shown. And it is further ordered, etc., that the defendant pay to the plaintiff \$200 a year, to be computed from the date of this decree, in half-yearly payments, to be applied towards the support and maintenance of the plaintiff and her son, and that this allowance is to continue until further order, and be subject to variation, as future circumstances may require. And it is further ordered that the defendant pay to the plaintiff the costs of this suit, to be taxed, and that she have execution thereupon, according to the course and practice of the court." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2292; Barrere v. Barrere, 4 Johns. Ch. (N. Y.) 187.

F. Decree for Divorce.

This cause having this day been brought on to be heard upon the bill of complaint filed therein, taken as confessed by the defendant, and upon the report of J. A., one of the masters of this court, from which it appears that all the material facts charged in the said bill are true, and that the defendant has been guilty of the several acts of adultery therein charged; on motion of O. L. B., of counsel for said complainant, it is adjudged and decreed, and this court, by virtue of the power and authority therein vested, and in pursuance of the statute in such case made and provided, doth adjudge and decree that the marriage between the said complainant J. A. D. and the said defendant C. D. be dissolved, and the same is hereby dissolved accordingly. And the said parties are, and each of them is, freed from the obligations thereof. And it is further adjudged and decreed that it shall be lawful for the said complainant J. A. D. to marry again in the same manner as though the said defendant C. D. was actually dead; but it shall not be lawful for the said defendant C. D. to marry again, until the said complainant J. A. D. is actually dead. 2 Barb. Ch. Pr. 684.

II. Under Codes.

A. Complaints for Divorce.

1. Complaint for Divorce on Ground of Adultery.

I. That on the ——— day of ———, 18—, at ——— (in this

state), the plaintiff was married to the defendant.

II. That the plaintiff and the defendant were, at the time of the commission of the several acts of adultery hereinafter mentioned, inhabitants of this state.

(Or, if the marriage is alleged to have taken place within this state, that the plaintiff, at the time, etc., as above, was, and now is, an actual inhabitant of this state.)

(Or, if the adultery is charged to have been committed within this state, that the plaintiff now is [or at the commencement of this action was] an actual inhabitant of this state.)

III. That on the _____ day of _____, 18—, at the house of _____ (or at No. _____ street), in the city of _____, the defendant committed adultery with one M. N.

(Charge of repetition.) IV. That a few days subsequently thereto, the defendant again committed adultery, at the house aforesaid, with the said M. N.

(Where the precise time is not known.) V. That between the _____ day of _____, 18—, and the _____ day of _____, 18—, at times which the plaintiff is unable more particularly to state, the defendant (etc., as above).

(Where the place is not known.)

VI. That on the _____ day of _____, 18—, at some place in the city of _____, which the plaintiff is unable more particularly to state, the defendant (etc., as above).

(Where time and place are not known.) VII. That at divers places within the city of _____, and at various times between the _____ day of _____, 18—, last and this action, but at what particular times and places the plaintiff is unable to state, the defendant has committed adultery with one M. N.

(Where the paramour is not known.)

VIII. That on the _____ day of _____, 18—, at the house of _____ (or at No. _____ street), in the town of _____, the defendant committed adultery with a man (or a woman), whose name is unknown to the plaintiff (or one or more women, whose names are unknown to the plaintiff).

(Charge of living in adulterous intercourse.) IX. That the defendant has committed adultery with one M. N., and ever since the _____ day of _____ has been living in adulterous

intercourse with him (or her) at _____.

X. That such adultery was committed without the consent, connivance, privity or procurement of the plaintiff; that five years have not elapsed since the plaintiff discovered the fact of such adultery (or, when living in adulterous intercourse is charged, that five years have not elapsed since the commencement of such adulterous intercourse was discovered by the plaintiff); and that the plaintiff has not voluntarily cohabited with the defendant since such discovery (or since the commission of the last offense above alleged).

XI. That there are no issue of the said marriage of the plaintiff and defendant (or that the issue of the said marriage of the plaintiff and defendant are two children, named _____, aged _____ years, and _____, aged _____ years.

(Where there are illegitimate children of guilty wife.) XII. That since the commission of said adultery the defendant has born a child, now _____ months old, and called _____, who is not the child of the plaintiff, but illegitimate, as he believes.

Wherefore the plaintiff demands judgment that the bonds of matrimony between (him) self and the defendant be dissolved. (If there are any children living, add: and that the custody of the said children be awarded to the plaintiff. If the wife is plaintiff, add: and that a reasonable provision for the support of the plaintiff and her said children be made out of the property of the defendant.) And for the costs of this action. 1 Abb. Forms 621, 624.

2. *Complaint for Limited Divorce, on Account of Cruel and Inhuman Treatment.*

I. That on the _____ day of _____, 18—, at _____, in the state of _____, she was married to the defendant.

II. That both the plaintiff and the defendant were, at the commencement of this action, and still are, actual inhabitants of this state.

(Or, if the marriage is alleged to have taken place in this state, it is enough to say: II. That the plaintiff was, at the commencement of this action, and still is, an actual resident of this state.)

(Or, if the marriage is not alleged

to have taken place in this state: II. That the plaintiff and defendant have, since their said marriage, become inhabitants of this state, and so remained for one year from the ——— day of ———, 18—; and the plaintiff was, at the commencement of this action, and still is, an actual resident of this state.)

III. That since said marriage the defendant has treated her in a cruel and inhuman manner, and since about the beginning of the year 18— has been an habitual drunkard, and in his fits of drunkenness has repeatedly committed acts of cruelty and violence upon deponent and her children, and in particular as follows (state the specific acts, e. g., thus): On the ——— day of ———, 18—, at ———, the defendant, without any provocation, struck and beat the plaintiff, severely injuring her face and breast; and on the ——— day of ———, 18—, at ———, the defendant again, without any provocation, knocked the plaintiff down, and kicked her in the side; and that defendant's entire course of conduct towards the plaintiff, with rare intervals, has been for a long period uniformly brutal and abusive, he being constantly in the habit of applying abusive epithets to her, of threatening her with violence, and of striking and attempting to strike her; and it has become entirely unsafe for her to live with him.

(Or, that on the ——— day of ———, 18—, the defendant abandoned the plaintiff (and expelled her from his residence, and has refused to permit her to return), and has since refused (or neglected), and still does refuse (or neglect) to provide for her.)

IV. (As to children as in II, A, 1.)

V. That in and about the year ———, and after their marriage, the said defendant received ——— dollars as the distributive share of the plaintiff in her father's estate; the whole of which the defendant has applied and converted to his own use. And that the defendant owns real estate to the amount of ——— dollars, and personal estate to the amount of ——— dollars.

Wherefore the plaintiff demands judgment for a separation from the bed and board of the defendant (conclude as in preceding form). 1 Abb. Forms 624.

Note.—Where sufficient for absolute

divorce, use prayer of preceding form.

In some jurisdictions it is necessary to allege that defendant has been guilty of "extreme cruelty," setting out the acts, and nothing but an absolute divorce can be granted.

3. *Complaint for Divorce on Account of Non-Age.*

I. (State appointment of guardian.)

II. That on the ——— day of ———, 18—, at ———, the plaintiff was married to the defendant.

III. That at the time of such marriage they were, and ever since have been, inhabitants of this state.

IV. That at the time of such marriage the plaintiff had not attained to the age of (if the female, say twelve, if the male, say fourteen) years, but was of the age of ——— years on the ——— day of ——— then last past.

V. That since the plaintiff has attained to the age of (twelve) years (she) has never voluntarily or freely cohabited with the defendant.

Wherefore the plaintiff demands judgment that the said marriage be annulled and declared void, and for the costs of this action. 1 Abb. Forms 626.

Note.—The state statute must be referred to in order to ascertain the age necessary to be inserted here.

4. *Complaint for Divorce on the Ground of Lunacy.*

(I, II and III, as in preceding form, except that, where the plaintiff has been restored to reason, omit I.)

IV. That at the time of such marriage she was a lunatic, and incapable of contracting a marriage; and has been ever since (or and that she remained a lunatic for the space of about six months after such marriage).

V. That her reason was restored about the month of ———, and that she is now of sound mind; but that she has not cohabited with the defendant since she was restored to a sound mind.

(Demand of judgment as in preceding form.) 1 Abb. Forms 627.

5. *Complaint for Divorce on Ground of Fraud by Husband.*

I. That on the ——— day of ———, 18—, at ———, the plaintiff was married to the defendant.

II. That for the purpose of inducing the plaintiff to consent to the said marriage, the defendant falsely and fraudulently represented * to (her) that he was one A. B., whom the plain-

tiff knew by reputation to be a respectable and honorable man, and he concealed from the plaintiff his real name and character.

III. That the defendant's real name is, and always was, C. D., and not A. B.; and that he was and is a man of very bad repute, having been convicted of forgery, and confined in the state prison at Sing Sing in this state, under sentence therefor, for ——— years.*

IV. That the plaintiff was induced to consent to the said marriage by the said representations, which she believed at the time of her said marriage to be true (and by her ignorance of the facts so concealed); and that if the said representations had not been made to her (and said concealment had not been practiced), she would never have consented to the said marriage.

V. That immediately upon her discovery of the falsehood of the said representations, to-wit, on the ——— day of ———, 18—, the plaintiff left the defendant's house, and has never since cohabited with him.

(Demand of judgment as in II, A, 3.)
1 Abb. Forms 627.

6. *Complaint for Divorce on Ground of Fraud by Wife.*

Substitute in preceding form, for the words between the asterisks: to the plaintiff that she was a chaste and virtuous woman, which representation the plaintiff believed to be true.

III. That defendant was in fact unchaste and of lewd habits, and was the mother of an illegitimate child; which facts the defendant fraudulently concealed from the plaintiff. 1 Abb. Forms 628.

7. *Complaint for Divorce for Physical Incapacity.*

I. That on the ——— day of ———, 18—, and within two years before this action, at ———, she was married to the defendant.

II. (See III in II, A, 3.)

III. That the defendant was then, and ever since has remained, physically incapable of entering into the marriage state or of consummating the said marriage, by reason of incurable personal defects, in that (here the nature of the incapacity may be briefly stated, e. g., thus): the uterus and vagina of the said defendant were, at the time of such intermarriage, and for a long time previous thereto had been, in a diseased, and in a schirrous, cartilagin-

ous, and ulcerated state, and unnaturally thickened and indurated.

IV. That said incapacity was known to the defendant at the time of contracting said marriage, but was unknown to the plaintiff.

(Demand of judgment as in II, A, 3.)
1 Abb. Forms 628.

8. *Allegation of Wilful Absence in Complaint for Divorce.*

That although the plaintiff has always conducted herself towards the said defendant as a faithful and obedient wife, the defendant, disregarding his duties as a husband, has been wilfully absent from the plaintiff for more than ——— years last past, without any cause or justification therefor, so far as the plaintiff is concerned. 1 Abb. Forms 625.

9. *Allegation of Drunkenness in Complaint for Divorce.*

The defendant, disregarding his duties as a husband towards the plaintiff, has been guilty of habitual drunkenness for the ——— years last past. 1 Abb. Forms 626.

10. *Allegation of Imprisonment in Complaint for Divorce.*

That at the ——— term of the court of ———, in and for the county of ———, and before this action, the defendant was duly convicted of the crime of ———, and duly sentenced by said court to confinement in the ——— of this state for the term of ——— years; and, in pursuance of the said sentence, the defendant is now confined in said ———. 1 Abb. Forms 626.

B. *Answers.*

1. *Answer, General Denial.*

Admitting the marriage alleged in the complaint, denies each and every other allegation of said complaint. 2 Abb. Forms 169.

2. *Answer, Denial of Adultery.*

That he never committed adultery with the person(s) named in said complaint (or with either of them). 2 Abb. Forms 169.

3. *Answer, Condonation of Adultery.*

I. That after the times mentioned in the complaint, and before this action, the plaintiff being informed as to the matters therein alleged, freely condoned said alleged adultery, and forgave the defendant therefor (and freely cohabited with him).

II. That ever since such condona-

tion the defendant has been a faithful husband to the plaintiff, and has constantly treated her with conjugal kindness. 2 Abb. Forms 169.

4. *Counterclaim for Divorce for Plaintiff's Adultery.*

Second. For a second defense and a counterclaim, the defendant alleges (proceeding as in II, A, 1, transposing parties' names).

Wherefore the defendant demands judgment (etc., as in that form). 2 Abb. Forms 169.

C. *Alimony.*

1. *Notice of Motion for Alimony and Costs.*

Take notice that on the petition of which a copy is annexed, and upon the pleadings (or the complaint, or answer), the undersigned will move the court, at a special term, to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____-noon, or as soon thereafter as counsel can be heard, for an order that the defendant (or plaintiff) pay the plaintiff (or defendant) the sum of _____ dollars monthly (or weekly) for her support during the pendency of this action, and the sum of _____ dollars to enable her to defray the costs and expenses of the said action (or her defense), and for such other or further order as may be just (and for the costs of this motion). 2 Abb. Forms 686.

2. *Order Allowing Alimony and Expenses.*

On reading and filing the petition of A. B., dated the _____ day of _____, 18—, and on motion of M. N., for said petitioner; and after hearing O. P. (or and on proof of service of due notice of this motion, and no one appearing) in opposition thereto:*

Ordered, that the said A. B., the plaintiff (or defendant), be allowed the sum of _____ dollars per month (or week) for her support and maintenance for and during each month (or week) until the final determination of this action; and that she also be allowed the sum of _____ dollars as and for her expenses in conducting this action (or her defense).

And it is further ordered that the said defendant (or plaintiff) pay to the said A. B., or her attorney, said sum of _____ dollars immediately upon (or within _____ days after)

the service of this order; and that he also pay the said defendant _____ dollars each and every week during the continuance of and until the final determination of this action. 2 Abb. Forms 687.

D. *Custody of Children.*

1. *Petition for Custody of Minor Children.*

I. That she has brought this action against the defendant, her husband, for a divorce and judgment dissolving the marriage contract between them (or for a limited divorce or judgment of separation between them) upon the ground of _____, as more fully appears by the complaint hereto annexed.

II. That the only (living) issue of the marriage between the petitioner and said defendant (or plaintiff) are two children, a boy named _____, of the age of _____, and a girl named _____, of the age of _____; who are now in the custody of said defendant (or plaintiff); and that he refuses to allow them to remain with your petitioner, or even to visit her. (Here proceed to state facts as to the defendant's business or habits, or his neglect, or inability to provide for, or nurture the children, such as go to support the application.)

Wherefore your petitioner prays that by an order of this court, the custody of the said children may be awarded to your petitioner; and said defendant ordered and directed to deliver said children up to her, and be restrained and enjoined thereafter from claiming or interfering in any manner with them or either of them, or with your petitioner in her custody thereof, and for such other or further order as may be just. 2 Abb. Forms 687.

2. *Order Confiding Custody of Children To Mother.*

(As in II, C, 2, to the *, continuing):

Ordered, that the custody, care and education of the children of the petitioner be, until further order, confided to the said petitioner exclusively, and that the defendant is hereby enjoined from interfering with either of said children, or with the plaintiff in her custody of them, and that the defendant shall not, until further order, be permitted to visit the said children except under the direction of one of the justices of this court (or the referee heretofore appointed in this cause). 2 Abb. Forms 688.

E. *Judgments.*1. *Acquittal in Judgment, Where Usual Reference To Take Proof Has Been Had.*

This action having been brought on to be heard upon the pleadings herein (or upon the complaint herein, and upon proof of defendant's failure to answer), and upon the report of R. F., duly appointed referee in this action, from which it appears that all the material facts alleged in the complaint are true, and that the defendant has been guilty of the several acts therein charged; on motion of M. N., attorney for the plaintiff, etc. 2 Abb. Forms 586.

2. *Judgment for Limited Divorce.*

Therefore it is adjudged that the said plaintiff and defendant be separated from bed and board; provided, however, that the parties may at any time hereafter, by their joint petition, apply to this court to have this judgment modified or discharged.

And it is further declared that neither of said parties is at liberty to marry any other person during the life of the other party.

(Provision as to custody of children and alimony, etc., as in preceding forms.) 2 Abb. Forms 586.

3. *Judgment for Absolute Divorce.*

Therefore it is adjudged that the marriage between the said plaintiff C. N. F., and the defendant E. F., be dissolved, and the same is hereby dissolved accordingly; and the said parties are, and each of them is, freed from the obligations thereof.

And it is further adjudged that it shall be lawful for the said C. N. F., the plaintiff, to marry again, in the same manner as if the said E. F., the defendant, was actually dead; but it shall not be lawful for the said E. F., the defendant, to marry again, until the said C. N. F., the plaintiff, shall be actually dead.

And it is ordered and adjudged that the said E. F., the defendant, pay to the said C. N. F., the plaintiff, the sum of ——— dollars a year from the ——— day of ———, 18—, during her natural life, as a suitable allowance to the said C. N. F., the plaintiff, for her support; and that such allowance be paid in manner following, that is to say, that the sum of ——— dollars be paid as aforesaid into the hand or upon the order of the said plaintiff, or to her attorneys of record in this action, on the ——— day of ———

(February), 18—; and that the sum of ——— dollars be paid as aforesaid into the hands or upon the order of the said plaintiff, or of her attorneys of record in this action, on the ——— day of each month of (May, August, November and February) thereafter, during the natural life of the said C. N. F., plaintiff.

And it is further ordered that the said E. F., the defendant, within thirty days from the date of the entry of this order and judgment, give unto the said C. N. F., the plaintiff, such reasonable security for the payment of such allowance, by lien upon his real estate in this state or otherwise, as may be directed and approved by this court, upon the report of the clerk of this court, to whom the examination is hereby referred.

And it is further ordered and adjudged that the said E. F., the defendant, within thirty days after the date of the entry of this order and judgment, pay to the said C. N. F., the plaintiff, or her attorneys in this action, her costs of this action, which have been taxed and are hereby allowed at ——— dollars.

And it is further ordered and adjudged that from time to time, as any sum or sums shall become payable by the terms of this order and judgment, the said C. N. F., the plaintiff, upon the allowance of any justice of this court, to be made on exhibiting to him, and filing, an affidavit that such sum or sums have not been paid, may have an order entered as of course on the foot of this order, decree and judgment, that execution issue, in such form as said justice may direct, against the said E. F., the defendant, for the sum or sums so unpaid, with interest thereon from the time or times when the same shall have become payable by the terms of this order and judgment.

And it is further adjudged that the custody of C. B., the child of said marriage, is hereby awarded to said (designating innocent parent); and that said (designating the other parent) do pay the said (innocent parent) the annual sum of ——— dollars in equal semi-annual payments, for the education of said C. B., so long as he shall live, and until he attains the age of twenty-one years; and that said ——— shall give security therefor to the clerk of this court in the sum of ——— dollars, to be approved by a

justice of this court; with leave to either party to apply for a modification of said allowance or security, in case of any event materially changing the circumstances of the parties.

And it is further ordered and adjudged that in case the said C. N. F., the plaintiff, shall survive the said E. F., the defendant, or any other event shall occur, materially changing the circumstances of the said parties, or either of them, an application may be made on the foot of the judgment in this action, by any party in interest, for such modification of the said judgment, touching the said allowance for support, as may be just, in view of any right, title or interest in, or claim to the estate, real or personal, of the said E. F., which may then have accrued to her, by act and operation of law, or in view of any such other event.

And it is further adjudged that the plaintiff recover of the defendant — dollars, costs of this action. 2 Abb. Forms 583.

4. Judgment for Divorce, Question of Alimony is Reserved and Referred.

And it is further ordered and adjudged that it be referred to A. C. B., esq., counsellor-at-law, as referee, to take proofs, and ascertain and report to this court what would be a suitable allowance to the plaintiff for her support, having regard to the circumstances of the parties respectively, and from what date the same should be allowed, and at what time or times and in what manner the same should be paid, and whether any and what moneys, heretofore paid or allowed by the defendant to the plaintiff since the commencement of this action, ought to be deducted from the payments hereafter to be made; the said referee having regard to the expenses of the plaintiff for counsel fees and otherwise in prosecuting this action, not taxable as costs merely; and that said referee also report what security for the payment of such allowance by the said defendant upon any estate of the said defendant or otherwise, would be reasonable and proper; and that he report the facts found by him, with his opinion on the matters aforesaid, and all proofs taken before him, and any rejection by him of proof offered.

And it is further ordered, decreed and adjudged that upon the coming in and filing of said report, this action

be brought to a further hearing thereon, and, unless on such hearing the court shall otherwise direct, it shall, as the final judgment of court in this behalf,

Be then ordered, decreed and adjudged that the said E. F., the defendant, pay to the said C. N. F., the plaintiff, for her support, such sum and sums of money, and at such time and times, and in such manner as shall be specified in the report of said referee; and that he the said E. F., within thirty days from the entry of that judgment, give to the said C. N. F. such reasonable security for the payment from time to time of such allowance, as shall be specified in said report. 2 Abb. Forms 585.

DOWER, PROCEEDINGS TO RECOVER.

I. Proceedings at Common Law, 428

- A. *Praeipie for Writ*, 428
- B. *Writ of Dower*, 428
- C. *Declaration*, 428
- D. *Pleas*, 428
 - 1. *Defendant by Guardian, Always Ready To Render*, 428
 - 2. *Ne Unques Se. Sic. Que.*, 428
 - 3. *Ne Unques Accouple*, 428
- E. *Replications*, 428
 - 1. *Married in England*, 428
 - 2. *Married Without Jurisdiction*, 429
- F. *Verdict in Dower*, 429
- G. *Judgments*, 429
 - 1. *To Recover Dower and Damages*, 429
 - 2. *To Recover Dower Without Damages*, 429
- H. *Writ of Habere Facias Seisinam*, 429

II. Proceedings in Equity, 430

- A. *Bill for Dower*, 430
- B. *Decrees*, 431
 - 1. *Master To Assign*, 431
 - 2. *Commissioners Appointed*, 432
 - 3. *Inquiry as to Separate Parcels*, 433

III. Proceedings Under Statutes, 433

- A. *Declaration in Ejectment for Dower*, 433
- B. *Complaint for Admeasurement of Dower*, 433
- C. *By Special Proceedings*, 434
 - 1. *Petition for Admeasurement*, 434
 - 2. *Notice of Petition*, 434
 - 3. *Order for Admeasurement*, 434
 - 4. *Report of Commissioners*, 434
 - 5. *Order To Confirm Report*, 434
 - 6. *Order in Final Judgment Confirming Report*, 435

CROSS REFERENCE:

ANNUITIES:

Bill for Dower and Annuity Against
Executors, Devisees in Trust.

I. Proceedings at Common Law..

A. *Præcipe for Writ of Dower.*

Essex (to-wit): Command C. D. that justly and without delay he render to A. B., widow, who was the wife of E. B., her reasonable dower, which falleth to her out of the freehold which was of the said E. B., late her husband, in the parish of E. (or parishes of E. F. and G.), whereof she has nothing, as she says. 3 Chit. Pl. 1311.

B. *Writ of Dower.*

Returnable on ———.

William the fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, to the sheriff of (Essex), greeting:

Command C. D. that justly and without delay he render to A. B., widow, who was the wife of E. B., now deceased, her reasonable dower which falleth to her of the freehold, which was of the said E. B., her late husband, in the parish of E. (or parishes of E. F. and G.), whereof she hath nothing, as she says, and whereof she complains that the said C. D. deforceth her, and unless he shall so do, and if the said A. B. shall give you security to prosecute her claim, then summon by good summoners the said C. D., that he be before our justices of the bench, at Westminster, on, etc. (a general return day), to show wherefore he hath not done it, and have there the summoners and this writ. Witness ourselves at Westminster, the ——— day of ———, in the ——— year of our reign.

Pledges to prosecute,

John Doe and

Richard Roe.

Summoners, John Venn and Richard Fenn.

John Herbert, esq., sheriff.

3 Chit. Pl. 1311.

C. *Declaration in Dower.*

———, to-wit, A. B., widow, who was the wife of E. B., deceased, by ———, her attorney, demands against C. D. the third part of ten messuages, ter barns, ten stables, four gardens, four orchards, two thousand acres of meadow, two thousand acres of pasture, and two thousand acres of other land with the appurtenances, in the parish

of ———, in the county of ———, as the dower of the said A. B., of the endowment of E. B., deceased, heretofore her husband, whereof she has nothing, etc. Steph. Pl. 30.

D. *Pleas.*1. *Plea by Defendant by Guardian, That He Was Always Ready to Render Dower.*

And the said W. by H. B., who is admitted by the court of the king here to defend in this behalf for the said W., who is under the age of twenty-one years, as the guardian of the said W., cometh and saith that from the death of the said J., late husband of the said M., he hath been always ready, and still is ready, to render to the said M. her dower of the said tenements and premises, with the appurtenances, and rendereth the same here in court to the said M. 3 Chit. Pl. 1316.

2. *Plea Ne Unques Se. Sic. Que.*

And the said C. D., by ———, his attorney, comes and says that the said A. B. ought not to have her dower of the manors, tenements, and rents aforesaid, with the appurtenances and advowsons aforesaid of the endowment of the said E. B., heretofore her husband, because he says that the said E. B., heretofore her husband, was not, either on the day on which he married the said A. B., or ever after, seised of such estate of and in the said manors, tenements, and rents, with the appurtenances and advowson aforesaid, whereof, etc., that he could endow the said A. B. thereof, and of this he puts himself upon the country, and the said A. B. doth the like. 3 Chit. Pl. 1316.

3. *Plea Ne Unques Accouple.*

And the said C. D., by ———, his attorney, comes and says that the said A. B. ought not to have her dower in this behalf, as having been the wife of the said E. B., deceased, because he says that the said A. B. never was accoupled to the said E. B., deceased, in lawful matrimony, and this the said E. D. is ready to verify, and therefore he prays judgment if the said A. B. ought to have her dower of the messuages and tenements aforesaid, with the appurtenances. 3 Chit. Pl. 1317.

E. *Replications.*1. *Replication That They Were Lawfully Married (in England).*

And the said A. B., by the said ———, her attorney, aforesaid, says

that she ought not by anything in the plea of the said C. D. above alleged, to be barred from having her aforesaid dower in this behalf, because she says that the said A. B., on the, etc., at ———, in the county of ———, in the parish church of ———, to-wit, etc., aforesaid, was accoupled to the said E. B., deceased, in lawful matrimony, and this she is ready to verify, when, where, and in such manner as the court here shall consider, etc. 3 Chit. Pl. 1317.

2. *Replication Where Married Without Jurisdiction.*

(Concluding): And this she prays may be inquired of by the country. 3 Chit. Pl. 1318.

F. *Verdict in Dower.*

(As in other cases), being chosen, tried and sworn to speak the truth of the matters within contained, say, upon their oath, that the within named E. D., heretofore the husband of the said F. D., was, on the day in which he married the said F. D., and after, seised of such estate of and in the within named manors, tenements, and rents, with the appurtenances, and advowson within mentioned, that he could endow the said F. D. thereof as the said F. D. has within alleged. And the jurors aforesaid, upon their oath aforesaid, further say that the said F. D. being so as aforesaid seised of such estate, of and in the within mentioned manors, tenements, and rents, with the appurtenances and advowson aforesaid, died so seised thereof on the ——— day of ———, in the ——— year of the reign, etc., and that the said manors, tenements, and rents aforesaid, with the appurtenances and advowson aforesaid, are worth by the year in all issues, besides reprises, £———, and they assess the damages of the said F. D. on occasion of the detention of her said dower, over and above the said value, and over and above her costs and charges by her about her suit in this behalf expended, to £———, and for those costs and charges to 40s. 3 Chit. Pl. 1322.

G. *Judgments.*

1. *Judgment After Verdict to Recover Dower and Damages.*

Therefore it is considered that the said A. B. do recover against the said C. D., as well her seisin of a third part of the said manors, tenements, and rents, with the appurtenances, and

of the advowson aforesaid, to hold to her in severalty by metes and bounds, to the value of a third part of the said manors, tenements, and rents, with the appurtenances and advowson aforesaid, from the time of the death of the said E. B., heretofore her husband, which said value, from the time of the death of the said E. B., heretofore her husband, amounts to £475, and her damages aforesaid to £14, by the jurors aforesaid, in farm aforesaid assessed, and also £41 for her said costs and charges by the court here adjudged of increase to the said A. B., and with her assent, which said value and damages in the whole amount to £580, and the said B., in mercy, etc., whereof £48 10s. are assigned to T. R., etsq., clerk of our lord the king. 3 Chit. Pl. 1322.

2. *Judgment for Demandant for Dower, No Damages Found.*

Therefore it is considered that the said S. do recover against the said J. her seisin of the said third part of the said three messuages, two workhouses, one garden, and two back sides, with the appurtenances, parcel of the tenements within specified, whereof, etc., to hold to her in severalty by metes and bounds, and the said J. in mercy, etc., and hereupon the said S. prays a writ of our lord the king to be directed to the sheriff of the county aforesaid, to cause her to have full seisin of the said third part of the said three messuages, two workhouses, one garden, and two back sides, with the appurtenances, parcel, etc., and it is granted to her, returnable here on, etc. 3 Chit. Pl. 1323.

H. *Writ of Habere Facias Seisinam of Recovered Dower.*

William the fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith. To the sheriff of Essex, greeting:

Whereas A. B., widow, who was the wife of E. B., deceased, hath lately in our court, before Sir J. E., knt., and his companions, our justices of the bench at Westminster, by our writ of dower, whereof she hath nothing, and by the judgment of the said court recovered against C. D. her seisin of the third part of (three messuages, two workhouses, one garden, and two back sides), with the appurtenances, in the parish of ———, in your county, as

the dower of her the said A. B. of the endowment of the said E. B., her late husband, whereof the said C. D. is convicted, as by the record and proceedings thereof remaining in our said court of the bench at Westminster aforesaid, more fully appears. Therefore we command you, that you, without delay, deliver to the said A. B., seisin of the said third part of the said three messuages, two workhouses, one garden, and two back sides, with the appurtenances, to hold to her in severalty by metes and bounds, according to the force, form and effect of the said recovery, and how you shall execute this our writ, certify to our justices at Westminster, on ———, returning to us this our writ. Witness, etc. 3 Chit. Pl. 1323.

II. Proceedings in Equity.

A. Bill for Dower Setting Aside Release for Fraud.

Humbly complaining, show unto this honorable court, your orator Ellick P., of Cincinnati, in the state of Ohio, esq., and a citizen of the said state of Ohio, and your oratrix Elizabeth P., now the wife of the said Ellick P., of said Cincinnati, and a citizen of the said state of Ohio, gentlewoman, that the said Elizabeth, who was the widow of R. M., late of M., in the said commonwealth of Massachusetts, deceased, intestate, wherein the said Ellick and Elizabeth demand against the Monson and Brimfield Manufacturing Company, duly and legally incorporated by that name within the said commonwealth of Massachusetts, the reasonable or just third part whereof the said Elizabeth is by law dowerable according to the true intentment of law, of, and in the following described lands or tenements bounded and described as follows, to-wit: (Description and boundaries.)

Whereupon your said orator and oratrix complain and say that the said R. H., formerly the husband of your said oratrix, was seized in his demesne as of fee of the aforesaid described lands and tenements during the coverture of the said R. M., with her your said oratrix, and while she was his wife and was actually in possession thereof.

And your said orator and oratrix further say that they at said M., on the 2d day of March, A. D. 1823, did make demand and require of the said Monson and Brimfield Manufacturing

Company, who then did, and now do, claim a right of freehold and inheritance in the before described premises, to assign and set out to her your said oratrix her dower or just third part of and in the aforesaid premises.

And your orator and oratrix further say that since the time of making said demand as aforesaid more than one month hath elapsed, and that the said Monson and Brimfield Manufacturing Company did not within one month next after said demands being made as aforesaid, assign and set out to your oratrix her dower, or any part thereof, in the aforesaid premises, and that the said Monson and Brimfield Manufacturing Company, or either of the members thereof, have not done, or caused the same to be done, at any time since, but, on the contrary, they then refused and still refuse so to do.

But now so it is, may it please your honors, that the said Monson and Brimfield Manufacturing Company, being in no wise ignorant of the premises, but contriving and confederating with each other, and with several other persons to your orator and oratrix yet unknown, in order to wrong and injure your said orator and oratrix, and to prevent your oratrix from having her dower or just third part of and in the aforesaid premises assigned and set out to her according to the true intentment of law.

Your orator and oratrix give your honors to be informed that the said confederates pretend and give out that the said oratrix, during her coverture, and while she was the wife of said R. M., did sign, seal, and deliver some deed, or other instrument in writing, whereby she acquitted, released, and discharged all her right of dower in the aforesaid described premises.

Now your orator and oratrix charge the contrary thereof to be true, and, moreover, that the said oratrix never did make any such release or discharge to them, the said Monson and Brimfield Manufacturing Company, as hereinbefore pretended, or if she did give or execute the same, she was grossly deceived and imposed upon in relation thereto, and that the same was obtained from her, or she was prevailed upon to execute the same by unfair means or practices used in that behalf by the said confederates.

And your orator and oratrix further

charge and complain that the said pretended release or instrument was procured and brought to the said oratrix, ready drawn and prepared for execution, and that she would not have signed or executed the same, in case she had known or been fully apprised of the real purport, tenor, or contents thereof, nor was any sum or sums of money whatever paid to or received by her, as the consideration for her executing the said pretended release or instrument. Under the circumstances aforesaid, your said orator and oratrix insist that the said pretended release or instrument ought to be delivered up to be cancelled, as having been fraudulently and unfairly, and without consideration, obtained from the said oratrix.

But nevertheless the said confederates insist upon the contrary, and claim the full benefit of the said pretended release or instrument, and threaten and intend, in case your orator and oratrix proceed at law against them touching the matters aforesaid, to set up the pretended release or instrument in bar thereto.

And, also, your orator and oratrix here before your honors insist that the said pretended deed or instrument, in manner and form as the same was signed, sealed and delivered, was not a discharge or relinquishment of dower of your oratrix in the premises therein referred to, and that the same, by the laws of the land, does not bar or exclude her from such dower or right in the within described lands or tenements.

And your orator and oratrix further complain, and give your honors to be informed, that the said confederates pretend that your oratrix, during the lifetime of her late husband R. M., and while she was his wife as aforesaid, did join with her said husband in the several deeds of sale and conveyance by him made, of the said several pieces of land, as hereinbefore described, and that your orator, by such joining in the aforesaid deeds of sale and conveyance, has lawfully barred or excluded herself from such dower or right. Now your orator and oratrix, on the contrary, charge and say, that your oratrix did not join with her said husband R. M. in any deed of sale or conveyance of the before described premises, as they pretend, and that she is not, by the laws of the land, barred or

excluded from her said dower or right in or to the within described lands or tenements.

In consideration of all which, and inasmuch as your orator and oratrix cannot have relief in the premises by the plain, direct, and ordinary course of the common law, to the end, therefore, that the said Monson and Brimfield Manufacturing Company, and the rest of the confederates, when discovered, may be holden to account with, or assign and set out to, your orator her dower or just third part in or to the within described premises, your orator and oratrix humbly pray that W. P., E. T. A., J. H., S. W., Jr., G. B., B. S., S. C. and G. T., all of B., in the said district of Massachusetts, gentlemen, W. B., of C., in said district, gentleman, and J. H., Jr., of M., in said district, gentleman, all being proprietors and constituting the Monson and Brimfield Manufacturing Company, and citizens of the said state of Massachusetts; and such other confederates, when discovered, may be called and required severally to answer on oath, fully and particularly, all and singular the matters herein set forth.

Wherefore, may it please your honors, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1924.

B. Decrees.

1. Decree for Dower, Master To Assign.

His lordship doth order that it be referred to the master to inquire what freehold lands the said S. M. died seised of wherein the plaintiff B. M. is dowable, and also to inquire what copyhold or customary lands the said S. M. died seised of wherein plaintiff B. M. is entitled to dower or any other estate by the custom of the manor wherein the said copyhold or customary lands or any of them do lie; and that the said master do assign to the plaintiff B. M. her dower in such freehold lands and tenements, and also her dower and widow's estate in such customary or copyhold lands and tenements, and the said master is to assign and set out particular lands and tenements for that purpose; and after the said lands and tenements shall be set out and ascertained, it is ordered that the defendant do deliver possession to plaintiff B. M. of the lands and tenements that shall be so set out and ascertained for the said dower or widow's estate.

of plaintiff B. M., and the tenants thereof are to attorn and pay their rents to the said plaintiff B. M.; and it is ordered and decreed that the master do take an account of the rents and profits of the said freehold and copyhold or customary lands and tenements whereof the said S. M. died seised, accrued since the death of the said S. M., which have been received by the said defendant, or by any other person by his order or for his use; and that one-third part of what shall be coming on said account of the rents and profits of such freehold lands and tenements is to be paid to plaintiff B. M. by the said defendant in respect of her dower out of such lands and tenements, and that such part of what shall be coming on said account of rents and profits of the said copyhold or customary lands and tenements as the said plaintiff B. M. shall appear to be entitled to in respect of her said dower or other widow's estate in such copyhold or customary lands and tenements, is to be paid to the said plaintiff B. M. by the said defendant; and for the better taking the said account, etc. Van Heyth. Eq. Dr. 827.

2. *Decree Assigning Dower, Commissioners Appointed.*

This cause came on to be heard at the, etc., on the bill and answer, and was argued by counsel. Whereupon it is ordered, adjudged, and decreed, that the said Ellick and Elizabeth, in her right, have as her dower, of the endowment of R. M., her late husband, now deceased, one just third part of the lands, tenements, and hereditaments hereinafter mentioned, exclusive of the increased value of the same, arising from or caused by the buildings erected and improvements made upon said lands and tenements, etc., or any one of them, since the alienation thereof by the said M., viz., of one certain tract of land, etc., etc.

And it is further ordered and decreed that the said Ellick and Elizabeth have and recover their reasonable damages by reason of the detention of her dower in the premises, from and after the 3d day of March, A. D. 1823, when they demanded of the defendants that they should assign and set out to the said Elizabeth her said dower in said lands, tenements, and hereditaments, until the present time. And that the plaintiffs recover of the defendants their legal costs of this suit, to be

taxed by the court. And it is further ordered and decreed that this bill be dismissed as to all the other lands and tenements mentioned in said bill, and the said Ellick and Elizabeth's claim, in her right of dower in the same, or any or either of them.

And it is further ordered and decreed that commissioners be appointed to inquire, ascertain, act and report, as soon as may be, on the matters following, viz.:

1. The several and respective times when the said R. M. alienated the above described lands, tenements and hereditaments, and any parcels or undivided parts thereof.

2. The present value of said lands, etc., exclusive of the increased value occasioned by the buildings and improvements on the premises, since the alienation thereof by the said R. M.; and also the reasonable damages by reason of the detention of her dower in the premises from and after the third day of March, A. D. 1823, to the present time.

3. If the commissioners shall find that one-third part of said lands, etc., can be assigned and set off to said Elizabeth, by metes and bounds, without great prejudice to the same, then, that they proceed to assign and set off to the said Elizabeth one just third part of said lands, etc., exclusive of the increased value thereof, occasioned by the buildings erected and improvements made thereon since the alienation thereof by said R. M., meaning so much and such part of said lands, etc., as would be equal in value to one just third part thereof at the present time, in case no buildings had been erected or improvements made thereon, since the alienation thereof by the said R. M.

4. If the commissioners shall find that one-third part of said lands, etc., cannot be assigned and set off to said Elizabeth, as aforesaid, to hold in severally by metes and bounds, without inconvenience and prejudice to the same, then, that they inquire and ascertain, and report to the court, the yearly amount and value of the rents, profits, and income of said lands, etc., exclusive of the increased value arising from, and occasioned by, the buildings erected, and improvements made thereon, since the alienation thereof by said R. M., meaning the true yearly amount and value of the rents, profits, and income, which the said lands, etc.,

would now yield, in case no buildings had been erected or improvements made thereon since the alienation thereof by the said R. M. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2290.

3. *Decree Assigning Dower and Ordering Inquiry as to Separate Parcels.*

This cause coming on this day to be heard for final decree on the pleadings, proof and note of testimony, and it appearing to the satisfaction of the court that complainant was married to and became the lawful wife of Joab Bagley on the 21st day of May, 1848, and so continued until the time of his death, and that on the 15th day of July, 1854, Joab Bagley became and was seized in fee of the land in the bill of complaint described, and so continued until the time of his death, and that he departed this life on the 27th day of April, 1875, it is decreed that complainant is entitled to the relief prayed for, and to be endowed of the land in the bill described, and it appearing that certain of the defendants claim to be tenants of certain portions of said land as purchasers thereof from the Elyton Land Company, and that improvements have been made on said lands, it is ordered that it be referred to the clerk and registrar of this court to inquire and ascertain what parts, if any, of said lands were granted by said Elyton Land Company, at any, and what time, or times, before the commencement of this suit, to S. B. Garrett, John Crowder, the Highland Avenue & Belt Railroad Company, respectively, and whether or no dower can be severally assigned by metes and bounds in each of said parcels of land granted as aforesaid to the three persons last named, so that the complainant may hold and enjoy the same in severalty, as and for her dower interest in each parcel thereof, without prejudice to the just rights of either party. And that an account be taken of the annual rents and profits, together with the annual interest thereon, of each of said parcels of land (exclusive of improvements thereon), which was granted to said Garrett, Crowder, and Highland Avenue & Belt Railroad Company, respectively, by the Elyton Land Company, from the time of Bagley's death to the time of the report. And that an account be taken of the annual rents and profits, together with the an-

nual interest thereon, of each of said parcels of land, together with the improvements thereon, from the time or times the same were granted to the said Crowder, Garrett and Highland Avenue & Belt Railroad Company, respectively, by the said Elyton Land Company, to the time the report is made. It is further ordered that an account be taken of the annual rents and profits, together with the annual interest thereon, of the whole of said land (saving and excepting such portions thereof as were granted by the said Elyton Land Company before the commencement of this suit to said persons hereinbefore named, or either of them), first, exclusive of the improvements thereon, and second, together with all the improvements thereon, from the time of the death of the said Bagley to the date of the report, and to inquire and ascertain, if any and what portion of said land is woodland and of but little rental value. *Elyton Land Co. v. Denny*, 108 Ala. 553, 18 Pac. 561.

III. *Proceedings Under Statutes.*

A. *Declaration in Ejectment for Dower.*

E. B. by E. F., her attorney, complains of C. D.: For that whereas the said E. B., on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, was possessed of the one undivided third part of, etc. (describe the premises), as her reasonable dower as widow of A. B., deceased, late the husband of the said E. B.; and the said E. B. being so possessed thereof, the said C. D. afterwards, to-wit, on the _____ day of _____, in the year aforesaid, entered into the said undivided third part of the said premises, etc. *Burr. App. 567, §1104.*

B. *Complaint for Admeasurement of Dower.*

I. That the plaintiff was married to C. B. in the year _____, and lived and cohabitated with him until his death, which was on the _____ day of _____, 18—.

II. That the said C. B., during said coverture of the plaintiff, was seized of an estate of inheritance of and in the lands situate in _____, and bounded and described as follows (description of the premises).

III. That the defendant Z. is a son and heir of said C. B., of full age; and

the defendant Y. is an infant son and heir of said C. B.

IV. That said C. B. left a will, which was duly proved and recorded in the office of the surrogate of ———, on or about the ——— day of ———, 18—, by which he devised the premises (or designate what portion was devised) to the defendant W. for life, with remainder over to the defendants.

Wherefore the plaintiff asks judgment for one equal undivided third of the premises, as and for her dower, and that it may be admeasured and set off to her, and for her costs. 1 Abb. Forms 609.

C. By Special Proceedings.

1. Petition for Admeasurement of Dower.

To the (justices of the supreme court of judicature of the people of the state of New York):

The petition of H. B., of ———, widow of A. B., of ———, deceased, respectfully sheweth that the said A. B. died on the ——— day of ——— last, leaving an estate in fee, belonging to him at the time of his death, in and to (here describe the real estate left).

And your petitioner further sheweth that she has not had her dower in the said premises above described, assigned to her within forty days after the decease of her said husband, nor at any time since. Wherefore she respectfully applies to this honorable court for the admeasurement of her said dower. Dated, etc. Burr. App. 554, §1088.

2. Notice of Petition for Admeasurement of Dower.

To (naming the heirs, or if they are now owners, then those that are):

Please to take notice that a petition, of which the above is a copy, will be presented to the (supreme court of judicature of the people of the state of New York), at, etc., on, etc., at the opening of the court on that day, or as soon thereafter as counsel can be heard; and that a motion will then and there be made, that the same be granted. Dated, etc. Burr. App. 540.

3. Order for Admeasurement of Dower.

In the matter of the application of H. B. for the appointment of commissioners for the admeasurement of her dower. E. F., for the widow. G. H. in opposition.

On reading and filing the petition of H. B., widow of A. B., deceased, and the notice accompanying the same, and an affidavit of the due service of the said petition and notice on (name the persons), and after hearing Mr. E. F., of counsel for the widow, and Mr. G. H., in opposition thereto, it is ordered that admeasurement be made of the dower of the said H. B. in and to (describe the land), and it is further ordered that O. P., Q. R. and S. T., three reputable and disinterested freeholders, residing in ———, be, and they are hereby appointed commissioners for the purpose of making the admeasurement herein directed; and that they make a report of their proceedings to this court, at, etc., on the ——— day of ——— next. Burr. App. 584, §1145.

4. Report of Commissioners on Dower.

We, ———, ———, ———, commissioners appointed by the (state the court) to admeasure the dower of ——— in the lands and premises described and set forth in her petition, in the above entitled cause, do certify and return to the said court that after our said appointment we took and subscribed the oath of office required by law, and then went to the lands and premises aforesaid, and in pursuance of authority to us given for that purpose, did on the ——— day of ——— admeasure, set apart and allot to the said ———, as and for her dower therein, the one-third part in value of the said lands and premises, as follows, to-wit (here describe the premises). And that the said commissioners do further return, report and certify to the said court the items of our charges as follows (here insert items). In testimony whereof we have hereunto set our hands and seals this ——— day of ———, in the year of ———. Compiled from Burr. App. pp. 576, 584, pars. 1128, 1146.

5. Order To Confirm Report of Commissioners on Dower.

On reading and filing the report of O. P., Q. R., and S. T., commissioners heretofore appointed to admeasure the dower of the said H. B. in the lands and premises described and set forth in her petition for the appointment of the said commissioners, by which it appears that after being duly sworn, they, the said commissioners, did, on the ——— day of ———, etc., admeas-

ure, set apart and allot to the said H. B., as and for her dower therein, the one-third part in value of the said lands and premises, as follows, to-wit: (here describe the premises). And by which report it also appears, that the charges of said commissioners attending such admeasurement are (six dollars). On motion of Mr. E., of counsel for the said H. B. (no one appearing to oppose), it is ordered that the said report be, and hereby is in all things ratified and confirmed. Burr. App. 584, §1146.

6. *Order in Final Judgment Confirming Report of Commissioners Assigning Dower.*

And now, to-wit, on the sixty-ninth day of said term, upon reading the report of the commissioners appointed by the court to ascertain the dower of the plaintiff and her damages, filed in the clerk's office on the 25th day of February, A. D. 1881, and the exception of the plaintiff to the said report filed in said office on the 23d day of March, A. D. 1881, and hearing what was alleged by the counsel for the respective parties, it is considered that the said report do stand confirmed, and that the plaintiff do recover against the defendants as well her seisin of a third part of the rents, issues, and profits of the freehold in her writ and declaration mentioned, to hold to her in severalty to the amount or value of one hundred dollars per annum, as the sum of ten cents for her damages by the said commissioners ascertained to have been by her sustained on occasion of the detention of her dower, and also her costs of this suit, to be taxed by the clerk. And hereupon the plaintiff prays a writ of execution for such damages and to put the plaintiff in perception of said one-third part of said rents, issues, and profits to the amount or value aforesaid, and it is granted to her issuable and returnable according to law. Talbot v. Talbot, 13 R. I. 336.

DRUNKARDS.—See DISORDERLY CONDUCT; HUSBAND AND WIFE; PUBLIC DRUNKENNESS.

DUPLICITY.

- I. Demurrer for Duplicity, 435
- II. Affidavit To Compel Election, 436
- III. Notice of Motion To Compel Election, 436

I. **Demurrer to Replication for Duplicity.**

For that the said plaintiff hath not, in or by his said replication, taken or tendered any single or material issue out of or upon the said plea of the said defendant by him last above pleaded in bar, but hath stated and put in issue, in his said replication, that the said bill of exchange, in the said first count mentioned, was not made and drawn for the corrupt considerations in the said last plea mentioned, or either of them, whereas every matter and thing stated in the said second plea in any matter relating to the said sum of £—— in the said plea mentioned, which is one of the matters stated and relied upon as a consideration in the said replication, was merely stated as inducement, and as a matter upon which no issue was intended to be offered or could be taken; and for that the said plaintiff hath not, in or by his said replication, traversed, or in any manner denied by traverse, or otherwise, the only material fact contained in the plea of the said defendant, by him lastly above pleaded in bar, and upon which any material issue could be taken, namely, whether there was any such corrupt contract and agreement for making and drawing, or in respect of the said bill of exchange in the first count mentioned, which he ought to have done; and for that the said replication is double and confused, in putting in issue two several and distinct matters, namely, whether the said bill of exchange in the said first count mentioned, was given for two illegal considerations, namely, a gambling consideration, and a usurious consideration, whereas the only material fact contained in the second plea of the said defendant was, whether it was given upon a corrupt and usurious consideration, in pursuance of a corrupt and usurious contract and agreement; and for that the said plaintiff hath not, in or by his said replication, traversed, denied, or in any manner put in issue such corrupt contract and agreement, which is the gist and foundation of the defense of the said defendant in that respect, inasmuch as that alone could make the said bill of exchange void in law, or bring it within the meaning and intent of the said statute in such case made and provided, etc. 3 Chit. Pl. 1263.

II. Affidavit To Compel Election Between Several Counts for Same Cause of Action.

Y. Z., being duly sworn, says:

1. That he is the defendant in the above entitled action. (Or if otherwise, show in some way deponent's knowledge of the circumstances involved.)

11. That only one transaction of the nature mentioned in either of the supposed causes of action set up in the complaint ever occurred between deponent and the plaintiff, and that the transactions mentioned in both of the said supposed causes of action are in reality one and the same. 2 Abb. Forms 213.

III. Notice of Motion To Compel Election Between Several Counts for Same Cause of Action.

Please take notice, that upon the summons and complaint in this action (and on an affidavit, of which a copy is herewith served), the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, that the plaintiff be required to elect between the first stated cause of action and the second stated cause of action in the complaint, and state which he will rely on; and that on such election the other be stricken out; or in default of so electing, then that the second stated cause of action be stricken out as redundant; and for such other or further relief as may be just (and for the costs of this motion). 2 Abb. Forms 213.

DURESS.

I. Pleas, 436

- A. *Duress of Imprisonment*, 436
- B. *Duress of Imprisonment (in debt)*, 436

II. Answers, 436

- A. *Duress by Imprisonment*, 436
- B. *By Threats*, 436

III. Replication to Plea of Duress, 437

I. Pleas.

A. *Plea Duress of Imprisonment.*

And the said C. D., defendant in this suit, by S. G. R., his attorney, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain

his aforesaid action thereof against him, because he says, that before and at the time the said promissory note (or bill of exchange) was made, he, the said defendant, was imprisoned by the said plaintiff (and others in collusion with him), to-wit, at, etc., and then and there continued so imprisoned until he, the said defendant, through the force and restraint of that imprisonment, there made and gave the said note (or bill of exchange), to the said plaintiff, and this, etc., wherefore, etc. Burr. App. 346, §634.

B. *Plea of Duress of Imprisonment (in debt).*

And the said C. D., defendant in this suit, by S. W., his attorney, comes and defends the wrong and injury, when, etc., and says that he ought not to be charged with the said debt, by virtue of the said supposed writing obligatory (or, indenture, etc.), because, he says, that he, the said defendant, at the time of making the said writing, to-wit, on the said _____ day of _____ in the year one thousand eight hundred and _____, aforesaid, at, etc. (the venue), aforesaid, was unlawfully imprisoned by the said plaintiff (and others in collusion with him), and then and there detained in prison, until by the force and duress of imprisonment of him, the said defendant, he made the said writing, and delivered the same to the said plaintiff, as his deed. And this he is ready to verify. Wherefore he prays judgment, if he ought to be charged with the said debt, by virtue of the said supposed writing obligatory (or, indenture, etc.) Burr. App. 356, §648; 3 Chit. Pl. 965.

II. Answers.

A. *Answer, Duress by Imprisonment.*

That the defendant, at the time of the making of the said (contract), was imprisoned by the said plaintiff (and others in collusion with him), and then and there detained until, by the force and duress of imprisonment, the defendant made and delivered the same. Wherefore, the defendant demands that the same be adjudged void, and be delivered up to be canceled. 2 Abb. Forms 41.

B. *Answer, Duress by Threats.*

That the instrument in the complaint mentioned was obtained from the defendant by the plaintiff (and others in collusion with him) by duress of the defendant in threatening (or beating)

the defendant; in consequence of which, and in fear and apprehension thereof, the defendant executed the instrument. Wherefore, the defendant demands that the same be adjudged void, and be delivered up to be canceled. 2 Abb. Forms 41.

III. Replication to Plea of Duress.

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says, that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, because he says, that at the time the said (promissory note) was made, the said defendant was free and at large, and not under any imprisonment; and that such (note) was made by the said defendant of his own free will, and not by force or restraint of imprisonment in manner and form as the said defendant hath above in his said plea alleged. And this he, the said plaintiff, prays may be inquired of by the country, etc. Burr. App. 375, §679.

EASEMENTS.

I. Declaration for Obstructing Right of Way, 437

II. Pleas, 438

A. *Private Way by Prescription*, 438

B. *Prescriptive Right Between Closes*, 438

C. *Right of Way by Non-existing Grant*, 439

III. Complaint for Obstructing Private Way, 439

IV. Answer, Enjoyment for Twenty Years, 439

CROSS-REFERENCES:

INJUNCTIONS:

Injunction Against Stopping a Way.

TRESPASS:

Plea of Private Way in Trespass.

I. Declaration for Obstructing Plaintiff's Private Right of Way.

For that whereas the said plaintiff, before and at the time of the committing of the grievances by the said defendant as hereinafter next mentioned, was, and from thence hitherto hath been, and still is, lawfully possessed of a certain messuage (and garden thereto belonging), with the appurtenances, situate and being in the parish of ——— in the county of

———. And, by reason thereof, the said plaintiff, during all the time aforesaid, ought to have had, and still of right ought to have, a certain way from and out of the said (garden), unto, into, through, and over a certain (close), in the parish aforesaid, and from and out of the same, unto and into (a certain wharf, or quarry, of the said plaintiff in the parish aforesaid), and so back again from the said (wharf, or quarry), unto and into, through, over and along the said (close), and from and out of the same into, unto and the said (garden) of the said plaintiff for himself and his servants, on foot, to go, return, pass, and repass, every year and at all times of the year, at his and their free will and pleasure, as to the said messuage and garden, with the appurtenances of the said plaintiff belonging and appertaining. Yet the said defendant well knowing the premises, but wrongfully and unjustly contriving, and intending to injure the said plaintiff in that behalf, and to deprive him of the use and benefit of his said way, whilst the said plaintiff was so possessed of his said messuage (and garden), with the appurtenances as aforesaid, to-wit, on, etc., and on divers other days and times between that day and the day of exhibiting this bill (or, if in C. P. "the day of the commencement of this suit"), at, etc. (venue) aforesaid, wrongfully and injuriously placed and erected, and caused to be placed and erected, divers large quantities of boards, planks, and wood, and across the said way, and put and placed, and caused and procured to be put and placed, divers other large quantities of wood and timber in the said way, and kept and continued the said boards, planks, and wood, so placed and erected in and across the said way, as aforesaid, and also the said other wood and timber in the same way as aforesaid, for a long space of time, to-wit, hitherto, and thereby during all the time aforesaid, the said way was and still is greatly obstructed and stopped up, and the said plaintiff by means thereof could not, during the time aforesaid, or any part thereof, nor can he now have or enjoy his said way, as he of right ought to have done, and otherwise might and would have done, and hath been and is, by means of the premises, deprived of the use, benefit, and advantage thereof, to-wit, at, etc. (venue) aforesaid. 2 Chit. Pl. 807.

II. Pleas.

A. *Plea, Private Way by Prescription by Freeholder.*

And the said defendant further saith, that he the said defendant, long before, and at the said several times when, etc., was, and still is, seized in his demesne as of fee, of and in a certain close called ———, continuous and next adjoining to the said close, in which, etc., and that he the said defendant and all those whose estate he now hath, and at the said several times when, etc., had of and in the said close called ———, from time whereof the memory of man is not to the contrary, have had and used, and have been accustomed to have and use, and of right ought to have had and used, and the said defendant at the said times when, etc., of right ought to have had and used, and still of right ought to have and use, a certain way for himself and themselves, and his and their servants, farmers, and tenants, occupiers of the said close called ———, to pass and repass on foot, and with horses, mares, geldings, and other cattle, from a certain common king's highway, in the parish of ——— aforesaid, unto, into, through, over, and along the said close of the said plaintiff called ———, in which, etc., unto and into the said close of the said defendant, and so from thence back again unto, into, through, and over and along the said close of the said plaintiff called ———, in which, etc., unto and into the said common king's highway, at all times of the year at his and their free will and pleasure, as to the said close of the said defendant, with the appurtenances belonging and appertaining. And the said defendant being so seized of his said close and also being in the possession thereof, and having occasion to use the said way, did with his servants and horses, and mares and geldings, and cattle, at the said several times when, etc., pass and repass, in, by, through, and along the said way, from the said common king's highway, into, through, over, and along the said close of the said plaintiff called ———, in which, etc., unto and into the said close now of the said defendant, and so from thence back again, in, by, through, and along the said way, unto and into the said common king's highway, using the said way there for the purpose and on the occasion aforesaid, as he lawfully might

for the cause aforesaid, and in so doing, etc. 3 Chit. Pl. 1118a.

B. *Plea, Prescriptive Right of Way Where Defendant Has Closes at Both Ends.*

(State a seisin in fee, as in preceding form.) And that he, the said C. D., and all those whose estates he now hath, and at the said several times when, etc., had, of and in the said messuage, farm, and lands, from time whereof the memory of man is not to the contrary, have had and used, and have been accustomed to have and use, and of right ought to have had and used, and the said C. D. at the said several times when, etc., of right ought to have had and used, and still of right ought to have and use, a certain way for himself and themselves, and his and their servants, farmers, and tenants, occupiers of the said messuage, farm, and lands, to pass and repass on foot, from a certain close in the parish aforesaid, near to a certain common king's highway, in the same parish, into, through, over, and along the said closes in which, etc., towards the said messuage, farm, and lands, now of the said C. D. and back again, unto, into, through, over, and along the said closes in which, etc., unto and into the said close (in this first plea mentioned), towards the said common king's highway, at all times of the year, at his and their free will and pleasure, as to the said messuage, farm and lands, of the said C. D. with the appurtenances belonging and appertaining; and the said C. D. being so seized of the said messuage, farm and lands, and also being in the possession thereof, the said C. D. in his own right, and the said E. F. as his servant, and by his command, at the said several times when, etc., did pass and repass on foot, in and by and along the said way from and out of the said close (in this plea first mentioned), into, through, over, and along the said close of the said plaintiff, in which, etc., towards the said messuage, farms and lands, now of the said C. D. and so from thence back again, in, by, through, and along the said footway towards the said common king's highway, using the said way there for the purpose and on the occasion aforesaid, as they lawfully might for the cause aforesaid, and in so doing, etc. 3 Chit. Pl. 1120.

C. Plea, Right of Way by Non-existing Grant.

And for a further plea in this behalf (as to the said several supposed trespasses in the introductory part of the said second plea mentioned, and therein justified), the said defendant by like leave, etc., says (*actio non*), because he says, that he the said defendant, long before and at the said several times when, etc., was, and from thence hitherto hath been, and still is, seised in the demesne as of fee, of and in a certain (close) situate and being in the parish of _____ aforesaid; and the said defendant further saith, that long before any of the said several times when, etc., to-wit, on, etc., at, etc. (*venue*) aforesaid, by a certain deed made between I. K., the then owner of the said (close), in which, etc., and who was then seised thereof in his demesne as of fee, and L. M., who was then seised in his demesne as of fee of the said (close) now of the said defendant, and whose estate therein he, the said defendant, now hath, but which deed hath since been lost and destroyed by accident, and therefore cannot be brought into the said court here, and the date whereof is for that reason wholly unknown to the said defendant, the said I. K. so then being owner of the said (close), in which, etc., did grant to the said L. M. so then being the owner of the said (close) now of the said defendant, and to the heirs and assigns of the said L. M., a certain way from (describe the way which may be thus): a certain public king's highway, in the parish aforesaid, into, through, over, and along the said (close), in which, etc., unto and into the said (close) now of the said defendant, and so back again from the said last-mentioned (close), into, through, over, and along the said (close), in which, etc., unto, and into the said public king's highway, to go, return, pass and repass on foot, by himself and themselves, and his and their servants, and with horses, mares, and geldings, carts and carriages, in and along the said last-mentioned way, every year, and at all times of the year, at his and their free will and pleasure. By virtue of which said grant, the said defendant before and at the said several times when, etc., was and still is entitled to such way as last aforesaid; and the said defendant being so seised and entitled to such way as last afore-

said, he the said defendant at the said several times when, etc., having occasion to use the said way, did, with his servants, and with his said horses, mares, and geldings, carts and carriages, at the said several times when, etc., go, pass, and repass, in, by, through, and along the said way from the said common king's highway, into, through, over, and along the said (close) of the said plaintiff in which, etc., unto and into the said (close) now of the said defendant, and so from thence back again, in, by, through, and along the said way, unto and into the said common king's highway, using the said way there, for the purpose and on the occasion aforesaid, as he lawfully might for the cause aforesaid, and in so doing, etc. 3 Chit. Pl. 1122.

III. Complaint for Obstructing Private Way.

I. That the plaintiff, at the time hereinafter mentioned, was (and still is) possessed of (here describe his premises, *e. g.*, a meadow in the town of _____, and county of _____), and had a right of way therefrom over the adjoining land to the highway (or to other land of the plaintiff), to pass and repass on foot freely at all times (or with horses, or with carts, designating the use of the way according to the fact).

II. That the defendant, on the _____ day of _____ 18____, and at other times thereafter, and before this action, wrongfully obstructed said way by (building a fence across it), whereby the plaintiff was for a long time (or was, and still is) prevented from enjoying said way, to his damage _____ dollars.

III. State special damage, if any. 1 Abb. Forms 476.

IV. Answer, Enjoyment of Easement for Twenty Years.

I. That at the place where it was alleged in the complaint that the defendant had erected the dam complained of, there had been erected and maintained by the defendant (or by one M. N., and by the defendant claiming under said M. N.), for more than twenty years before the time of the alleged grievances, a mill-dam upon and across the said creek, of the same or greater height, which set back the waters upon and flowed the premises, alleged in the complaint to have been in the possession of the plaintiff, to

the same or greater extent, and caused the same or greater obstruction to the flow of water from the said last mentioned mill, as was caused or made by means of the said dam and obstruction of the defendant mentioned in the complaint.

11. That said dam, and the water power created thereby, were, and had been, during all the time above mentioned, held and enjoyed by (said M. N. and) this defendant, claiming title thereto adverse to the plaintiff and all other persons; and were, during all said time, used for the propulsion of a mill and other machinery without hindrance or molestation from the persons owning or occupying the mill and premises alleged in the complaint to have been in the possession of the plaintiff. 2 Abb. Forms 125.

Note.—There should be allegations that the possession was not only “adverse” but “continuous.” Winslow v. Winslow, 52 Ind. 8.

EJECTMENT.

I. Declarations, 441

- A. *At Common Law*, 441
- B. *Claiming Whole*, 441
- C. *For Undivided Share*, 442
- D. *For Term of Years*, 442
- E. *By Several Plaintiffs*, 442
- F. *Suggestion for Damages in*, 442

II. Appearance, 443

- A. *Notice With Declaration*, 443
- B. *Affidavit of Personal Service*, 443
- C. *Affidavit of Service at Residence*, 443
- D. *Order To Appear and Plead*, 443
- E. *Order To Appear on Motion in Court*, 443

III. Pleas, 443

- A. *General Issue*, 443
- B. *To Suggestion for Mesne Profits*, 444

IV. Complaints, 444

- A. *General Form*, 444
- B. *Plaintiff Once in Possession*, 444
- C. *By Owner of Undivided Interest*, 444
- D. *By Widow for Dower*, 444
- E. *By Widow and Heirs*, 445
- F. *Title by Deed*, 445
- G. *Title by Descent*, 445
- H. *Title by Descent*, 445

V. Denial of Title, 445

VI. Petition for Order To Stay Waste, 445

VII. Writs, 446

- A. *Of Possession*, 446
- B. *Of Possession With Fieri Facias for Costs*, 446
- C. *Of Possession With Capias*, 446
- D. *Of Restitution*, 446

CROSS-REFERENCES:

ADVERSE POSSESSION:

- Answer, Adverse Possession, Avoiding Deed;
- Answer, Statute of Limitations Pleaded Against Ejectment by the People;
- Answer Setting Out Adverse Possession.

ATTORNEYS:

- Affidavit for Order Requiring Plaintiff's Attorney To Produce His Authority To Sue in Ejectment;
- Order That Plaintiff's Attorney in Ejectment Produce His Authority.

DISCLAIMER:

- Answer, Disclaimer in Ejectment to Entire Property.

DOWER, PROCEEDINGS TO RECOVER:

- Declaration in Ejectment for Dower;
- Complaint for Admeasurement of Dower.

INJUNCTIONS:

- Injunction Against Proceeding in Ejectment.

JUDGMENT RECORDS:

- Judgment Record in Ejectment, Verdict for Plaintiff;
- Judgment Record in Ejectment for Plaintiff in Default;
- Judgment Record in Ejectment for Plaintiff, Title Expires Before Trial;
- Judgment Record in Ejectment for Plaintiff on Suggestion of Damages.

JUDGMENTS:

- Judgment in Ejectment for Plaintiff;
- Judgment in Ejectment for Plaintiff on Default;
- Judgment in Ejectment, Title Expires Before Trial;
- Judgment in Ejectment on Suggestion of Damages;
- Judgments in Actions for Lands (Ejectment) for Recovery of Possession, With Damages, Etc.

MINES AND MINERALS:

- Complaint To Recover Possession of Mine and for Damages After Ouster.

VERDICT:

Postea on Verdict in Ejectment of Part for Plaintiff and Part for Defendant;

Postea in Ejectment, Verdict for Plaintiff;

Verdict for the Defendant (Ejectment);

Verdict in an Action for Land (Ejectment).

I. Declarations.

A. *Declaration in Ejectment, Common Law. (Second declaration with actual defendant's name inserted.)*

In the king's bench, ——— term, in the ——— year of the reign of King William the Fourth. ———, to-wit, C. D., was attached to answer John Doe of a plea of trespass and ejectment, and thereupon the said John Doe, by ———, his attorney, complains: For that whereas A. B. (a) heretofore, to-wit, on the ——— day of ———, in the year of our Lord ———, had demised to the said John Doe ——— messuages, ——— stables, ———, yards, and ——— gardens, situate and being in the parish of ———, in the county of ———, to have and to hold the same to the said John Doe and his assigns, from the ——— day of ———, in the year aforesaid, for and during and unto the full end and term of ——— years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said John Doe entered into said tenements, with the appurtenances, and became and was thereof possessed for the said term so to him thereof granted as aforesaid. And the said John Doe being so thereof possessed, the said C. D. afterwards, to-wit, on the ——— day of ———, in the year aforesaid, with force and arms entered into the said tenements, with the appurtenances, in which the said John Doe was so interested, in manner, and for the term aforesaid, which is not expired, and ejected him the said John Doe out of his said farm, and other wrongs to the said John Doe then and there did, against the peace of our said lord the king, and to the damage of the said John Doe of ——— pounds; and therefore he brings his suit, etc. Steph. Pl. 33.

(a) This is the name of the party who really institutes the suit, called

"the lessor of the plaintiff," and so distinguished from the nominal plaintiff John Doe.

B. *Declaration in Ejectment, Plaintiff Claiming Whole in Fee or for Life.*

Supreme court, ——— of ——— term, in the year of our Lord one thousand eight hundred and (forty-six). (City and) county of (———), ss.: A. B., by E. F., his attorney, complains of C. D.. For that whereas, the said A. B. on the ——— day of ———, in the year of our Lord one thousand eight hundred and ——— (some day after the title accrued), was possessed of * a certain dwelling house and garden (or "of a certain lot of woodland," or "of a certain orchard," or otherwise, as the case may be), with the appurtenances, situate in the town of ———, in the said county of ———, and being known and designated as lot (or "as parcel of lot," or "as subdivision number ——— of lot") number ———, in range of townships of a certain tract of land called and known as ——— patent (or "purchase"; or, if the premises cannot be so described, then say: "and adjoining northwardly to lands late in the occupation of G. H.; southwardly to lands late in the occupation of J. K.; eastwardly to land late in the occupation of L. M.; and westwardly to lands late in the occupation of N. O.; or, if there have been no occupants of such adjacent lands, then stating the natural boundaries, if any; and if none, describing such premises by metes and bounds; or in some other way so that from such description, possession of the premises claimed may be delivered): which said premises the said A. B. claims in fee (or "for his own life," or "for the life of one R. S.," as the case may be); and he the said A. B., being so possessed thereof, the said C. D. afterwards, to-wit, on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, entered into the said * premises, and ejected the said A. B. therefrom; and unjustly withholds from the said A. B. the possession thereof: To the damage of the said A. B. of ——— dollars (any nominal sum), and therefore he brings his suit, etc.

E. F., attorney for plaintiff.
Supreme Court Rules, ed. 1831, App.; Burr. App. 565, §1100.

C. Declaration in Ejectment for Undivided Share.

(As in last form to the *, and then as follows): the one equal undivided moiety (or "the one equal undivided third [or fourth or other] part," according to the share or interest the plaintiff claims), of a certain dwelling house and garden, etc. (describing the premises as in last form), which said premises the said A. B. claims in fee, etc. (as in last form to the last *, and then as follows): one equal undivided moiety (or "third" or "fourth" or other part, according to the share or interest the plaintiff claims), and ejected the said A. B., etc. (as in last form to the end). Burr. App. 566, §1101.

D. Declaration in Ejectment for Term of Years.

(As in I, B, or I, C, as the case may be, to the end of the description of the premises, and then as follows): which said premises the said A. B. claims upon the demise of one R. S., for a term of years, to-wit, for the term of _____ years, from the _____ day of _____ last past (or "in the year of our Lord one thousand eight hundred and _____"), thence next ensuing, and fully to be complete and ended: and the said A. B. being so possessed thereof, the said C. D. afterwards, to-wit, on, etc., entered into the said premises, which the said R. S. had demised as aforesaid, for the term aforesaid, which is not yet expired, and ejected, etc. (as in I, B, to the end). Burr. App. 566, §1102.

E. Declaration by Several Plaintiffs.

(Caption as in I, B.) (City and) county (of _____), ss.: A. B., I. J. and K. L., by E. F., their attorney, complain of C. D.: For that whereas, the said A. B., I. J. and K. L., on the _____ day of _____, in the year, etc., were possessed of a certain dwelling house and garden, etc. (describe the premises as in I, B, or I, C, and then proceed as follows): which said premises the said A. B., I. J. and K. L. claim in fee (or "for their joint lives," or "for the life of R. S.," or as in I, D, or otherwise, as the case may be); and the said A. B., I. J. and K. L., being so possessed thereof, the said C. D. afterwards, to-wit, on, etc., entered into the said premises, and ejected them therefrom, and un-

justly withholds from them the possession thereof.

And also, for that whereas the said A. B., on, etc. (as in I, B, I, C and I, D, describing the premises as "a certain other dwelling house and garden," or "a certain other lot," etc., to the words "withholds from him the said A. B. the possession thereof").

And also, for that whereas, etc., the said I. J., on, etc. (as in the second count, substituting "I. J." for "A. B." throughout).

And also, for that whereas, the said K. L., on, etc. (as in the second count, substituting "K. L." for "A. B." throughout, and conclude as follows): To the damage of the said A. B., I. J. and K. L. of _____ dollars (any nominal sum), and therefore they bring their suit, etc.

E. F., atty. for plaintiffs.

Burr. App. 566, §1103.

F. Suggestion for Damages or Mesne Profits in Ejectment.

And now at this day, to-wit, the _____ day of _____, in the year one thousand eight hundred and _____, at, etc., before the said (or "within mentioned") justices of the supreme court of judicature aforesaid (or "within mentioned"), comes the said (or "within named") A. B., by his attorney, and, according to the form of the statute in such case made and provided, suggests to the said court, and gives the said court, before the aforesaid justices thereof, now here, to understand and be informed, that the said A. B. claims from the said (or "within named") C. D. the sum of _____ dollars; in which sum the said C. D. is indebted to him the said A. B. for the use and occupation of the premises, in the above (or "within") written judgment described, from the _____ day of _____, in the year, etc., until the _____ day of _____, in the year, etc., during all of which time the said C. D. enjoyed the mesne profits thereof; and the value of which profits amounts to the said sum of _____ dollars above claimed. And being so indebted as aforesaid, the said C. D., in consideration thereof, afterwards, to-wit, on, etc. (some day after the recovery of the judgment), at, etc., undertook, and then and there faithfully promised the said A. B. to pay him the said A. B. the said sum of _____ dollars, when

he the said C. D. should be thereunto afterwards requested; yet the said C. D., although often requested, etc., hath not yet paid the said sum of _____ dollars, or any part thereof, to the said A. B., but so to do hath hitherto wholly refused, and still doth refuse; to the damage of the said A. B. of the said sum of _____ dollars above claimed, etc.

E. F., attorney for plaintiff.

Burr. App. 586, §1152.

II. Appearance.

A. Notice With Declaration in Ejectment.

To Mr. C. D.: You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed on the _____ day of _____ next (or "instant"), being the first (or other) day of the next (or "present") term of the supreme court of judicature of the people of the state of New York: That, upon filing the same, a rule will be entered, requiring you to appear and plead to the said declaration, within twenty days after the entry of such rule: And that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration. Dated this _____ day of _____, 18—.

Yours, etc.,

E. F., attorney for plaintiff.

(Or "A. B., plaintiff in person.")

Burr. App. 539, §1065.

B. Affidavit of Personal Service of Declaration in Ejectment.

(Title of the cause.) (City and county (of _____), ss.: I. J. of _____, being duly sworn, deposes and says that on the _____ day of _____ last (or "instant") he personally served C. D., the defendant in this suit, who is the actual occupant of (or "the person exercising acts of ownership on," or "claiming title to," or "claiming some interest in"), the premises for which this action is brought, with a true copy of the declaration hereunto annexed; and also a true copy of the notice in writing to the said declaration subjoined, and likewise hereunto annexed. And further deponent says not. Sworn, etc. Burr. App. 503, §1016.

C. Affidavit of Service of Declaration in Ejectment at Residence.

(Title of the cause.) (City and county (of _____), ss.: I. J. of _____, being duly sworn, deposes and says that on the _____ day of _____ last (or "instant") he personally served C. D., the defendant in this suit, who is the actual occupant of (or "the person exercising acts of ownership on," or "claiming title to," or "claiming some interest in"), the premises for which this action is brought, with a true copy of the declaration hereunto annexed; and also a true copy of the notice in writing to the said declaration subjoined, and likewise hereunto annexed; by leaving the same with one R. L., being a person of proper age, at the dwelling house of the said defendant C. D., he being absent (or "at the residence of the said defendant C. D. because he could not be found," or "by leaving the same with the wife of the said defendant, on the said premises"): And further this deponent says not.

I. J.

Sworn, etc. Burr. App. 503, §1016 (a).

D. Order To Appear and Plead.

(Date.) (Title of cause.) E. F., attorney.

On filing the declaration in ejectment in this cause, and the notice in writing thereto subjoined, directed to the said defendant, and on reading and filing an affidavit of due personal service upon the said defendant, of a copy of the said declaration, and of the said notice thereunto subjoined; and on motion of E. F., on behalf of the said plaintiff, ordered that the defendant appear and plead within twenty days, or that his default be entered. Burr. App. 581, §1138; 6 Hill 263.

E. Order To Appear and Plead on Motion in Open Court.

(Title.) E. F., attorney for plff.

On filing the declaration in this cause, etc. (as in last form) and on reading and filing an affidavit of service of a copy of the said declaration and notice upon (name the person served), and on motion, etc. (as in last form). Burr. App. 581, §1138a.

III. Pleas.

A. Plea in Ejectment, General Issue.

And the said C. D. by G. H., his attorney, comes and says that he is

not guilty of unlawfully withholding the premises claimed by the said A. B., as alleged in the said declaration of the said A. B. And of this he the said C. D. puts himself upon the country. And the said A. B. doth the like, etc.

G. H., attorney for deft.

Burr. App. 569, §1108.

B. Plea To Suggestion for Mesne Profits.

And the said C. D., by G. H., his attorney, comes and defends the wrong and injury, when, etc, and says that he did not undertake or promise in manner and form as the said A. B. hath above in his said suggestion, in that behalf alleged against him. And of this he the said C. D. puts himself upon the country, etc. And the said A. B. doth the like, etc.

G. H., attorney for deft.

Burr. App. 570, §1109.

IV. Complaints.

A. Complaint in Ejectment, General Form.

I. That the plaintiff is seized in fee (or for life *, or other estate) of † the following described premises (designating the same; see next form).

II. That the defendant is in possession thereof, and withholds the same from him.

Wherefore the plaintiff demands judgment:

1. For the possession of the said premises.

2. For _____ dollars, the plaintiff's damages by the withholding of the same; together with his costs. 1 Abb. Forms 514.

Note.—This form is approved in *Payne v. Treadwell*, 16 Cal. 220, 244.

B. Complaint in Ejectment, Where the Plaintiff Was Once in Possession.

I. That on the _____ day of _____, 18— (designating a day after plaintiff's title accrued, and before the defendant's entry), the plaintiff was lawfully possessed, as owner in fee simple (or as tenant for her own life, * or as tenant for the life of one M. N., or as tenant for the term of _____ years), of † the following described premises in said county (here describe premises in question, designating the number of the lot or township, if any, in which they are situated; if none, stating the names of the last occupants of lands adjoining the same, if

any; if there be none, stating the natural boundaries, if any; and if none, describing such premises by metes and bounds, or in some other way, so that, from such description, possession of the premises claimed may be delivered).

II. That the plaintiff being so possessed thereof, the defendant afterwards, on the _____ day of _____, 18—, entered into said premises (and ousted the plaintiff), and that he unlawfully withholds from the plaintiff the possession thereof, to his damage _____ dollars.

III. That the value of the use and occupation of said premises since said _____ day of _____, 18—, and while the plaintiff has been excluded therefrom by defendant, is _____ dollars.

Demand of possession, damages and rents. 1 Abb. Forms 515.

Note.—An actual ouster by defendant or those under whom he holds must be alleged. *Watson v. Zimmerman*, 6 Cal. 46.

If claim is made for damages, exact time of alleged ouster should be stated, otherwise it is not material. *Collier v. Corbett*, 15 Cal. 183.

C. Complaint in Ejectment by Owner of Undivided Interest.

As in either preceding form, inserting at the †: one undivided half (or third, or other) interest in. 1 Abb. Forms 517.

D. Complaint in Ejectment by Widow for Dower (a).

As in either preceding form, substituting, at the *: as her reasonable dower as the widow of her husband, the late C. B., of the one undivided third part of the following described premises. 1 Abb. Forms 517.

Complaint in Ejectment by Widow for Dower (b).

I. That the late A. B. was the husband of the plaintiff at, and for many years next previous to, his death; that he died many years since; and that at the time thereof of his death, and for many years previous thereto, he was seized in fee simple and in possession of the following described premises (description as in IV, B).

II. That the plaintiff is entitled to one undivided third part thereof for her life, as her reasonable dower.

III. That the defendant Y. Z. is in possession of said premises and wrongfully and unjustly withholds from

plaintiff the possession of her said one-third part thereof as her dower.

IV. That the other defendants claim an estate in fee in said premises, as the heirs at law of the said A. B.; that they are the legitimate children of said A. B.

Wherefore, the plaintiff demands judgment that she recover possession of one undivided third part of said premises for her own life, against said defendant Y. Z., and that she is entitled to one undivided third part thereof for her own life against all the other defendants, and that she recover her costs of this action. 1 Abb. Forms 517.

E. Complaint in Ejectment by Widow and Heirs.

I. That one M. N. was, on and before the _____ day of _____, 18—, seized in fee and in the lawful possession of the following premises (describing them as in IV, B).

II. That being so seized and possessed, he died, on the _____ day of _____, 18—, intestate, leaving C. B., one of the plaintiffs, his widow, and the other plaintiffs, his only heirs at law, him surviving.

III. That the plaintiffs (heirs) were, and are, seized in fee and entitled to the possession, subject to the life estate of the plaintiff (widow) in an undivided third part thereof.

IV. That the defendants are wrongfully in possession, and claim a right thereto; and (although on the _____ day of _____, 18—, they were duly requested) they refuse to give up the possession, and unjustly withhold the same from the plaintiffs.

Demand of relief. 1 Abb. Forms 518.

F. Complaint in Ejectment, Setting Forth Plaintiff's Title by Deed.

I. That on the _____ day of _____, 18—, one M. N. was lawfully seized, as owner in fee simple (or otherwise), and in possession of the following described premises (description as in form 621).

II. That being so possessed thereof, on the _____ day of _____, 18—, by his deed, bearing date on that day, he duly conveyed the same (or state the estate conveyed) to the plaintiff.

III. That on the _____ day of _____, 18—, the defendant entered into said premises, and that he unlawfully withholds from the plaintiff

the possession thereof, to his damage _____ dollars. 1 Abb. Forms 518.

G. Complaint in Ejectment, Setting Forth Title by Devise.

I. (As in preceding form.)

II. That on the _____ day of _____, 18—, the said M. N. died, having by his last will devised to the plaintiff the said premises, which will has been duly proved as a will of real estate in the office of the surrogate of the county of _____.

III. (Continue as above.) 1 Abb. Forms 519.

H. Complaint in Ejectment, Setting Forth Title by Descent.

I. That one M. N., late of _____, deceased, was, at and before his death, seized in fee simple of (here describe the premises), and was at the time of his death in the possession of said premises.

II. That on the _____ day of _____, 18—, at _____, said M. N. died intestate, leaving surviving him these plaintiffs, his only children and heirs at law.

III. That on or about the _____ day of _____, 18—, the defendant unlawfully entered into, and now is in possession and actual occupancy of, said premises, without leave of the plaintiff, or any right or title thereto, and unlawfully withholds possession thereof from the plaintiffs, to their damage _____ dollars.

(Demand of relief.) 1 Abb. Forms 519.

V. Answer, Denial of Title.

That the plaintiff, at the commencement of this action, was not the owner of the premises alleged (nor entitled to possession thereof). 2 Abb. Forms 153.

Note.—“This form is only appropriate where the averment of title in the complaint is in general terms without stating the sources of title.” 2 Abb. Forms 153.

VI. Petition for Order To Stay Waste.

To the justices, etc.: The petition of A. B. of _____ respectfully sheweth, that he has lately commenced an action of ejectment in this honorable court (and which is still pending undetermined), against C. D. for the recovery of all (describe the premises).

And your petitioner further shows that the said C. D. has, pending the said suit, made waste of the land in

demand, by (set forth the acts of waste).

Wherefore your petitioner prays this honorable court to grant an order restraining the said C. D. from the commission of any further waste thereon. Dated, etc.

E. F., attorney.

(City and) county (of ———), ss.: A. B., the above named petitioner, being duly sworn, deposes and says that the matters set forth in the above petition of this deponent are true. Sworn, etc.

A. B.

Burr. App. 554, §1089.

VII. Writs.

A. Writ of Possession in Ejectment.

The people of the state of New York, to the sheriff of the (city and) county of ———, greeting: Whereas A. B. has lately, in our supreme court of judicature, by the judgment of the said court recovered against C. D. one mesuage, etc. (describing the premises recovered, with the like certainty, as required in the declaration), which said premises have been, and are still, unjustly withheld from the said A. B. by the said C. D., whereof he is convicted, as appears to us of record; and forasmuch as it is adjudged in the said court that the said A. B. have execution upon his said judgment against the said C. D. according to the force, form and effect of his said recovery; therefore we command you that without delay you deliver to the said A. B. possession of the said premises so recovered, with the appurtenances; and that you certify to our said supreme court of judicature, before our justices thereof, at the capitol in the city of Albany, on the ——— Monday of ——— next, in what manner you shall have executed this writ.* And have you then and there this writ. Witness Greene C. Bronson, esquire, our chief justice, at, etc., on, etc.

Hallett and others, clerks.

E. F., attorney.

Burr. App. 588, §1156.

B. Writ of Possession in Ejectment With Fieri Facias for Costs.

(As in last form to the *, and then as follows): We also command you, that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made ——— dollars, which in our same court were adjudged to the said A. B. for damages which he had sustained, as well on occasion of the

matters aforesaid, as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as appears to us of record. And if sufficient goods and chattels of the said C. D. cannot be found in your bailiwick, that then you cause the same to be made of the lands, tenements, real estate and chattels real, whereof the said C. D. was seised on the ——— day of ———, in the year one thousand eight hundred and ———, or at any time afterwards, in whose hands soever the same may be: And that you have those moneys before our said justices, on the return day aforesaid, to render unto the said A. B., for his damages aforesaid; and have you then and there this writ. Witness, etc. (teste, etc., in usual form). Burr. App. 588, §1157.

C. Writ of Possession in Ejectment With Capias Ad Satisfaciendum.

(As in VII, A, to the *, and then as follows): We also command you that you take the said C. D., if he may be found in your bailiwick, and him safely keep, so that you may have his body before our said justices of our said supreme court, on the return day aforesaid, to satisfy the said A. B. ——— dollars, which were lately in our said court adjudged to the said A. B. for his damages which he had sustained, as well on occasion of the matters aforesaid, as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted as appears to us of record. And have you then there this writ. Witness, etc. (teste, etc., in usual form). Burr. App. 589, §1158.

D. Writ of Restitution in Ejectment. (On reversal.)

The people, etc., to the sheriff, etc., greeting: Whereas, by our writ to you heretofore directed, we commanded you, that (here recite the writ of possession), and by virtue of which said writ you caused the said A. B. to be put in possession of the said described premises, as we have been informed, and because that writ did wrongfully, unadvisedly and erroneously issue out of our said court (or if the fact be so: "and because the judgment upon which that writ did issue, hath since that time been wholly reversed, annulled and held for nought in our said court," or "in the court of," give the title of the court). Therefore we command

you, that you forthwith restore the said C. D. to his possession of the premises aforesaid: And how you shall have executed this our writ, make appear to our justices of our supreme court of judicature, on, etc., at, etc., and have you then there this writ. Witness, etc. (teste, etc., in usual form). Burr. App. 589, §1159; Yates' Forms 626.

ELECTION OF REMEDIES. — See CHOICE AND ELECTION OF REMEDIES.

ELECTIONS.

- I. Complaint for Usurping an Elective Office, 447
- II. Complaint Against Officers, Refusing Plaintiff's Vote, 447
- III. Information for Refusal To Administer Oath to Elector, 448
- IV. Indictment, Intimidating Elector by Threat of Imprisonment, 448
- V. Indictment for Giving Intoxicant to Elector, 448
- VI. Indictment for Interference With Election Officers, 448
- VII. Indictment, Failure of Election Officers To File Copy of Poll Books, 449
- VIII. Indictment, False Statement as to Time of Residence, 449
- IX. Indictment for Stating False Residence on Registration, 450
- X. Indictment, Voting, Not Being Legal Voter in District, 450
- XI. Indictment for Voting, Disqualification, Conviction for Felony, 450
- XII. Indictment for "Repeating," 450
- XIII. Indictment, Betting on Election, 451
- XIV. Notice of Contest, Because Officer Elect Ineligible, 451
- XV. Notice of Contest, Election Irregularly Conducted, 451

For other forms, see 8 STANDARD PROC. 159, 159, 160, 163.

CROSS-REFERENCES:

BRIBERY:

Indictment for Giving Bribe at Election.

INTOXICATING LIQUORS:

Indictment, Selling on Election Day.

MANDAMUS:

Petition for Writ To Declare Relator Elected to Office.

I. Complaint for Usurping an Elective Office.

I. That on the _____ day of November, 18____, at an election duly held in the (designate county or district) of this state, pursuant to the statute, for the election, among other officers, of (a county judge of said county), for the term of _____ years from the first day of January, 18____, the said (individual plaintiff) received the greatest number (or the majority, according to the statute) of legal votes for the said office, and was duly elected.

II. That on the _____ day of _____, 18____, the defendant usurped the said office, and has ever since unlawfully exercised the same, and withheld the same from the said (individual plaintiff).

Wherefore, the plaintiff demands judgment, with costs:

1. That the defendant is not entitled to the said office, and that he be ousted therefrom.

2. That the said (individual plaintiff) is entitled to the office, and to assume the execution of the duties of the same on taking the oath and filing the bond prescribed by law. 1 Abb. Forms 619.

II. Complaint Against Officers of an Election for Refusing Plaintiff's Vote.

I. That the defendants were the inspectors (or judges) of an election held at _____, in and for the (naming the district) in the city (or county) of _____, for the purpose of electing (designate officer, *e. g.*, thus), one justice of the peace in and for said town of _____; and being duly elected (or appointed) and qualified as such inspectors (or judges), the defendants had the polls open for said election at the town house in said town, between the hours of _____ and _____.

II. That the plaintiff then was and for the space of _____ had been a citizen of the state of _____, and then was and for the space of _____ had been resident in said town (or ward, or otherwise, according to the statute), and a legal elector at said election.

III. That as such elector, the plaintiff, while the polls were so open, duly offered to the defendants his vote or ballot for the election of a justice of

the peace, in and for said town, and requested them to receive the same.

IV. That the defendants, not regarding their duty, wrongfully and maliciously refused to receive or deposit the same, whereby he was deprived of his right to vote at said election, to his damage _____ dollars. 1 Abb. Forms 506.

III. Information for Refusal of Official To Administer Oath to Elector.

"Charles M. Walker, prosecuting attorney for the county of Lapeer aforesaid, for and in behalf of the people of the state of Michigan, comes into said court in the December term thereof, A. D. 1860, and gives it here to understand and be informed that heretofore, to-wit, on the 6th day of November, 1860, at North Branch, in said county, one Abraham Moyer appeared before David C. Wattles, Isaiah Butler and John Skym, who were then and there acting as a board of inspectors of election at said election, and offered his ballot to vote for officers then to be chosen, and that he was then challenged as unqualified by David McConnell, an elector qualified to vote at that poll, and then and there the said Abraham Moyer stated that he was a qualified elector, and, said challenge not having been withdrawn, he, said Moyer, demanded the right to have administered to him the oath contained in clause 1 of section 40, of the Compiled Laws of the state of Michigan, which he then claimed to contain grounds of his qualifications to vote, and that the said David C. Wattles, Isaiah Butler and John Skym did each, then and there, corruptly and wilfully neglect and refuse to administer to said Moyer said oath in that behalf, contrary to the statute in such case made and provided, and against the peace and dignity of the state of Michigan.

Charles M. Walker,
Prosecuting attorney for the county of
Lapeer."
People v. Wattles, 13 Mich. 446.

IV. Indictment for Intimidating Elector by Threat of Imprisonment.

"Did wilfully and unlawfully attempt to hinder Isaac Williams (he being a legally qualified elector) in the free exercise of the right of suffrage at the election then pending in the town of Hallettsville, for a representa-

tive in the congress of the United States from the fourth congressional district of the state of Texas, by the use of wilful falsehood, to-wit, by then and there telling the said Isaac Williams that if he voted for Hancock (one of the candidates for congress at that election) he would be fined fifty dollars and sent to the penitentiary for two and a half years." State v. Franks, 38 Tex. 640.

V. Indictment for Giving Intoxicant to Elector.

"State of West Virginia, Mercer county, to-wit: The grand jurors of the State of West Virginia, in and for the body of the county of Mercer, upon their oaths present that on the 6th day of November, 1888, in the said county of Mercer and State of West Virginia, at an election then and there held in said county for the election of state, county, and district officers, under the laws of the State of West Virginia, George W. Pearis did then and there, to-wit, in the said county of Mercer, on the 6th day of November, 1888, wilfully, wrongfully, knowingly, and unlawfully give to one Joseph R. Johnston an intoxicating drink, the said Joseph R. Johnston being then and there a legally qualified voter, against the peace and dignity of the state. J. W. Hale, Prosecuting Attorney."

State v. Pearis, 35 W. Va. 320, 13 S. E. 1006.

VI. Indictment for Interference With Election Officers.

"Did unlawfully interfere with the judges of election of the Eighteenth voting precinct in said county of Arapahoe, in the discharge of their duties, which said judges of election were then and there officers of the election for representative in the fifty-second congress of the United States, in accordance with the laws of the state of Colorado and of the United States, and did then and there unlawfully and with force and arms seize, carry away, and secrete the ballot box containing the ballots of said eighteenth voting precinct, which on said 4th day of November, in the year aforesaid, at said election, had been cast for said representative in congress, and did then and there knowingly aid and assist in the forcible and unlawful seizure, carrying away, and secreting of said ballot box, and did then and

there counsel, advise, and procure divers other persons, whose names are to the grand jurors unknown, so to seize, carry away, and secrete said ballot box, thereby, as aforesaid, interfering with said judges of election of said eighteenth voting precinct, and hindering and preventing them, the said judges of election, from counting the votes which had been cast at said election, and from declaring and certifying the result thereof." *Connors v. United States*, 158 U. S. 408, 15 Sup. Ct. 951, 39 L. ed. 1033.

VII. Indictment, Failure of Election Officers To File Copy of Poll Books.

The grand jurors of the state of Tennessee, being duly elected, empanelled, sworn, and charged to enquire for the body of the county of Sevier, on their oaths aforesaid, present and say, that heretofore, to-wit, on the 7th day of August, in the year of our Lord one thousand eight hundred and forty-five, an election was held in the state of Tennessee for governor of said state, members of congress, and members of the state legislature; that said election was held in the county aforesaid, under the constitution and laws of this the said state, on the said 7th day of August, in the year of our Lord one thousand eight hundred and forty-five, that Samuel Randles, Abraham Fox and Thomas Brabson, late of said county, laborers, on the day and year last aforesaid, at, to-wit, in the county aforesaid, were then and there the judges of said election, at the place of holding the same in the ninth civil district of said county; that as judges as aforesaid, it was their duty, within ten days after said election, to return and file with William L. Rodgers, he then and there being clerk of the circuit court of said county, one copy of the poll books, or list of voters, kept by the clerks at said election, of which they were the judges as aforesaid, certified by said judges, or a majority of them, under their hands, to contain a true list of the votes at the place of holding said election in the ninth district, and attested by the clerks and officers holding said election, or to cause the same to be done; and that the said judges of said election did not within ten days after the same was held return and file with said William L. Rodgers, clerk as afore-

said, a certified copy of the poll books, or list of voters, at said election, of which they were judges as aforesaid, signed and attested as aforesaid and according to law. *State v. Randles*, 7 Humph. (Tenn.) 9.

VIII. Indictment, False Statement as to Time of Residence.

In the circuit court for the fifth judicial circuit of the state of Florida for Alachua county, at the fall term thereof, in the year of our Lord one thousand eight hundred and seventy-eight.

Alachua county, to-wit: The grand jurors of the state of Florida, inquiring in and for the body of the county of Alachua, on their oaths do present that William Humphreys, late of the county of Alachua aforesaid, in the circuit and state aforesaid, laborer, on the fifth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, with force and arms at and in the county of Alachua aforesaid, at a general election held in said Alachua county, in the state aforesaid, in election district number ten, in the town of Micanopy, did present himself as a duly qualified elector to the duly qualified and acting inspectors of said election, and that his right to vote at said election was then and there challenged and questioned. Whereupon, as is provided and authorized and required by the statute in such cases made and provided, the said William Humphreys was then and there duly, legally and solemnly sworn by one Daniel C. Hart, a duly appointed and qualified inspector of the election aforesaid, at said voting precinct or district, who was duly authorized and required by law to administer the oath provided for by the statute in such cases made and provided, and the said William Humphreys being so sworn as aforesaid, then and there upon his oath aforesaid, falsely, corruptly, knowingly, wilfully and maliciously before the said inspector of the election aforesaid, the said Daniel C. Hart, and did swear amongst other things in substance, and to the effect following, that is to say, that he, the said William Humphreys had lived and resided in the state of Florida twelve months, and in the said county of Alachua for six months, next preceeding said day, the fifth day of November, in the year aforesaid, whereas in truth and in fact the said

William Humphreys had not lived or resided in the said county of Alachua for six months next preceeding the said fifth day of November, in the year aforesaid, against the form of the statute in such case made and provided, to the evil example of all others in the like case offending and against the peace and dignity of the state of Florida. *Humphreys v. State*, 17 Fla. 381.

IX. Indictment for Stating False Residence on Registration.

"Unlawfully, knowingly, and fraudulently register as a voter at the place of registry in the third election district of the twenty-seventh assembly district in the city of New York, he, the said Zachariah Jacques, then and there not having a lawful right so to do, which said registration was then and there false and fraudulent, in this: that said Zachariah Jacques, at the time he so registered as aforesaid, stated that his residence was at Randall's Island Hospital, New York City, whereas, in truth and in fact, as he, the said Zachariah Jacques, then and there well knew, he, the said Zachariah Jacques had no residence at Randall's Island Hospital, New York City, which entitled him to register as a voter, as aforesaid." *United States v. Jacques*, 55 Fed. 53.

Note.—This form should contain an allegation that the false statement of residence was made to the officers at the time of registration. See opinion in above case.

X. Indictment, Voting Not Being Legal Voter in District.

"On the tenth day of March, A. D. 1863, at the city of Portsmouth, in the county of Rockingham aforesaid, a town meeting of the legal voters of ward number three, in said Portsmouth, in the county aforesaid, for the election of two representatives to represent said ward in the general court of said state, was then and there duly holden, at which said town meeting the inhabitants of said ward legally qualified to vote therein were also called on to give in their votes for governor of said state, for one railroad commissioner, for a representative in the congress of the United States from congressional district number one of said state, for councillor from councillor district number one in said state, for county officers for the county of Rock-

ingham aforesaid, and for senator from senatorial district number one of said state. And the jurors aforesaid, upon their oath aforesaid, do further present that Christopher J. Marshall of Portsmouth aforesaid, yeoman, then and there not being a legal voter in said ward, and then and there well knowing himself not to be a legal voter in said ward, did then and there, at said election, knowingly and wilfully give in a vote for a representative in the congress of the United States from congressional district number one of said state, contrary to the form of the statute," etc. *State v. Marshall*, 45 N. H. 281.

XI. Indictment for Voting, Disqualification, Conviction for Felony.

"That Mike Gallagher, late of said county, on the 5th day of April, A. D. one thousand eight hundred and eighty-one, and in said county and State of Texas, did then and there unlawfully and feloniously, at an election then and there held and authorized by law, within and for the corporation of the city of Weatherford, vote for city attorney and other officers then and there to be chosen at said election; he the said Mike Gallagher not then and there being a qualified voter at said election, for that he had been by the District Court of Dallas county, State of Texas, convicted in said court of the crime of burglary, and by said court sentenced to the State penitentiary for the term of two years, all of which the said Mike Gallagher did well know, and he the said Mike Gallagher did then and there know himself not to be a qualified voter under the laws of the State of Texas at said election; contrary," etc. *Gallagher v. State*, 10 Tex. App. 469.

XII. Indictment for "Repeating" at Election.

"Michael Welch is accused by the grand jury of the county of Washington, in the state of Minnesota, by this indictment, and upon their oaths, of the crime of voting more than once at the same election, committed as follows:

"That the city of Stillwater is a municipal corporation, within the county of Washington in the state of Minnesota, organized and acting under and by virtue of an act of the legislature of the state of Minnesota, entitled 'An act to reduce the law incorporat-

ing the city of Stillwater in the county of Washington and state of Minnesota, and the several acts amendatory thereof, into one act, and to amend the same,' approved March 3d, A. D. 1870, and the acts amendatory thereof. That on the 1st day of April, A. D. 1873, the municipal election of said city of Stillwater was then and there in said city being held, under and by virtue of the said act of the legislature above mentioned, and the acts amendatory thereof, and in accordance with law and the statutes in such cases made and provided, for the purpose of electing the officers of said municipal corporation, the said city of Stillwater, as provided and required by said act of the legislature of the State of Minnesota, and the acts amendatory thereof.

"That said Michael Welch did then and there, on said 1st day of April, A. D. 1873, in said city of Stillwater, in said county of Washington, at said election, vote in said city of Stillwater in the first ward thereof, said Michael Welch being then and there a resident and legal voter in said ward in said city; and said Michael Welch did then and there, on said first day of April, A. D. 1873, in said city of Stillwater in said county of Washington, after the casting by him of the vote above mentioned, wrongfully, wilfully, unlawfully and feloniously vote a second time at said election in said city of Stillwater, said vote being cast by the said Michael Welch in the second ward of said city of Stillwater: both of said votes being then and there by the said Michael Welch voted at the same election, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Minnesota." *State v. Welch*, 21 Minn. 22.

XIII. Indictment, Betting on Result of Election.

"The grand inquest of the commonwealth of Pennsylvania, inquiring in and for the county of Cumberland, on their oaths and affirmations respectively, do present: That Daniel Sherban, late, etc., on the 28th of September, 1838, in the county aforesaid, and within the jurisdiction of this court, did lay a wager and bet with a certain Jacob Clark, and that the said Daniel Sherban did then and there lay a wager and bet of fifty dollars with the

said Jacob Clark, that a certain Joseph Ritner would be elected governor of the commonwealth of Pennsylvania at an election to be held in said commonwealth, under the constitution and laws of said commonwealth on the 9th day of October, in the year 1838, the said Joseph Ritner then and there being a candidate nominated for public office, to-wit, for the office of governor of said commonwealth, contrary to the act of assembly in such case made and provided, and against the peace and dignity of the commonwealth of Pennsylvania." *Sherban v. Com.*, 8 Watts (Pa.) 212.

XIV. Notice of Contest, Because Officer Elect Ineligible.

"To Thomas Swinburn, Esq.:

"You are hereby notified, that I shall contest before the county court of Kanawha, West Virginia, your election as clerk of the circuit court of said county at the recent election held in said county on the 8th day of October, 1878, upon the ground that at the time of said election you were not, and never have been, a citizen of the United States, or of the State of West Virginia, and were not at the time of said election, and never had been entitled to vote in said State, and by the express provisions of the Constitution of said State, you could not be elected to said office at said election; and that I shall there resist and contest your right to hold said office, or perform the duties thereof, and shall there claim to be myself duly and legally elected to said office at said election. You are further notified, that I shall docket this notice, and insist upon the trial thereof, in the county-court of Kanawha county on 1st day of November, 1878, if the court be then in session, and if not in session, the 1st day of December term, 1878, of said county-court.

"John Dryden.

"17th of October, 1878."

Dryden v. Swinburn, 15 W. Va. 234.

XV. Notice of Contest, Election Irregularly Conducted.

"Georgetown, Brown County, Ohio,
November 30, 1864.

"To William C. Howard:

"Sir:—You are hereby notified that at the general election held in October, A. D. 1864, at and within the county of Brown, and State of Ohio, on the 11th day of said month of October,

at which said election you were an elector and candidate for the office of sheriff of said county of Brown, I was an elector and resident of said county, and a candidate for the same office.

"You are further notified that, afterward, to-wit, on the 12th day of November, A. D. 1864, R. C. Mitchell, clerk of the court of common pleas of said county of Brown, as such clerk, proceeded, together with F. F. Shaw and Joseph S. Innis, two justices of the peace within and for said county, to count out, according to law, and make an abstract of all votes cast within said county of Brown, at said election, for said office of sheriff and other officers voted for at said election, and also of votes cast at various other places outside of said county of Brown, in virtue of an act of the general Assembly of the State of Ohio, passed March 30, 1864, at which counting out I received 2,442 votes cast within the said county, in the different townships thereof, and you received 2,166 votes cast within said county, as aforesaid, and I received one hundred and nineteen votes cast outside of said county, for said office of sheriff of said county, as will appear by an abstract duly certified by said clerk of said court and said justices of the peace, now on file at the clerk's office of said county; and you were thereby declared by said clerk and said justices duly elected to said office of sheriff of said county, at said election so held as aforesaid.

"You are further notified that I intend to contest your declared election, as aforesaid, before the next court of common pleas to be holden within and for said county, on the following grounds:

"1. Because the state board of canvassers, comprised of the officers pointed out by law, proceeded, according to law, to make out an abstract of votes cast at said October election by electors of said county outside of said county of Brown, from the poll-books, tally-sheets, and ballots, returned to the governor of Ohio, auditor of state, and secretary of state, by which said abstract it appears, and is so certified by said board of canvassers, that I received for said office of sheriff, one hundred and fourteen votes so cast outside of said county of Brown, and

that you received three hundred and eighty-five votes so cast outside of said county of Brown, at said October election, and that said abstract made out from said poll-books, tally-sheets, and ballots, together with the votes so cast within said county of Brown, elects me to said office of sheriff of said county.

"2. Because minors voted at said election for you.

"3. Because the tally-sheets returned to the clerk of said court are not certified according to law, nor do they show that the judges of the election and the clerks thereof were sworn as required by law.

"4. Because a portion of said tally-sheets so returned to said clerk, and counted by said clerk and said justices, show elections held by a number of voters less than ten at said election.

"5. Because the poll-books on which said votes so cast outside of the State of Ohio were counted, are not certified according to law, and do not show that the judges and clerks of said election were sworn according to law.

"6. Because said poll-books do not show the names of the voters, county and township of their residence, the letter of their respective companies, the name and number of the regiment, battery, and battalion to which said voters respectfully belonged, as required by law.

"7. Because illegal votes were cast at said election, for said William C. Howard.

"You are further notified that I will proceed, on the 12th day of December, A. D. 1864, at the office of John Woods, a justice of the peace within and for said county, at his office, in Georgetown, in said county, between the hours of nine o'clock a. m. and nine o'clock p. m. of said day, to take depositions as to said points, before said John Woods and Joseph Innis, two justices of the peace within and for said county, who will officiate at the taking of the same; and that the taking of the said depositions will be continued, if necessary, between same hours, from day to day, until completed.

"Respectfully,

G. R. Shields."

Howard v. Shields, 16 Ohio St. 184.

ELECTRICITY.

See 8 STANDARD PROC. 171-174, 180-185.

EMBEZZLEMENT.

- I. Indictment Against Clerk of Bankers, 453**
- II. Information for Embezzlement by Attorney, 453**
- III. Indictment for Embezzlement of Property, 453**
- IV. Indictment for Aiding and Abetting Embezzlement, 454**
- V. Indictment for Embezzlement of City Funds, 455**
- VI. Indictment for Embezzlement by Employee, 455**

For other forms, see 8 STANDARD PROC. 214, 215.

I. Indictment Against Clerk of Bankers.

That A. B., late of, etc., on, etc., at, etc., aforesaid, was clerk to C. D. and E. F., of the same parish and county, bankers, and employed and entrusted by the said C. D. and E. F. to receive money for them, and being such clerk so employed and entrusted as aforesaid, then and there, by virtue of such employment and entrustment as aforesaid, he the said A. B. did receive and take into his possession a certain sum of money, to-wit, the sum of ten pounds, of the monies of the said C. D. and E. F., for and on the account of the said C. D. and E. F., his said masters and employers, and having so received and taken into his possession the said sum of money, for and on account of his said masters and employers, he the said A. B. then and there, with force and arms, fraudulently and feloniously did embezzle and secrete part of the said sum of money, to-wit, the sum of 4l 13s. And so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B. did then and there, with force and arms, in manner and form aforesaid, feloniously steal, take and carry away from the said C. D. and E. F. his said masters and employers, the said sum of 4l 13s of the moneys of the said C. D. and E. F. for whose use, and on whose account the same was delivered to, and taken into, the possession of him the said A. B., being such clerk so employed and entrusted as aforesaid, against the form of the statute, etc., and against the peace, etc. 3 Chit. Cr. L. 962.

II. Information for Embezzlement by Attorney.

"The circuit court for the County of Calhoun.

Herbert E. Winsor, prosecuting attorney for the county of Calhoun, aforesaid, for and in behalf of the people of the state of Michigan, comes into said court in the December term thereof, A. D. 1887, and gives it here to understand and be informed, that Eugene M. Converse, late of the city of Battle Creek, in the county of Calhoun and state of Michigan, heretofore, to-wit, on the twenty-eighth day of July, in the year one thousand eight hundred and eighty-five, at the city of Battle Creek, in said county of Calhoun and state of Michigan, being then and there agent to John E. Dunning and Daniel W. Hall, the executors of the last will and testament of Rice Hall, deceased, and being then and there the agent of them, the said John E. Dunning and Daniel W. Hall, executors of the last will and testament of Rice Hall, deceased, and not being then and there an apprentice, nor other person under the age of sixteen years, did, by virtue of his said employment, then and there, and whilst he was such agent as aforesaid, receive and take into his possession certain moneys to a large amount, to-wit, to the amount of four thousand dollars, of the value of four thousand dollars of the property of the said John E. Dunning and Daniel W. Hall, as such executors, and which said money came to the possession of the said Eugene M. Converse by virtue of said employment, and the said money then and there fraudulently and feloniously did embezzle and convert to his own use, without the consent of the said John E. Dunning and Daniel W. Hall, as such executors as aforesaid, his said employers, and that so the said Eugene M. Converse did then and there, in manner and form aforesaid, the said money, the property of the said John E. Dunning and Daniel W. Hall, as executors as aforesaid, his said employers, from the said John E. Dunning and Daniel W. Hall, as such executors as aforesaid, feloniously did steal, take, and carry away, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the state of Michigan." People v. Converse, 74 Mich. 478, 42 N. W. 70, 16 Am. St. Rep. 648.

III. Indictment for Embezzlement of Property.

"And the grand jurors aforesaid, on

their oath aforesaid, do further present, that on the seventeenth day of December, A. D. 1894, at said Jackson county, state aforesaid, the said Robert H. Crosswhite was a commission merchant and agent, and, as such, a member of the firm of Crosswhite & Co., composed of him, the said Robert H. Crosswhite, and one J. O. R. Campbell, and he, the said Robert H. Crosswhite, as such commission merchant and agent, and as such member of said firm, then and there became the consignee and bailee of one David H. Biethan, in possession of seven carloads of potatoes, of the value of five hundred and twenty-five dollars, and the property of said David H. Biethan, and which potatoes then and there came into the possession and care of said Robert H. Crosswhite as such commission merchant, and as the said consignee and bailee of said David H. Biethan, and he, the said Robert H. Crosswhite, then and there, the said seven carloads of potatoes unlawfully and feloniously did embezzle and convert to his own use, and so the jurors aforesaid, on their oath aforesaid, do say that the said Robert H. Crosswhite, in manner and form aforesaid, feloniously did steal, take, and carry away, contrary to the form of the statutes in such case made and provided, and against the peace and dignity of the state." *State v. Crosswhite*, 130 Mo. 358, 32 S. W. 991, 51 Am. St. Rep. 571.

IV. Indictment for Aiding and Abetting Embezzlement.

And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to-wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid, and within the jurisdiction of this court, did knowingly, wilfully, unlawfully, and fraudulently aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association then and there known and designated as the Spring Garden National Bank, in the state of Pennsylvania, which said association had been theretofore created and organized under and by virtue of acts of congress in such case made

and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of congress in such case made and provided) then and there to wilfully misapply a certain large amount of the moneys, funds and credits then and there belonging to the said national banking association for the use, benefit, and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association—that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to-wit, on the day and year aforesaid, in the district aforesaid, and within the jurisdiction of this court, being then and there cashier, as aforesaid, of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently, and wilfully and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds, and credits of the said national banking association, to-wit, the sum of seventy-five hundred dollars, in the manner and by the means following—that is to say, a certain promissory note, dated, to-wit, Philadelphia, November 10, 1890, made and drawn by a certain person, to-wit, A. B. Nettleton, for the sum of, to-wit, seventy-five hundred dollars, due and payable March 13, 1891, at the said bank, had been theretofore, to-wit, upon the day and year aforesaid, discounted by the said bank, and was then and there overdue and unpaid, and held by the said bank as and for funds and credits, as aforesaid; whereupon, the said Harry H. Kennedy did then and there with intent to injure and defraud the said national banking association, knowingly, unlawfully, and fraudulently wilfully misapply the same, in that he then and there surrendered and delivered the same to the said Nelson F. Evans, without receiving therefor for the said bank the said sum of seventy-five hundred dollars, or any part thereof; and the said Nelson F. Evans did then and there knowingly and unlawfully aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully, and fraudulently, to wilfully misapply the said funds and credits of the said na-

tional banking association, as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association, contrary to the form of the Act of Congress in such case made and provided, and against the peace and dignity of the United States of America." *Evans v. United States*, 153 U. S. 584, 14 Sup. Ct. 934, 939, 38 L. ed. 830.

V. Indictment for Embezzlement of City Funds.

"The said B. D. Rapley, in the county and state aforesaid, on the first day of April, 1893, being then and there the duly elected and acting city treasurer of the city of Hot Springs, a city of the first class in said county of Garland, duly created according to law, and having taken an oath of office as such city treasurer, and having then and there the custody and possession as such city treasurer, by virtue of his said office, of a large amount of money and public funds, to-wit: Five thousand dollars of the value of five thousand dollars of the personal property of the said city of Hot Springs, said money being then and there public funds and being composed of paper money of the United States of the value of three thousand dollars, gold coin of the United States of the value of one thousand dollars, and silver coin of the United States of the value of one thousand dollars, a more particular description of which is to the grand jury unknown, and which he, the said B. D. Rapley, was acting as such city treasurer as aforesaid, and having the custody and possession of such money and public funds by virtue of his said office, he, the said B. D. Rapley, did then and there, with felonious intent to cheat and defraud the said city of Hot Springs, unlawfully, feloniously and fraudulently embezzle and convert the same to his own use and benefit, against the peace and dignity of the State of Arkansas." *State v. Rapley*, 60 Ark. 13, 28 S. W. 508.

Note.—The second count varied in description of funds, the third in the description of the funds and charged failure to pay over. The last part rejected as surplusage.

VI. Indictment for Embezzlement by Employee.

The jurors, etc., present that Jere Lanier, etc., with force and arms, etc.,

being then and there employed as a servant of Addie P. McClammy, by virtue of his employment, and whilst he was so employed, did receive and take into his possession certain money, to-wit: seven dollars and fifty cents for, and in the name of, and on account of the said Addie P. McClammy, his mistress and employer, the said Lanier not being an apprentice, nor under the age of sixteen years; and the said money then and there fraudulently and feloniously did embezzle. And so the jurors, etc., do say, that said Lanier, in manner and form aforesaid, the said money, the property of said Addie P. McClammy, feloniously did steal, take and carry away, against the form of the statute, etc. *State v. Lanier*, 89 N. C. 517.

Note.—Held that charge of larceny, under the statute, was improper for this statute did not, as in case of English statutes, make embezzlement larceny, but held that it might be rejected as surplusage.

EMBRACERY.

I. Indictment for Embracery, Attempting To Influence, 455

II. Indictment for Embracery, Indefinite Offer of Gain, 456

III. Indictment, Offer of Specific Property, 456

I. Indictment for Embracery, Attempting To Influence.

"The said E. T. Dankwardt, on or about the 30th day of January, 1897, in the county aforesaid, one Jacob Reiss, a juror, then and there duly sworn and impaneled to try a certain cause then pending and on trial in the district court of Des Moines county, Iowa, to-wit, the case wherein Mary Mahoney was plaintiff and E. T. Dankwardt was defendant, did unlawfully and feloniously attempt to improperly influence the said Jacob Reiss as a juror in said cause in relation to the same by then and there requesting said Jacob Reiss to see that the right was done, that it would not be to his loss, and by the use of language of like import, the exact words being to the grand jury unknown; all said language being used with the purpose and intent on the part of said E. T. Dankwardt to improperly influence said Jacob Reiss in his actions and findings as a juror in said cause." *State*

v. Dankwardt, 107 Iowa 704, 77 N. W. 497.

II. Indictment for Embracery, Indefinite Offer of Gain, Defendant Not a Party.

"That on the 25th day of March, 1895, at the county of Carroll and state of Missouri, a certain panel of forty jurors of said county being then and there duly summoned, returned, impaneled, and sworn as to their qualifications to serve as jurors, and the said panel of forty jurors, being then and there qualified to sit on said jury, and being then and there accepted by the court as competent and qualified to serve as jurors on said jury, from which said panel of forty jurors, so returned, summoned, and qualified, and sworn as aforesaid, a jury of twelve jurors was then and there being selected to try a certain criminal cause in which the state of Missouri was plaintiff and Wm. P. Taylor and George E. Taylor were defendants, upon the charge of having feloniously killed and murdered one Gus Meeks, which said criminal cause was then and there depending and on trial in the circuit court in and for said Carroll county, the said circuit court then and there having jurisdiction of said criminal cause; and one J. S. Williams then and there well knowing the premises and facts aforesaid, and that one Charles Dickenson was one of the said panel of forty jurors as aforesaid, corruptly and wickedly and feloniously intending to hinder and prevent a just and fair trial of said cause and issue by said jury, did then and there unlawfully, knowingly, corruptly, wickedly and feloniously attempt to corrupt the said Charles Dickenson, one of the panel of forty jurors, from which said panel a jury was then and there being selected to try said cause as aforesaid, by offering to give to the said Charles Dickenson a gift and gratuity, to-wit, by then and there offering and promising to well pay the said Charles Dickenson if the said Charles Dickenson would return a verdict in favor of the said defendants or hang the jury then and there being selected to try said cause as aforesaid, and by saying to the said Charles Dickenson that he, the said Charles Dickenson, could well afford to leave his farm and sit on said jury and hang it, and that he, the said J. S. Williams would see that the said Charles Dickenson would get well paid

for bringing in a verdict for the said defendants or for hanging the said jury as aforesaid, he the said J. S. Williams, then and there and thereby offering to give and intending to give to the said Charles Dickenson money and other valuable things, the amount, kind, value, and character of which is to these jurors unknown, with the felonious intent then and there and thereby to bias the mind of the said Charles Dickenson and induce him, the said Charles Dickenson, to be more favorable to the side of the defendants, William P. Taylor and George E. Taylor, than to the side of the plaintiff, the state of Missouri, in the trial and decision of the said issue so joined and to be tried by and before said jury then and there being selected as aforesaid and to wickedly, corruptly, and feloniously bribe said Charles Dickenson so summoned as juror, against the peace and dignity of the state." *State v. Williams*, 136 Mo. 293, 38 S. W. 75.

III. Indictment for Embracery, Offer of Specific Property.

"The grand jury of said county charge that before the finding of this indictment Will White did corruptly offer, promise or give Peter Singleton, a juror regularly summoned to serve as a petit juror at the spring term 1890, of the circuit court of Escambia county, three yoke of oxen and a cart of the value of two hundred and fifty dollars, with the intent to bias the mind or influence the decision of such juror, in relation to a cause or matter which was pending in said court, wherein Will White was the defendant and the state of Alabama was plaintiff, and said White was charged with grand larceny. And the grand jury aforesaid further charge that before the finding of this indictment Will White did corruptly offer, promise or give to Peter Singleton, a juror who was empanelled and sworn as a juror at the spring term 1890 of the circuit court of Escambia county, Alabama, three yoke of oxen and a cart of the value of two hundred and fifty dollars, in relation to a cause or matter which was pending in said court, wherein the said Will White was defendant and the State of Alabama was plaintiff, and the said White was charged with grand larceny, against the peace and dignity of the State of Alabama." *White v. State*, 103 Ala. 72, 16 So. 63.

EMINENT DOMAIN.

- I. Petition for Condemnation for Railroad Bridge, 457
- II. Petition, Acquiring Land for Railroad, 458
- III. Petition To Condemn Right of Way Across Tracks of Another, 459
- IV. Petition To Condemn Ground for State Capitol, 460
- V. Statement of Petition for Condemnation for Telegraph, 460
- VI. Statement of Object of Improvement, 461
- VII. Plea by Owner in Condemnation Proceedings, 461
- VIII. Plea Setting Up Condemnation Proceedings, 461
- IX. Answer in Condemnation Proceedings, 462
- X. Supplemental Answer in Condemnation Proceedings, 462
- XI. Stipulation as to Title, 463
- XII. Order for Hearing, 463
- XIII. Report of Commissioners, 463
- XIV. Report of Viewers, 464
- XV. Notice of Filing Report in Condemnation Proceedings, 464
- XVI. Bond for Payment of Assessed Damages, 464
- XVII. Application for Assessment by Jury, 464
- XVIII. Order To Summon Jury, 465
- XIX. Verdict of Jury, 465
- XX. Judgment on Findings, Jury Waived, 465
- XXI. Order on Condemnation, 465
- XXII. Notice of Appeal From Assessment by Commissioners, 466
- XXIII. Appeal From Order of Board of Aldermen, 466
- XXIV. Complaint for Injunction Against Using Without Compensation, 466
- XXV. Complaint in Action for Damages by Landowner, 467
- XXVI. Complaint for Injury to Adjoining Property, 468

CROSS-REFERENCES:

INJUNCTIONS:

Injunction Against Taking Possession of Lands Without Payment.

MUNICIPAL CORPORATIONS:

Complaint To Recover Agreed Damages for Property Illegally Taken for Public Improvement.

Note.—Proceedings for the condemnation of land are of statutory origin. They are quite diverse in their character, even in the same state where land is condemned for different purposes. The following forms from adjudicated cases will be suggestive in preparing forms in similar cases, due reference being always had to the particular statute applicable to the particular case in the state where used.

I. Petition for Condemnation of Land for Railroad Bridge.

In the circuit court of Scott County, Missouri, to October Term, 1902.

Southern Illinois & Missouri Bridge Company, Plaintiff *v.* Robert Stone, R. M. Finley, Nannie E. Finley, David Heldt, Burhardt Miller, and Perry Bates, Defendants.

"Plaintiff for its cause of action says it is a corporation regularly incorporated under the laws of the state of Illinois, and has obtained from the secretary of state of the state of Missouri authority to do business in the state of Missouri. That it is incorporated for the purpose of erecting and maintaining a bridge across the Mississippi river from a point near Thebes, in Alexander county, Illinois, to a point near Manning's Landing, in Scott county, Missouri, with the necessary appurtenances thereto. That said bridge is intended as a railway bridge, and it is necessary for this plaintiff to have a right of way for its railway tracks, bridge, and terminal yards, etc. That the general direction of its yards will be westwardly from the western bank of the Mississippi river. That for the purpose of carrying out its charter privileges it is necessary for it to hold and to own the following described tract of land, lying and being in the county of Scott, state of Missouri, to-wit: A part of the southeast and southwest parts of private survey No. 794 in township 30, range 14 east, and in lot 2 of the northeast quarter of section 2, township 29, range 14 east, being a tract of land two hundred feet wide, one hundred feet on each side of the center line of the approaches to the Southern Missouri & Illinois Bridge Company, as located and platted, beginning at a point on the east line of fractional section 24, township 30, range 14 east, and 1,240 feet from the southeast corner of said fractional section, thence run south, 70 degrees 45 minutes east, 765 feet, thence by a one

degree curve to the right 980.4 feet; thence south, 59 degrees 45 minutes east, 924.8 feet; thence by a two degree and thirty minute curve to the left 1,289.3 feet; thence north 87 degrees 51 minutes east, to the west bank of the Mississippi river; said center line intersects the north line of township 29, 100.5 feet west of the northwest corner of lot 2 in the northeast quarter of section 2, township 29, range 14 east, and also intersects the west line of said lot 2, 69.1 feet south of the northwest corner of said lot 2. The tract above described contains 20.3 acres, and will appear by a blue print hereto attached and made a part of this petition.

"That the defendants herein, together with R. M. Finley, the husband of one of the defendants, are the owners of said real estate. That defendants Held, Miller, and Bates are tenants, having growing crops on different portions of said real estate. That the defendants have refused to relinquish to the plaintiff the right to the occupancy and use of said real estate for the purposes designated. That your petitioner has endeavored to agree with defendants and each of them upon the price to be paid for said property, but has been unable to amicably settle or to agree at all upon a proper compensation to either of the parties defendant. That said real estate is necessary for the laying of tracks and the handling of business over and across plaintiff's bridge. Wherefore your petitioner prays the court to make such order and decrees that may be proper and necessary, and to appoint three freeholders of the county of Scott and state of Missouri as commissioners to assess the damages which defendants may sustain in consequence of the establishment, erection, and maintenance of said road and approaches over and through the said premises and for all proper orders. *Southern I. & M. Bridge Co. v. Stone*, 174 Mo. 1, 73 S. W. 453, 63 L. R. A. 301.

II. Petition, Acquiring Land for Railroad.

St. Louis, Kansas City & Colorado Railroad Company, of the State of Kansas, plaintiffs, *v.* William P. Lewright, James M. Lewright, Elijah McLean and L. B. Kitchen, defendants.

The plaintiff states that it is a corporation duly organized and existing under the laws of the state of Kansas for the purpose of constructing and maintaining a standard gauge railroad from a point in the western line of Seward county in said state of Kansas, near the center of said line eastwardly, through the counties of Seward, Ford, Comanche, Barbour, Harper, Sumner, Cowley, Choutaque, Linn, Elk, Wilson, Neosho, Crawford and Bourbon in said state of Kansas, to a point in the eastern line of said Linn county, near the center of said line; thence through the state of Missouri eastwardly, through the counties of Vernon, Bates, Henry, Johnson, Cass and Jackson, in the state of Missouri, to the union depot in Kansas City and said Jackson county; and from the point where said railroad runs northwestwardly to Kansas City aforesaid, eastwardly through the counties of Henry, Miller, Osage, Maries, Gasconade, Franklin, St. Louis, to and into the city of St. Louis, Missouri, to, through and along the union depot in the said city of St. Louis, to the west bank of the Mississippi river at said city of St. Louis.

The plaintiff as authorized by the laws of the said states of Kansas and Missouri is about to construct, operate and maintain, and is now constructing, with the design and intention of operating and maintaining a standard gauge railroad over that part or portion of said road survey which passes through said county of Franklin, Missouri, in a general southwesterly direction from the town of Labadie in said county to the town of Union in said county.

That plaintiff has caused to be made an amended profile map of the route surveyed and adopted by plaintiff of that part of said railroad line in said Franklin county between the said towns of Labadie and Union.

That said amended profile map, made, certified to and filed in the office of the clerk of the county court of said county as aforesaid, shows the actual survey, location and distance of the roadbed through the several lots and tracts of land, and the congressional sections through which the road runs, and the number of miles, main and side tracks of said road on said portion of said railroad line in said part of said county.

That your petitioner has given written notice to all actual occupants of the lands hereinafter described of the defendants, over which the route of said railroad has been relocated and designated as aforesaid, of the location of said road through the same as shown by said amended profile map.

Plaintiff further states that as a common carrier and for the public benefit and convenience it needs and seeks to acquire for the purposes aforesaid and for the additional purposes of cutting and embankments, necessary for the proper construction and security of said railroad, a strip of land of the uniform width of one hundred feet in the following described tracts and parcels of land situated in said county of Franklin, between the said towns of Labadie and Union, through and over which said railroad route is surveyed and located, as aforesaid, with the courses of said roadbed, and the number of acres and parts of acres sought to be appropriated, and which said land is owned by the defendant, William P. Lewright, to-wit: The west half of the southeast quarter and the northeast quarter of the southeast quarter and southwest quarter of section 36, in township 44, and northwest quarter of the northwest quarter, section 1, township 43, all in range 1, east. That the center line of said strip of lands sought to be appropriated for the purposes aforesaid enters the north boundary line of said southeast quarter of said section 36, about one thousand and fifty feet west of the northeast corner of said quarter section, and is located on said lands in a general southwesterly and northeasterly direction, passing out of said section 36, township 44, range 1 east, one hundred feet east of the southwest corner thereof, into said section 1, township 43, range 1 east, and continuing in the same general southwesterly direction until said center line of said railroad intersects the west line of said section 1, township 43, range 1 east, about one hundred feet south of the northwest corner thereof. That the amount of land sought to be appropriated and used by the plaintiff for the purposes of the construction of the roadbed is about eleven and six-tenths acres.

Plaintiff further states that it has, by and through its agents, made efforts to purchase of the defendant, William

P. Lewright, the above described strip of land, for the purposes aforesaid, at a fair and reasonable compensation, to be paid to him by the plaintiff, but plaintiff, although so endeavoring, yet cannot agree with the said defendant, William P. Lewright, upon the just and fair compensation for said strip.

Wherefore, plaintiff prays this honorable court to appoint three disinterested freeholders, residents of said county of Franklin, as commissioners to ascertain and assess the damages which the said defendant, William P. Lewright, may sustain, and the just compensation to which he may be entitled in consequence of the construction, maintaining and operating of said railroad through said lands as aforesaid. *St. Louis, etc. R. Co. v. Lewright*, 113 Mo. 660, 663, 21 S. W. 210.

III. Petition To Condemn Right of Way Across Tracks of Another Company.

Your petitioner, the Englewood Connecting Railway Company, respectfully shows unto your honor that it is a corporation duly organized and existing under and by virtue of the law of the state of Illinois, and as such is authorized to construct and operate a line of railroad from a point on the Chicago, St. Louis and Pittsburgh railroad, in the town of Lake, in the county of Cook and state of Illinois, between Fifty-eighth and Fifty-ninth streets, running thence eastwardly to a point on the Pittsburgh, Fort Wayne and Chicago railroad, in said town, county and state, between said Fifty-eighth and Fifty-ninth streets, with the right to construct all such side-tracks, switches, and lateral and other branches, as the said railway company from time to time, by resolution of its board of directors, determine and elect to build. Your petitioner further shows that its said line of railroad is located in accordance with its charter; that the said line of railroad so located by your petitioner intersects and passes over and across the railroad tracks of the Chicago and Western Indiana Railroad Company laid in Wallace street, in said town of Lake, at a point in front of, and opposite to, lots 11 and 12, in block 4, in Eliza A. Temple's subdivision of the east half of the southwest quarter of the southwest quarter of the northwest quarter of section 16, township 38,

north, range 14, east of the third principal meridian, and that your petitioner desires to appropriate and use so much of the track of said Chicago and Western Indiana Railroad Company, in said Wallace street, as may be necessary to make the crossing for two main railroad tracks of your petitioner; that said crossing is necessary for the purposes of your petitioner's railroad, and to operate the same; that your petitioner is unable to agree with said Chicago and Western Indiana Railroad Company as to the proper or just compensation to be paid to said railroad company for said crossing. Your petitioner further shows that it is ready and willing, and has offered to said railroad company, and hereby offers, to put down, at your petitioner's cost, all necessary crossing frogs for two main tracks over the said tracks of said Chicago and Western Indiana Railroad Company, in said Wallace street, and to perpetually keep and maintain the said crossing in good and safe repair and condition, at your petitioner's charge and cost; that your petitioner therefore prays that summons may be ordered to issue to said Chicago and Western Indiana Railroad Company, defendant, commanding it to appear before this honorable court on the first day of its next term, and that a jury may be empaneled to ascertain the just compensation to be paid by your petitioner to said defendant for said crossing for said main tracks of your petitioner's railroad. And your petitioner will ever pray, etc. Chicago, etc. R. Co. v. Englewood C. R. Co., 115 Ill. 375, 4 N. E. 246.

IV. Petition To Condemn Certain Lots for State Capitol.

"Notice to Property Owners. To the Hon. John H. McKune, district judge for the sixth judicial district, county of Sacramento, state of California—John G. Downey, acting governor; Johnson Price, secretary of state; Thomas Findley, state treasurer; A. C. Monson and Alfred Redington, by Thomas H. Williams, attorney-general, respectively petitioning, represent:

That they compose the Board of Commissioners created by the act entitled 'An Act to provide for the Construction of the State Capitol in the city of Sacramento,' approved March 29th, 1860.

Your petitioners further represent, that they have caused a description and abstract of the title to the ground or tract of land described in the first section of said act, to be made, setting forth the names and residence of each owner or person interested therein in any manner whatever, or who claims any interest therein, present or future, so far as known to the attorney-general, or as appears by record in the recorder's office of Sacramento county; which said description and abstract of title is herewith filed, marked 'A,' and made part of this petition.

Wherefore, the premises considered, your petitioners pray that your honor will appoint commissioners, or cause to be appointed commissioners, to ascertain the compensation to be made to the person or persons lawfully entitled to the same, for the land in said act described, and hereinbefore mentioned, or any part thereof. As in duty bound, they will ever pray, etc.

Respectfully,
Thomas H. Williams,
Attorney-General."

Koppikus v. State Capitol Com., 16 Cal. 248.

V. Statement of Petition for Condemnation for Telegraph Line.

The petition of the company upon which the appointment was made sets out that the petitioner is a corporation organized under the provisions of "An Act to Incorporate and Regulate Telegraph Companies" and the acts supplementary thereto. Revision, p. 1174. That the object of the corporation is to build a line of telegraph for telegraphic or telephonic communication, or both, within and through certain counties in the state of New Jersey, to various cities, towns, boroughs and villages and other convenient localities for said business therein. That, in addition to these uses of said line as hereinafter mentioned, to establish, let, conduct and manage private or other telegraphic or telephonic lines, or both, and instruments and other means and appliances for the use of individuals, firms, corporations, municipalities and others, and to carry on a general telegraph and telephone business, either or both, for all purposes whatsoever, upon the whole of said line, in all the localities aforesaid, and in connection with other telegraph or telephone line or lines within the state of New Jer-

sey, and also to purchase, control, lease, let or use and subgrant all patents and licenses and rights now or hereafter existing, for the purposes of the business hereinbefore set out. The petition then sets out the description of the line of telegraph or telephone, and the localities it is intended to traverse. It is to consist of such poles, with cross-arms, fixtures and appliances, as may be necessary to sustain such wires, cables or other electrical conductors as may be required for the purpose of conducting a telegraph or telephone business, or both. It then describes the part of the road, running over the land of the prosecutor, upon which the poles are to be placed, and sets out that a map or diagram is presented with the petition, showing the situation of the road in relation to the land of prosecutor, the intended location of each post or pole, the distance between each post or pole. The petition then sets out the size of the poles, the maximum distance from the ground to the point where wires are to be attached to the poles. *State, Duke v. Central New Jersey Tel. Co., 53 N. J. L. 341, 21 Atl. 460, 11 L. R. A. 664.*

VI. Statement of Object of Improvement, Petition for Condemnation.

We think the petition states fully enough, in a "general way," the nature and extent of the use of the land that will be required in making and maintaining the improvement as required by law. It states the object of the improvement to be the opening "and extending of Eleventh Street from Leverett Street to Michigan Avenue, where not already opened, sixty feet wide; and that, in making and maintaining the proposed improvement, a perpetual right of way over the different pieces or parcels of private property hereinafter described will be necessary; and that such right of way is purposed to be used for the purpose of a public street and highway." It is difficult to see what more is needed to fulfill the requirements of the statute in this respect. *Detroit v. Beecher, 75 Mich. 454, 42 N. W. 986, 4 L. R. A. 813.*

VII. Plea by Owner, in Condemnation Proceedings, Jurisdiction.

"And now comes Samuel R. Throckmorton and pleads to the jurisdiction of the Court. And for his plea he

denies the existence of any jurisdictional fact authorizing the proceeding attempted by the applicant herein; and he specially pleads that the United States do not now desire to purchase the land mentioned, having already, by an agreement evidenced by writing, purchased the same from this appearer on the nineteenth of February, 1858, by and through the action of P. Della Torre, Esq., late District Attorney of the United States, duly authorized and empowered in that behalf by the Secretary of War, the whole pursuant to an Act of the Congress of the United States, passed March 3d, 1857.

And this appearer denies that he has ever refused to convey said land to the United States; he expressly avers that no one in their behalf has ever tendered to him any sum of money as the purchase price or equivalent of said land, different from that which he originally charged therefor, and which the Government of the United States, after much negotiation, and after being duly advised in the premises, agreed in writing to pay him; and he expressly denies that that sum of money has been tendered him, though the United States has frequently promised the same, in compliance with their duty pursuant to the contract of sale aforesaid. And further this appearer pleads, that, hereby expressly reserving his lawful right to recede from the contract aforesaid, should the conduct of the United States touching said contract make it his interest and his privilege so to recede, he has ever been and now is willing and able to convey said lands, in strict pursuance of the contract aforesaid. And he further pleads that the law of California of February 14th, 1859, entitled 'an act for the relinquishment to the United States, in certain cases, to title of lands, etc., and site of light-houses,' etc., is unconstitutional, null and void.

And he asks that the application for an order of publication be rejected." *Gilmer v. Lime Point, 18 Cal. 229, 233.*

VIII. Plea Setting Up Condemnation Proceedings.

"1. A general denial; secondly, that the Chicago, Kansas & Western Railroad Company was formed by consolidation of the Leroy & Western Railway Company, and several other companies, the agreement of consoli-

tion being duly ratified and filed in the office of the secretary of state of the state of Kansas, the agreement being entered into on the 1st day of June, 1886; that the Leroy & Western Railway Company was, at the time stated, and prior to June 1st, 1886, a railroad company duly organized and existing under the laws of the state of Kansas, and authorized to build a line of railroad through Sedgwick county, Kansas, and that on the 15th day of March, 1886, it made application to the Hon. T. B. Wall, judge of the district court of Sedgwick county, for the appointment of commissioners to appraise lands along the line of its railroad, and make appraisement and assessment of damages for lands taken as a right-of-way, etc., as required by law, and the judge appointed three commissioners as required by law; that said commissioners gave due notice as required by law; that on the 26th day of April, 1886, in pursuance of such notice, they proceeded to view, survey and assess damages for a right-of-way through the land described in plaintiff's petition, and damages to the land not taken, and damages to the crops on said land, in the aggregate sum of \$141.50; that the report of said commissioners was filed and recorded in the office of the county clerk of said county on the 29th day of April, 1886; and on said day the said the Leroy & Western Railroad Company deposited said sum of \$141.50 with the county treasurer of said county for the owners of said land; that the application and appointment of said commissioners were duly recorded in the office of the register of deeds of said county on the 15th day of March, 1886; that said award for damages to said land has never been set aside, vacated, or appealed from, and is in full force and effect." *Chicago, K. & W. R. Co. v. Abbott*, 44 Kan. 170, 24 Pac. 52.

IX. Answer, Landowner in Condemnation Proceeding (a).

"1. Now comes the defendant, and for its amended answer to the plaintiff's petition, denies each and every material allegation therein contained, except as hereinafter directly admitted.

3. For a third and further defense, the defendant admits that it is a corporation, and is engaged in the operation of a railroad into and through the

county of Osage, and over and upon F. street in the city of Osage City, in Osage county, state of Kansas; and the defendant says, that the said city ordinance, number 166, entitled 'An ordinance granting the right-of-way to the Ottawa, Osage City & Council Grove Railroad Company, through the city of Osage City, Osage county, state of Kansas,' which was passed and approved October 31, 1885, and which was duly published, and was at the time complained of in plaintiff's petition, and is a valid ordinance of said city, granted to the defendant a right-of-way to construct, operate and maintain its railroad track and such turnouts, switches and side-tracks as are essential and necessary to the transaction of the business of said company upon said F street, and the right to make drains along the said F street, and to run cars, trains and engines upon such right-of-way; and under the authority conferred by said ordinance, this defendant has, in a proper and legal manner, constructed its track on said F street in said city, and runs its cars, trains and engines upon said street, and made necessary alterations of the surface of the street, and has not unnecessarily impaired the usefulness of said street for public travel and access to the abutting lots." *Ottawa, O. C. & C. G. R. Co. v. Larson*, 40 Kan. 301, 19 Pac. 661.

Answer by Landowner, in Condemnation Proceedings (b).

"Now comes the defendant above named, and for answer to the petition filed by the plaintiff admits that it is a corporation organized under and by virtue of the laws of the state of Illinois, and that it is operating certain lines of railroad in the state of Nebraska. Further answering the said petition, the defendant denies each and every allegation therein contained." *Koenig v. Chicago, etc. R. Co.*, 27 Neb. 699, 43 N. W. 423.

X. Supplemental Answer in Condemnation Proceedings.

"Now comes the above named defendant, and for a supplemental answer to the petition herein, admits that it is a corporation duly organized under and by virtue of the laws of the state of Illinois, and that it is operating certain lines of railroad in the state of Nebraska. . . . And defendant had the right to construct, main-

tain, and use a track across the said lot by virtue of a contract duly executed, signed, and delivered by the plaintiff on the 22d day of June, 1887, wherein Henry T. Clarke was party of the second part, and which contract and the terms and condition thereof said Clarke had duly kept and performed, but said plaintiff now refuses to keep and perform." And after alleging certain condemnation proceedings by the Lincoln & Northwestern railway in its behalf, it alleges that "Further answering the said petition, the defendant denies each and every allegation therein contained." *Koenig v. Chicago, etc. R. Co.*, 27 Neb. 699, 43 N. W. 423.

XI. Stipulation as to Title in Condemnation Proceedings.

"It is stipulated in the above entitled cause, that the railway over the tracts of land sought to be condemned in this proceeding, was constructed by the Springfield and Northwestern Railroad Company; that at the time the land described in plaintiffs' petition was appropriated by said Springfield and Northwestern Railroad Company, the title to said land was in John T. Bennett; that subsequent to the building of said road, to-wit, in 1872, McDougall and Hamilton, defendants herein, acquired a fee simple title to said lands, and are now, and ever since have been, the owners of said land in fee simple, and also at said time acquired title to all the land described in the cross-petition herein, and still have title thereto." *Wabash, St. L. & P. R. Co. v. McDougall*, 118 Ill. 229, 8 N. E. 678.

XII. Order for Hearing in Condemnation Proceedings.

"State of California, county of Sacramento.

Having read the foregoing petition, I order that the hearing of the same be set for Friday, the first day of June, A. D. 1860, at the hour of ten and a half o'clock, a. m.; that said hearing take place at the court house in the city of Sacramento, state of California; and the persons named in the abstract of title filed with the petition aforesaid, together with all others interested in the land described and mentioned in said petition and abstract, are hereby required to appear before me at the time and place aforesaid, to show cause, if any they have, why the prayer of said petition should not be granted.

Given under my hand, at chambers, in the city of Sacramento, on this, the twenty-fifth day of April, A. D. 1860.

John H. McKune,

District Judge, Sixth District."

Koppikus v. State Capitol Com., 16 Cal. 248.

XIII. Report of Commissioners in Condemnation Proceedings.

"The undersigned, W. N. Randall, George Morris and C. W. Bomgardner, commissioners appointed by the judge of this court, by order dated December 15, 1890, to ascertain and determine the necessity for the taking of lands described in the complaints herein, for the purpose of constructing the canal of the plaintiff and to appraise and determine the damages and compensation to be allowed the owners and persons interested in the real estate so proposed to be taken and damaged for the purpose alleged in the petition herein, respectfully report that, as such commissioners, we held our first meeting at the town of La Junta, on the 29th day of December, A. D. 1890, and by agreement of the parties hereto, adjourned to the 12th day of January, A. D. 1891, when we met and issued subpoenas, then adjourned to the 26th day of January, A. D. 1891, when we met at the town of La Junta for the purpose of hearing the testimony and continued the taking of testimony until the evening of the 27th day of January, 1891. All parties to said actions appearing, the said plaintiff by B. L. Carr and Geo. A. Kilgore, its attorneys, and the said defendants by Gerry and Campbell, their attorneys; that on the 28th day of January, 1891, we viewed the premises in controversy, and on the 29th day of January, 1891, we listened to the arguments of the counsel; that we have heard all the proofs and allegations of the parties, and after viewing the said premises, we have ascertained and do hereby certify as follows:

That in order to construct this canal it is necessary for the plaintiff to take and use that portion of the lands occupied by the defendants hereinafter described.

That an accurate description of the lands occupied by the defendant Fossdick, so necessary to be taken is as follows:

That the value of said land so actually taken is \$356.75.

That the damages to the remainder of said Fosdick's land amount to the sum of \$1,390.00.

That the value of the benefits amount to \$_____.

That an accurate description of the land occupied by the defendant Hungerford, so necessary to be taken is as follows:

That the value of said land so actually taken is \$128.95.

That the damages to the remainder of said Hungerford's land amount to the sum of \$920.00.

That the value of the benefits amount to _____." *Otero Canal Co. v. Fosdick*, 20 Colo. 522, 524, 39 Pac. 332.

XIV. Report of Viewers in Condemnation Proceedings.

"That the Pennsylvania Railroad Company, heretofore, to-wit: Anno Domini 1851, entered in upon the said tract of land, then and aforesaid owned by your petitioner and his ward, and constructed the railroad of the said company, through and over said lands, to the great damage and injury of your petitioner and his said ward. That the said Pennsylvania Railroad Company hath never paid to your petitioner any sum of money whatsoever, for and in satisfaction of the damages by him sustained in the premises; he, therefore, prays your honors for the appointment of viewers to estimate and determine the damages aforesaid, according to the Acts of Assembly in such cases made and provided, and he will ever pray, etc." *Pennsylvania R. Co. v. Porter*, 29 Pa. 165.

XV. Notice of Filing Report in Condemnation Proceedings.

"To the said defendant, David Atchison:

You are hereby notified that the commissioners appointed by the court to assess the damages which you may sustain by reason of the appropriation of your property by said plaintiff for the purpose mentioned in its petition, did on the seventeenth day of April, 1893, file and report all their proceedings as such commissioners." *Leavenworth Terminal R. & B. Co. v. Atchison*, 137 Mo. 218, 223, 37 S. W. 913.

XVI. Bond for Payment of Assessed Damage in Condemnation Proceedings.

"The Rock Island and Alton Rail-

road Company, principal, and David Skilling, Robert E. Haggart, William H. Wilson, F. T. Hale, securities, acknowledge themselves to be jointly and severally bound unto Alexander J. Hawks, John Gamon and Mary Ann Gamon, his wife, Robert Seathe, James Coultas, Hezekiah Evans, Hiram Kelly, John Collins, and William G. Coy, according to their relative and respective several interests, in the penal sum of three thousand dollars (\$3,000), on this express condition, that the said railroad company shall, on the assessment of damages, to be made to secure right of way for said railroad, pay to the obligees, relatively and respectively, damages which may be assessed as aforesaid, then this bond to be void, otherwise to remain in full force and effect. Given under our hands and seals, this 26th day of May, 1858." *St. Louis, etc. R. Co. v. Coultas*, 33 Ill. 189.

XVII. Application for Assessment of Damages by Jury in Condemnation Proceedings.

"To the Hon. County Commissioners for the county of Middlesex, at their meeting to be held at Cambridge on the twenty-fifth day of March, 1845, by adjournment from the first Tuesday of January, 1845.

The petition of Lucy J. Walker of Charlestown, in said county, respectfully represents: That at a special meeting of your Honors held at Charlestown in said county, on the fourteenth of November last, she presented her petition for an appraisement of damages against the Boston and Maine Extension Railroad Company, occasioned by the laying out and constructing the railroad of said company over and across the flats appurtenant to the wharf estate owned by your petitioner, as set forth in her said petition, when and where your Honors, having viewed the premises, heard the respective parties. And at the meeting of your Honors, held at said Cambridge on the first Tuesday of January, 1845, you did estimate and award the damages sustained by your petitioner, to be paid her by said company, at the sum of eight hundred dollars, with costs taxed at the sum of forty-five dollars eighty-seven cents. That your petitioner is dissatisfied with said estimate, and wishes to have her said damages assessed by a jury. Wherefore she prays

your honors to issue your warrant for a jury to assess her said damages, agreeable to the statute in such cases made and provided." *Walker v. Boston & M. R.*, 3 Cush. (Mass.) 1.

XVIII. Order To Summon Jury in Condemnation Proceedings.

"Middlesex, ss. County Commissioners' meeting at Cambridge, January, 1846, and by adjournment at said Cambridge on the twenty-sixth day of March, 1846.

This petition was presented to the county commissioners at their January meeting last, and thence said petition hath been continued from time to time, to this time. It is now ordered, that the clerk forthwith issue a warrant, directed to the sheriff of said county of Middlesex, to summon a jury according to law in such case made and provided for the purposes in said petition mentioned." *Walker v. Boston & M. R.*, 3 Cush. (Mass.) 1.

XIX. Verdict of Jury in Condemnation Proceedings.

"Middlesex, ss. June 18th, 1846. Verdict of the jury in the case of Lucy J. Walker, of Charlestown, petitioner, against the Boston and Maine Railroad Company.

The jury empanelled by Samuel Chandler, sheriff of said county, to estimate and assess the damages sustained by the said Lucy J. Walker, occasioned by laying out and constructing the railroad of said company over and across her land and flats, as set forth in her petition, having been first duly sworn, by Samuel Chandler, sheriff, and having chosen Orr S. Town foreman, by ballot, after viewing the premises, and fully hearing the evidence and the parties, do find, and our verdict is, that the said Lucy J. Walker recover, against the said Boston and Maine Railroad Company, the sum of fourteen hundred and fifty dollars and seventy-one cents, as her damages sustained as aforesaid. In witness whereof, we have hereunto set our hands and seals, this eighteenth day of June, A. D. 1846." *Walker v. Boston & M. R.*, 3 Cush. (Mass.) 1.

XX. Judgment on Findings, Jury Being Waived, in Condemnation Proceedings.

"The court being sufficiently advised, doth find that the value of the property in controversy, to-wit, lot 7, in block 18, in Carpenter's addition

to Chicago, is the sum of \$10,000. The court also finds that the value of the frame buildings, situated in the rear of said lot, is the sum of \$2500. The court also finds that the value of the partially constructed brick building upon the front part of said lot, as a part of a building to be completed upon said lot, including the present cost of the construction thereof, and the respondent's own trouble and loss of time in the preparation of said building, and for loss of use of capital invested therein, for architect's fees, the amount for which the respondent is liable to contractors, and the inconvenience and cost of the removal of his business from said premises, the sum of \$5500, making a total compensation for all damages resulting from the taking of said premises, the sum of \$18,000. Therefore it is ordered and adjudged by the court, that the full compensation for the taking of the said premises, and for all damages to the respondents, William P. Hock, and Wilhelmina Hock, his wife, shall be the sum of \$18,000, of which sum \$966 is to be paid to Gustav Wolff, in full of his claim upon the premises; . . . that petitioner may enter upon said premises, and shall have exclusive possession thereof, for the use and purpose of said railroad company, upon the payment of said sum of \$966 to said Wolff, and the sum of \$17,034 to the said William P. Hock." *Chicago, M. & St. P. R. Co. v. Hock*, 118 Ill. 587, 9 N. E. 205.

XXI. Order on Condemnation of Land.

That court (state supreme court), on November 19, 1891, issued a peremptory writ of mandamus, as prayed for. 89 Mich. 210. On November 30, 1891, the circuit court, in compliance with this writ, entered an order, which, as amended, confirmed the verdict and award of the jury, and also provided as follows:

"It is further ordered that within sixty days from the date of this order the Fort Street Union Depot Company is required to tender and pay to Absalom Backus, Jr., the sum of seventeen thousand, eight hundred and fifty dollars, and to A. Backus, Jr. & Sons the sum of seventy-eight thousand, two hundred and ninety-three dollars, and to James N. Dean and William H. Davidson, executors, the sum of one dollar, together with their costs and ex-

penses, if the same have been taxed, including an attorney's fee of twenty-five dollars; and if the said parties or either of them refuse to accept the tender and payment of said sums the Fort Street Union Depot Company is required to deposit the same, under the supervision of the clerk of this court, in the Detroit National Bank and to the credit of this cause, including said costs and expenses; provided, that if said costs and expenses have not been taxed within the said sixty days the same to be so deposited within five days after they are taxed.

Said money shall remain on deposit in said bank, but, at the risk of the petitioner, subject to be drawn therefrom and to be paid to the parties entitled to the same on orders signed by one of the judges of this court and countersigned by the clerk.

It is further ordered that upon the tender and payment or deposit of said sum of ninety-six thousand, one hundred and forty-four dollars, and of said costs, expenses, and counsel fees, as aforesaid, the Fort Street Union Depot Company shall be entitled to enter upon and take possession of and use the right of way above described for the purpose of its incorporation under its articles of association and the Constitution and laws of this state, and that said respondent shall be divested and barred of all right, estate, and interest in such right of way until such right or title, shall be again legally vested in them and said right of way shall be deemed to have been acquired by said company for public use." *Backus & Sons v. Fort Street Union Depot Co.*, 169 U. S. 557, 18 Sup. Ct. 445, 42 L. ed. 853.

XXII. Notice of Appeal From Assessment by Commissioners.

"You will please take notice that we have appealed from the assessment of damages made by the commissioners appointed by S. P. McCaddon, sheriff of Johnson county, state of Iowa, on the 26th day of August and the 14th day of September, A. D. 1872, on our land for right of way for said railroad company. The land described as follows, to-wit: the west half of the southwest quarter of section 27, in township 80, north of range 5, west of the 5th P. M., to the circuit court of the state of Iowa, in and for Johnson county, and that such an appeal

will be brought on for further proceeding at the November term of the circuit court, to be begun and held at the court house in Iowa city, in said county, on the 18th day of November, A. D. 1875.

Hahn & Wife,
Plaintiffs.

Cornell & Bro.,
Attorneys for plaintiffs."

Hahn r. C. O. & St. J. R. Co., 43 Iowa 333.

XXIII. Appeal From Order of Board of Aldermen in Condemnation Proceedings.

To the board of aldermen of the city of Edina, Knox county, Missouri.

You are hereby notified that I have appealed from your order approving the report of the commissioners (Rufus M. Ringer, William J. Slaughter and V. E. Lyeon) appointed by you on the first day of May, 1893, to assess damages to me and others for the location and establishment of Cottey street on and over my lands in said city of Edina. Said report being dated the fifth day of June, 1893; and said order of approval being dated the third day of July, 1893; and that said appeal is taken to said circuit court of Knox county, Missouri, from said order of approval and from said report of said commissioners and from all orders or proceedings of said board of aldermen in said premises.

Given under my hand this tenth day of October, 1893.

Mary L. Shoot, appellant.

By R. G. Balthrope, her attorney.

City of Edina v. Shoot, 129 Mo. 354, 31 S. W. 767.

XXIV. Complaint for Injunction Against Using Without Compensation.

"The plaintiff, Herman Koenig, a resident of Lincoln, Lancaster county, and state of Nebraska, complains of the said defendant, the Chicago, Burlington & Quincy R. R. Co., and alleges that said defendant is a foreign and non-resident railroad corporation, organized and incorporated under the laws of the state of Illinois and operating a line of railroad from the city of Chicago, in the state of Illinois, to the city of Lincoln, in the state of Nebraska, and from thence, either by lease or otherwise, various other railroads radiating in different directions from the said city of Lincoln, in

said state of Nebraska. The said plaintiff alleges that he is the owner of, and has the legal title to, and is in the possession of, lot two, in block thirty-one, of the city of Lincoln, county of Lancaster, and state of Nebraska, that he has a house upon the same, wherein he resides, and that said property is of the value of \$8,000. Plaintiff avers that the said defendant has laid its railroad tracks across the west end of said lot two, in said block thirty-one aforesaid, and extended the same from its main track across said lot to the warehouse and store-building of one Henry T. Clarke, situated at the intersection of Eighth and P streets in said city of Lincoln; and the said plaintiff alleges that the said defendant unlawfully, and without the assent, knowledge, or permission of the said plaintiff, entered upon said lot of the plaintiff's and laid its track and railroad ties thereon and is now operating, hauling, and running its freight cars across, over said track and across the lot of this plaintiff to the said warehouse aforesaid of the said Henry T. Clarke, without having compensated this plaintiff for his damages or tendered payment for the use and occupation of said premises, and without having taken any steps to condemn said land under the laws of the state of Nebraska, or securing to this plaintiff compensation in any manner whatsoever for the damage occasioned by the occupancy of said lot, and the use thereof, and for the operation of trains and cars across the same. And the plaintiff avers that by reason of the building in the construction of said railroad across said lot, and the operation of engines, trains, and cars over the same, contrary to law, and without the consent and permission of this plaintiff, he has suffered great and irreparable injury and has been deprived of the peaceful enjoyment of said premises and the life of himself and family has been and is daily endangered by the passing and repassing of cars over said track. Plaintiff also alleges that he has no adequate remedy at law, and that except for the interposition of this court he will be embroiled in a multiplicity of suits. Plaintiff further alleges that the said defendant threatens to continue the use of said track for said railroad purposes and operate trains over and across said lot, notwithstanding the request

of this plaintiff to desist therefrom, unless restrained by the order of this court." *Koenig v. Chicago, etc. R. Co.*, 27 Neb. 699, 43 N. W. 423.

XXV. Complaint in Action for Damages by Landowner on Condemnation.

"That he is the owner of lots numbers 6, 7, 8, and 9, in block 31, and lots numbers 4 and 5, in block 38, all in the Osage Carbon Company's second addition to Osage City, in Osage county, state of Kansas; that said second addition is duly platted of record, and the streets and alleys thereof, including F street, are duly and lawfully dedicated and opened to the public as such streets and alleys, and that the portion of said second addition, embracing plaintiff's said lots, is within the corporate limits of said Osage City; that plaintiff selected, purchased, improved, occupied and cultivated, and now occupies and cultivates said lands with reference to and for the purpose of his comfort, convenience and profit and the comfort and convenience of his family, and as his and his family's homestead; that, in furtherance and pursuance of said purposes, he has improved said lands with fences, family residence, barns and other necessary buildings, with fruit, ornamental and other trees, shrubs and plants, all at an aggregate expense to him of \$800.

"And plaintiff says that the defendant is a railroad corporation, duly organized under the laws of the state of Kansas, owning, constructing, occupying and operating a standard-gauge railroad, known and styled the Ottawa, Osage City & Council Grove Railroad; that said railroad is by defendant located, constructed and operated on and along the whole of F street in said second addition to Osage City, length and breadth, and on and along the south line and front of said lots Nos. 6, 7, 8, and 9, in said block 31, and on and along the north line and front of said lots 4 and 5 in block 38 of said second addition; that in constructing, locating and operating said railroad on and along said street, and upon and along said lines and fronts of said lands of plaintiff, defendant has dug and excavated large and deep ditches along and upon said street and along and upon said the said lines and fronts of plaintiff's said

lands, and raised and builded a great elevation along and upon said street, and along and upon the said lines and fronts of said lands of plaintiff, and has laid, fixed and fastened along and upon the top of said elevation, for the whole length thereof, the ties and track of said railroad; that thereby defendant has wholly occupied and destroyed said F street, length and breadth, and particularly on and along said lines and fronts of plaintiff's said lands as such streets and highways; and that said defendant has not repaired, amended or restored said street or any part thereof, or sought, undertaken or attempted to repair, mend or restore said street or any part thereof to its original or to any condition, state or degree of usefulness or availability as such street or public highway. And plaintiff further says that said street on and along said lines and fronts of his said lands is the only means of ingress or egress to his said lands, or appertaining in any way thereto.

"And he further says that the location, construction and operation of said railroad by said defendant as hereinbefore complained of, has destroyed, injured and impaired his said fences, dwelling house, barns and other buildings and improvements on said lands, and rendered them useless, untenable and unavailable, and has rendered said lands and premises unfit, undesirable and untenable for the uses and conveniences and comforts aforesaid, to his damage in the sum of \$1,000. Wherefore he prays judgment against said defendant for said sum of \$1,000, his damages so as aforesaid sustained." *Ottawa, O. C. & C. G. R. Co. v. Larson*, 40 Kan. 301, 19 Pac. 661.

XXVI. Complaint for Injury to Adjoining Property in Condemnation.

"Charles Fox complains of the Baltimore & Ohio Railroad Company, a corporation created by the laws of the State of Maryland, which has been summoned to answer," . . . "of a plea of trespass on the case, for that, whereas the said plaintiff on the 5th day of September, A. D. 1885, at the said county of Wood, was lawfully and peaceably in his demesne as of fee, and continually from thenceforth hitherto was seized, and yet is seized, as aforesaid, of a certain lot and premises lying and being in the county

of Wood, city of Parkersburg, W. Va., Avery street, and bounded and described as follows, to-wit: Beginning at a point on Avery street, on the west side thereof, twenty-five feet from Neal street, thence sixty-four feet, parallel with Neal street, towards Market street; thence twenty feet, parallel with Avery street, towards Court street; thence sixty-four feet, parallel with Neal street; thence twenty feet to the beginning—it being the same property conveyed to said plaintiff by C. Shattuck and wife by deed dated the 8th day of December, 1879, and of record in the county clerk's office of the County Court of Wood county, in Deed-Book 41, page 176, which said lot of the plaintiff is of great value, to-wit, of the value of fifteen hundred dollars; and by reason thereof the said plaintiff, before and at the time of the committing of the grievance hereinafter mentioned by said defendant, had the right for himself, servants and tenants to use, enjoy, pass and repass over and along said Avery street on foot and with carts, carriages and other vehicles, and also to have convenient access to lot and premises from said Avery street, from time to time, for the necessary ingress and egress to and from said lot and premises, and for the beneficial occupation and enjoyment of the same: Nevertheless the defendant well knowing the premises, to-wit, on the day and year aforesaid, at the county aforesaid, unlawfully, wrongfully and injuriously, and without the consent of the said plaintiff, laid a railroad track through said Avery street in front of said plaintiff's property, about eight feet from the sidewalk, and hath unlawfully, wrongfully and injuriously kept and continued to keep the said railroad track so laid by it as aforesaid through said street for a long space of time, to-wit, from thence hitherto, and thereby during all the time last aforesaid, the said defendant, by the track so laid through and along said Avery street, and by the use made of it, of said track, unlawfully, wrongfully, and injuriously deprived the said plaintiff from having full and free access to said lot and premises, and his facilities for ingress and egress to and from the said lot and premises have been greatly interrupted and cut off, and the value of said lot and premises thereby greatly diminished and damaged to the value of four hundred and

ninety-nine dollars. And whereas, also, the plaintiff, before and at the time of committing the grievance heretofore and hereafter mentioned, being so possessed of his said lot and premises as in first count is set forth, situated as aforesaid on Avery street in the city of Parkersburg, and upon which lot and premises there is situated a dwelling house and appurtenances, which said dwelling house had long before said grievance complained of, and thence hitherto, and now is occupied by tenants of said plaintiff, and by the occupation of said lot, premises, and dwelling-house by said tenants the plaintiff has derived great rents and profits and emoluments, and he, by means of said common highway, easements, and public street, had, together with the tenants, comfortable, safe, and convenient access to his said property; and the said defendant, not being ignorant of the premises, but wrongfully and injuriously contriving and intending injury, and to hinder and deprive him, the said plaintiff, of the use, enjoyment, and benefit of his said property, and of the rents and profits and emoluments aforesaid, and of the peaceful and uninterrupted occupancy and use of the same, and of safe and convenient access and ingress to and from the same, and without the consent and against the protest, did, as aforesaid, lay and construct a railroad track on said Avery street in front of the plaintiff's said dwelling house; and the said defendant during all the period aforesaid since the laying of said track has placed thereon divers freight cars, and caused the same to . . . moved and transported and propelled to and from, over and along said track, by means of a locomotive or steam engine attached thereto, causing great jarring noises and disturbing sounds with bells and steam whistles, thereby rendering it dangerous, inconvenient, and unsafe for plaintiff or his tenants to travel over and use said street and highway for a long space of time thenceforth hitherto, and thereby, during all the time aforesaid, said street and highway was and still is greatly obstructed and stopped up, and by means of all of said premises said plaintiff saith that he and his tenants are subjected to great inconvenience, and prevented from occupying said lot, dwelling-house and premises, and enjoying the same in so convenient and beneficial a man-

ner as otherwise. . . might and would have done but for the laying of the said railroad track as aforesaid, and the said dwelling-house and premises have, by means of the said premises aforesaid, been greatly damaged, lessened in value, and permanently injured; wherefore the said plaintiff saith he has sustained damages in the sum of four hundred and ninety-nine dollars; and therefore he sues," etc. *Fox v. Baltimore & O. R. Co.*, 34 W. Va. 466, 12 S. E. 757.

ENTRY, WRIT OF.—See WRIT OF ENTRY.

EQUITY JURISDICTION AND PROCEDURE.

I. Jurisdiction, 470

- A. *On What Jurisdiction Depends*, 470
- B. *Exclusive Jurisdiction*, 470
- C. *Concurrent Jurisdiction*, 470
- D. *Auxiliary Jurisdiction*, 471

II. Procedure, 471

- A. *General*, 471
 - 1. *Frame of Bills*, 471
 - 2. *Parties to Bills*, 471
 - 3. *Service of Bill*, 471
 - a. *Affidavit of Non-delivery*, 471
 - b. *Order of Dismissal*, 471
 - 4. *Process*, 471
 - 5. *Appearance*, 471
 - 6. *Pro Confesso*, 471
 - a. *Order for Decree Where Defendant Appears and Waives Objection*, 471
 - b. *Order for Decree Where Defendant Does Not Appear at Hearing*, 471
 - 7. *Guardians and Prochein Amis*, 471
 - 8. *Demurrers*, 472
 - 9. *Pleas*, 472
 - 10. *Answers*, 472
 - 11. *Disclaimer*, 472
 - 12. *Cross-Bill*, 472
 - 13. *Interpleader*, 472
 - 14. *Amendments to Bills*, 472
 - a. *Affidavit To Amend Bill Before Replication*, 472
 - b. *Petition for Leave To Withdraw Replication and Amend Bill*, 472
 - c. *Petition To Amend by Adding Defendant*, 472
 - d. *Petition To Amend Requiring Further Answer*, 472
 - e. *Petition To Amend Not Requiring Further Answer*, 473

- f. *Order for Leave To Withdraw and Amend Bill*, 473
- g. *Order for Leave To Amend After Plea to Part Is Allowed*, 473
- h. *Order for Leave To Amend After General Demurrer*, 473
- i. *Order for Leave To Amend Injunction Bill*, 473
15. *Exceptions to Answers*, 473
16. *Replications*, 474
17. *Dismissal by the Plaintiff*, 474
18. *Dismissal on Motion of Defendant*, 474
19. *Testimony, How Taken*, 474
20. *Form of Interrogatories*, 474
21. *Letters Rogatory*, 474
22. *Hearing*, 474
23. *Reference and Proceedings Before Master*, 474
 - a. *Master's Summons*, 474
 - b. *Certificate of Examination Not Brought in*, 474
 - c. *Examination of Party*, 475
 - d. *Exceptions to Examination of Party*, 475
 - e. *Master's Certificate on Exceptions to Examination of Party*, 475
 - f. *Exceptions to Report of Master*, 476
24. *Feigned Issues*, 476
25. *Decrees*, 476
26. *Enrolment of Decrees*, 476
27. *Bills of Revivor and Supplemental Bills*, 476
28. *Affidavit of New Matter for Bill of Review*, 476
29. *Petition for Leave To File Bill of Review*, 476
- B. *Interlocutory Applications and Proceedings*, 477
 1. *Affidavit*, 477
 2. *Jurats*, 477
 3. *Motions*, 477
 4. *Petitions*, 477
 5. *Scandal and Impertinence*, 477
 6. *Election*, 477
 7. *Payment Into Court*, 477
 8. *Production of Papers*, 477
 9. *Preliminary Injunctions*, 477
 10. *Ne Exeat*, 477
 11. *Receivers*, 477
 12. *Petition To Withdraw Plea or Demurrer*, 477
 13. *Petition That Feme Covert May Answer Separate*, 477
 14. *Affidavit for Order To Examine Witness Abroad*, 477
 15. *Notice of Motion for Decree*, 477
 16. *Petition To Enter Decree Nunc Pro Tunc*, 478
 17. *Leave To Enter Decree Nunc Pro Tunc*, 478
 18. *Notice of Motion To Vacate Enrolment of Decree*, 478

CROSS-REFERENCES:

GUARDIAN AND WARD:

Petition for Appointment of a General Guardian.

SURPLUSAGE AND SCANDAL:

Exceptions to Bill for Scandal and Impertinence;

Exceptions to Answer for Scandal and Impertinence;

Order To Expunge Scandal and Impertinence on Submission to Exceptions;

Order To Expunge Scandal and Impertinence From Answer on Report of Master.

I. Jurisdiction.

A. On What Jurisdiction Depends.

Note.—Equity jurisdiction depends on the statement of a cause of action in equity in the bill. The so-called jurisdiction clause (see Bills and Answers, I, F) is merely formal and has no legal effect.

B. Exclusive Jurisdiction.

For bills setting out causes under the exclusive jurisdiction, see titles as follows in this volume: *Chattel Mortgages* (same title); *Decedents' Estates* (same title); *Election* (see *Choice and Election of Remedies*); *Guardian and Ward* (same title); *Husband and Wife* (same title); *Liens* (same title); *Marshaling Assets* (same title) *Mortgages* (same title); *Pawns and Pledges* (see *Pledges*); *Penalties, Forfeitures and Fines* (same title); *Trusts and Trustees* (same title); *Wills* (same title).

C. Concurrent Jurisdiction.

For bills setting out a cause of action under the concurrent jurisdiction, see titles as follows in this volume: *Account and Accounting* (same title); *Contribution* (same title); *Dower, Proceedings To Recover* (same title); *Fraud and Deceit* (same title); *Injunctions* (same title); *Interpleader* (same title); *Mistake* (see *Reformation, Rescission and Cancellation*); *Partition* (same title); *Partnership* (same title); *Payment* (same title); *Principal and Surety* (see *Contribution*); *Reformation* (same title); *Re-*

scission and Cancellation (same title); **Set-Off and Counterclaim** (same title); **Specific Performance** (same title); **Subrogation** (same title).

D. *Auxiliary Jurisdiction.*

For forms setting out a cause of action under the auxiliary jurisdiction, see titles as follows in this volume: **Creditors' Suit** (same title); **De Bene Esse** (see **Depositions**); **Discovery** (same title); **Ne Exeat** (same title); **Perpetuation of Testimony** (same title); **Quia Timet** (same title).

II. Procedure.

A. *General.*

1. *Frame of Bills.*

See the title "**Bills and Answers**" in this volume; U. S. Eq. Rule, Nos. 18, 24, 25, 26, 27, 8 STANDARD PROC. 500-512.

Note.—Filing of Bill. See title "**Filing**" in volume; U. S. Eq. Rule No. 1, 8 STANDARD PROC. 500-512.

2. *Parties to Bills.*

See title "**Parties**" in this volume; U. S. Eq. Rule, Nos. 26, 27, 8 STANDARD PROC. 500-512.

3. *Service of Bill.*

See "**Service of Process and Papers**" in this volume.

a. *Affidavit of Non-delivery of Bill.*

J. E., solicitor for the defendant C. D., being duly sworn, deposeth and saith, that on the _____ day of _____ last he personally served upon C. M. D., solicitor for the complainant in this cause, a notice of the order of this court made on the _____ day of _____, requiring him to deliver a copy of the bill of complaint in this cause within twenty days after such service (or, a notice, of which the annexed is a true copy), but no copy of such bill has as yet been served upon this deponent. 2 Barb. Ch. Pr. 401.

b. *Order Dismissing Suit for Non-delivery of a Copy of Bill.*

On reading and filing due proof of the service upon the complainant's solicitor, more than twenty days since, of notice of the order of this court, made on the _____ day of _____ last, requiring the complainant to deliver to the defendant's solicitor a copy of the bill of complaint in this cause within twenty days after service of such notice, or that in default thereof said bill be dismissed with costs, and

that no copy of such bill has been served upon the defendant's solicitor; on motion, etc., ordered that the bill in this cause be dismissed with costs, to be paid by the complainant, for want of prosecution. 2 Barb. Ch. Pr. 401.

4. *Process.*

See the title "**Process**" in this volume; U. S. Eq. Rule, Nos. 1, 7, 12, 13, 14, 15, 8 STANDARD PROC. 500-512.

5. *Appearance.*

See the title "**Appearances**" in this volume.

6. *Pro Confesso.*

See the title "**Default**" in this volume; U. S. Eq. Rule, No. 16, 8 STANDARD PROC. 500-512.

a. *Order for Decree Pro Confesso Where Defendant Appears and Waives Objections.*

This cause coming on, etc., in the presence of counsel for the plaintiff (if there are defendants who appear, add, and for the defendants A. and B.); and the defendant C. now appearing by counsel, and waiving all objections to the order, dated the _____ day of _____ (preliminary order), and praying to be heard to argue the case upon the merits stated in the bill; this court doth order that the plaintiff's bill be taken pro confesso against the said defendant C. And doth order and decree, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2348; 2 Seton Dec. (Eng. ed. 1862) 1128.

b. *Order for Decree Pro Confesso Where Defendant Does Not Appear at Hearing.*

This cause coming on, etc., in the presence of counsel for the plaintiff (if there are defendants who appear, add, and for the defendants A. and B.); and whereas, etc. (recite shortly the proceedings for obtaining the appearance of the defendant); and upon reading the plaintiff's bill duly, etc.; and upon hearing what was alleged by the counsel for the plaintiff (and for the defendants A. and B.), this court, etc., doth order that the plaintiff's bill be taken pro confesso against the said defendant C. And doth order and decree, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2348.

7. *Guardians and Prochein Amis.*

See the title "**Guardian Ad Litem**" in this volume; U. S. Eq. Rule, No. 70, 8 STANDARD PROC. 500-512.

8. *Demurrers.*

See the title "**Demurrer**" in this volume; U. S. Eq. Rule, No. 29, 8 STANDARD PROC. 500-512.

9. *Pleas.*

See the title "**Pleas in Equity**" in this volume; U. S. Eq. Rules, No. 29, 8 STANDARD PROC. 500-512.

10. *Answers.*

See the title "**Bills and Answers**" in this volume; U. S. Eq. Rule, Nos. 16, 18, 30, 36, 8 STANDARD PROC. 500-512.

11. *Disclaimer.*

See the title "**Disclaimer**" in this volume.

12. *Cross-Bill.*

See the title "**Cross-Bill**" in this volume.

13. *Bills of Interpleader.*

See the title "**Interpleader**" in this volume.

14. *Amendment of Bills.*

U. S. Eq. Rule, Nos. 19, 32, 8 STANDARD PROC. 500-512.

a. *Affidavit in Support of Application To Amend Bill Before Replication.*

1. That the draft of the prepared amendments to the plaintiff's bill has been settled and approved, and signed by the counsel.

2. That such amendment is not intended for the purpose of delay or vexation; but because the same is considered to be material for the case of the plaintiff.

If after replication filed, or after the expiration of four weeks from the time when the answer, or the last answer, is deemed sufficient, add:—

3. That the matter of the proposed amendments is material, and could not, with reasonable diligence, have been sooner introduced into such bill. (Show also the materiality of the amendments, and state such facts as will enable the court to judge, whether reasonable diligence has been used). 3 Dan. Ch. Pl. & Pr. (Perkins' ed. 2184.

b. *Petition for Leave To Withdraw Replication and Amend Bill.*

To the chancellor of the state of New York:

The petition of the above complainant respectfully sheweth, that the defendant in this cause has caused his appearance to be entered therein, and has put in his answer to the bill of complaint; and that your petitioner has filed a replication, but no witnesses

have been examined by either party. That since the filing of such replication your petitioner has been advised by his counsel and believes, that it is essential to the rights of your petitioner in this cause that the bill therein should be amended, by adding thereto the following statements (insert matter proposed to be introduced).

And your petitioner further shows, that he had no knowledge of the facts above set forth, nor was he aware of the necessity of inserting them in his bill, until after the said replication was filed.

Your petitioner therefore prays that he may be at liberty to withdraw his said replication, and amend his said bill by adding parties defendants, or otherwise, as he shall be advised, on payment of costs. 2 Barb. Ch. Pr. 430. See also 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2165.

c. *Petition To Amend Bill by Adding Defendant.*

(Title, etc.) Sheweth,

That your petitioner filed his bill in this honorable court against the defendant, on the _____ day of _____, to which the defendant has appeared and put in his answer, upon which your petitioner is advised to make E. F. a party in this cause, and to bring him before the court as a defendant to the suit.

Your petitioner therefore prays that he may have leave to amend his bill by adding the said E. F., a defendant thereto, with apt words to charge him.

And, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2157.

d. *Petition To Amend Bill Requiring Further Answer.*

(Title, etc.) Sheweth,

That your petitioners having exhibited their bill against the above-named defendant W. F. and others, the said defendant W. F. only hath appeared, and put in his answer thereto (none of the other defendants having yet appeared to the said bill), since which your petitioners are advised to amend their said bill.

Your petitioners therefore humbly pray, that they may be at liberty to amend their said bill, as they shall be advised, on payment of \$_____ costs to the said defendant W. F. in respect thereof, and without costs as to the other defendants.

And, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2157.

e. *Petition To Amend Bill Not Requiring Further Answer.*

(Title, etc.) Showeth,

That your petitioner (or petitioners) having exhibited his (or their) bill in this honorable court against the said defendant R. A. and others, who have all appeared thereto and put in their answers; and that your petitioner (or petitioners) is (or are) advised to amend his (or their) said bill, but he (or they) does (or do) not require any further answer from the defendants.

Your petitioner (or petitioners) therefore humbly prays (or pray), that he (or they) may be at liberty to amend his (or their) said bill, as he (or they) shall be advised, amending the defendants' copies, and requiring no further answer from the said defendants. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2156.

f. *Order for Leave To Withdraw and Amend Bill.*

Upon motion, etc., and upon hearing counsel for (or reading an affidavit of notice to) the defendant, this court doth order that the plaintiff be at liberty to withdraw his replication, and amend his bill filed in this cause, as he may be advised; and it is ordered that the plaintiff A. do pay to the defendant B. his costs of this suit up to the present time, and also the costs of this application, to be taxed, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2361; *Champneys v. Buchan*, 2 Seton Dec. (Eng. ed. 1862) 1253.

g. *Order for Leave To Amend Bill After Plea to Part Is Allowed.*

The plea of the defendant C. D. to the bill of complaint in this cause having been, on argument, allowed as to part of said bill, on motion of Mr. N. of counsel for complainant, ordered that the complainant have leave to amend said bill by (state the manner in which it is to be amended) upon payment of costs to be taxed. 2 Barb. Ch. Pr. 429.

h. *Order for Leave To Amend Bill After General Demurrer.*

The defendant C. D. having put in a general demurrer to the bill of complaint in this cause, for want of equity, on motion of Mr. N. of counsel for complainant, ordered that said complainant have leave to amend his bill as he may be advised, upon payment of costs to be taxed. 2 Barb. Ch. Pr. 429.

i. *Order for Leave To Amend an Injunction Bill.*

It is hereby ordered "that the petition of the plaintiff be granted, so far as that she be at liberty, within _____ days, to amend her bill by inserting such additional statements, matters, and charges as she shall be advised are material, and that the same be made without prejudice to the injunction; and that the defendants B. G., J. W., and T. H. answer the exceptions and the amendments together; and that the residue of the prayer of the petition be denied, with liberty, nevertheless, to the plaintiff, at her election, to act under this order, or on or before the first day of the next term, upon payment of the costs of resisting this motion, to renew her motion, upon due notice thereof, to amend, accompanied with an affidavit, stating clearly and precisely the amendments, alterations, and omissions proposed." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2360.

15. *Exceptions to Answers for Insufficiency (a).*

Exceptions taken by the said complainant to the answer put in by the defendant C. D. to the said complainant's bill of complaint.

1st. Exception. For that the said defendant C. D. hath not to the best and utmost of his knowledge, remembrance, information, and belief, answered and set forth whether (set forth the interrogatory in the bill which is not answered, in haec verba).

2d. Exception. For that the said defendant C. D. hath not, in manner aforesaid, answered and set forth whether, etc. (as before).

In all which particulars the answer of the said defendant C. D. is, as the said complainant is advised, imperfect, insufficient and evasive; and the said complainant therefore excepts thereto, and prays that the said defendant C. D. may put in a further and better answer to the said bill of complaint.

J. E., solicitor and of counsel for complainant.

2 Barb. Ch. Pr. 421; U. S. Eq. Rule, Nos. 21, 33, 8 STANDARD PROC. 500-512.

Exceptions to Answers for Insufficiency (b) (English Form).

In Chancery. Between E. D., plaintiff, and J. P., defendant.

Exceptions taken by the above-

named plaintiff to the answer of the defendant (or if more than one defendant, of the defendant ———) for insufficiency.

First exception. For that the said defendant has not in and by his said answer, according to the best of his knowledge, remembrance, information, and belief, answered and set forth whether, etc.

Second exception. For that the defendant has not in and by his said answer in manner aforesaid answered and set forth whether, etc.

(And so with respect to the other exceptions, using the words of the interrogatory not answered.)

In all or some of which particulars the said plaintiff is advised that the said answer of the defendant is evasive and insufficient, and ought to be amended, and humbly prays the same may be amended accordingly.

(Counsel's name.)

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2148.

16. *Replication and Issue.*

U. S. Eq. Rule, No. 31, 8 STANDARD PROC. 500-512. See the title "**Replication and Reply**" in this volume.

17. *Petition by Plaintiff To Dismiss His Bill With Costs.*

(Title, etc.) Showeth,

That your petitioner having exhibited his bill in this honorable court against the above-named defendant, who has appeared (and put in his answer) thereto, your petitioner is now advised to dismiss his said bill.

Your petitioner therefore humbly prays, that the said bill may stand dismissed out of this court, with costs to be taxed by the proper taxing-master (or by the clerk of this court). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2163.

18. *Dismissal on Motion of Defendant.*

See the title "**Dismissal, Discontinuance and Nonsuit**" in this volume; U. S. Eq. Rule, No. 29, 8 STANDARD PROC. 500-512.

19. *Testimony, How Taken.*

See the title "**Depositions**" in this volume; U. S. Eq. Rule, Nos. 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 8 STANDARD PROC. 500-512.

20. *Form of Interrogatories.*

See the title "**Depositions**" in this volume.

21. *Letters Rogatory.*

See the title "**Depositions**" in this volume.

22. *Hearing.*

See the title "**Hearing**" in this volume; U. S. Eq. Rule, Nos. 44, 57, 69, 8 STANDARD PROC. 500-512.

23. *Reference and Proceedings Before Master.*

See the titles "**Decrees**" and "**References**" in this volume; U. S. Eq. Rule, Nos. 59, 60, 62, 63, 64, 65, 66, 68, 8 STANDARD PROC. 500-512.

a. *Master's Summons.*

A. B. v. C. D. and others.

In pursuance of the authority and directions contained in an order, made in the above cause, by the (vice) chancellor (of the fourth circuit), dated on the ——— day of ———, 18——, I, the subscriber, one of the masters of the court of chancery of the state of New York, do hereby summon you C. D., E. F., and G. H., to appear before me, at my office, in the village of Saratoga Springs, on the ——— day of ———, 18——, at ——— o'clock in the ——— noon, to attend a hearing before me the said master, of the matters in reference in the said cause, to be had by virtue of the order of the said court of chancery above referred to: And hereof you are not to fail at your peril.

Dated the ——— day of ———, 18——.

P. G. E., master in chancery.

Underwriting.

To proceed upon the settlement of the issues at law in above cause.

I direct the above summons to be served two days previous to the return day thereof.

P. G. E., mast. in chan.

2 Barb. Ch. Pr. 487.

b. *Certificate of Examination Not Brought in.*

Whereas it appears by my certificate made in this cause, bearing date the ——— day of ———, instant, that interrogatories had been exhibited before me, on behalf of the above named complainant, for the examination of E. F., one of the defendants in this cause, touching the inquiries directed by the said decree; which I had settled and allowed: Now, at the request of Mr. J. E., the solicitor for the said complainant, I do hereby certify that the said defendant E. F., hath not put in any answer and examination to the said interrogatories; al-

though he hath been duly summoned for that purpose. All which I certify, and submit to this honorable court.

Dated, etc.

P. G. E., master in chancery.

2 Barb. Ch. Pr. 488.

c. *Examination of Party.*

(Title.) The answer and examination of the above named defendant E. F., to interrogatories exhibited on behalf of the above named complainant, and allowed by P. G. E., one of the masters of this honorable court, to whom this cause stands referred, pursuant to a decree made on the hearing thereof, bearing date the _____ day of _____, 18____.

To the first interrogatory this examinant saith, that he hath, in the first schedule to this his answer and examination annexed, and which he prays may be deemed and taken as part thereof, set forth, according to the best of his knowledge, remembrance, information, and belief, a full, true, and particular account of all the personal estate and effects which J. S., the testator in the pleadings of this cause named, was possessed of, entitled to, or interested in, at the time of his death, and which are not specifically bequeathed by his will, and all the particulars whereof the same consisted, and the full, true, and utmost value thereof, and all the particulars thereof.

To the second interrogatory, this examinant saith, that he hath, in the second schedule to this his answer and examination, and which he prays may be taken and considered as part thereof; given a full, true, and particular account of all sum and sums of money, and the times when, and the persons from whom the same have been received by this examinant, or by any person or persons by his order, or for his use; and also an account of all and every sum and sums of money received by sale, or on account of the said testator's personal estate and effects (not specifically bequeathed), and from and by whom; and when, and on what account the same and every part thereof were, or was so received; and what parts, and to what value and amount the said personal estate and effects of the said testator remain undisposed of, and what is become thereof.

To the third interrogatory this examinant saith, that he has paid, ex-

pended, disbursed and allowed the several sum or sums of money in respect of the said testator's personal estate and effects, not specifically bequeathed, mentioned and set forth in the third schedule to this his answer and examination annexed, and which he prays may be taken and considered as part thereof: And this examinant saith, that the last mentioned schedule contains a full, true, and particular account of all and every the said sum and sums of money so paid, expended, disbursed, or allowed by this examinant; and the times when and to whom, and for what, and upon what account such sums of money, and every of them, were so paid, expended, disbursed, or allowed.

To the fourth interrogatory, this examinant saith, that the said testator J. S., in the pleadings named, was not, at the time of his death, seized, or possessed of, or entitled to, or interested in, any freehold, copyhold, or leasehold estate held for lives or years whatsoever.

E. F.

Sworn before me, this _____ day of _____, 18____.

P. G. E., mast. in chan.

2 Barb. Ch. Pr. 488; U. S. Eq. Rule, No. 58, 8 STANDARD PROC. 500-512.

d. *Exceptions to Examination of Party.*

Exceptions taken by the complainant, to the answer and examination of the defendant E. F., to the interrogatories exhibited on behalf of said complainant, and allowed by P. G. E., the master, to whom this cause stands referred.

First exception. For that the said defendant hath not answered so much of the first interrogatory as requires him to set forth and state whether, etc.

Second exception. For that the said defendant hath not answered the matters of the first interrogatory, or any part thereof, to the best of his knowledge, remembrance, information, or belief.

J. E., solr. for compt.

S. C., of counsel.

2 Barb. Ch. Pr. 490.

e. *Master's Certificate on Exceptions to Examination of Party.*

Exceptions to the answer and examination of the defendant E. F., to the interrogatories exhibited on the part of the above complainant, for in-

sufficiency, having been taken, I, the subscriber, the master to whom this cause stands referred, pursuant to a decree made on the hearing thereof, bearing date the _____ day of _____, 18____, do certify and report.

That having been attended by the counsel of the respective parties, and having looked into the said interrogatories, and the answer and examination of the said defendant thereto, I am of opinion, that the said answer and examination is sufficient. (Or that the said answer and examination is insufficient in the matters of the 1st and 4th exceptions, and the interrogatories on which such exceptions are founded; and that the said 1st and 4th exceptions are well taken. And I do fix the time for the said E. F. to put in a further examination to the said 1st and 4th exceptions, and to the interrogatories on which the same are founded, at twenty days after this certificate shall become absolute.)

All which is respectfully submitted.

Dated, etc.

2 Barb. Ch. Pr. 490.

f. Exceptions to Report of Master.

Exceptions taken by E. F., one of the above defendants, to the general report of J. M. A., the master to whom this cause stands referred, by the decree made herein, on the _____ day of _____, 18____, and which report bears date the _____ day of _____, 18____.

First exception. For that the said master has in and by his said report certified that, etc. (set out the words of the report). Whereas the said master ought to have certified that, etc.

Second exception. For that the said master, etc.

Wherefore the said defendant doth except to the said general report, and appeals therefrom to the judgment of this court.

W. H., sol. for deft. E. F.

S. A., of counsel.

2 Barb. Ch. Pr. 423, 507; U. S. Eq. Rule, No. 67, 8 STANDARD PROC. 500-512.

24. Feigned Issues.

See the title "**Issues in Pleading and Practice**" in this volume.

25. Decrees.

See the title "**Decrees**" in this volume; U. S. Eq. Rule, Nos. 71, 72, 73, 8 STANDARD PROC. 500-512.

26. Enrolment of Decrees.

See the title "**Judgment Records**" in this volume.

27. Bills of Revivor and Supplemental Bills.

See the titles "**Revivor**" and "**Supplemental Pleading**" in this volume; U. S. Eq. Rule, Nos. 34, 45, 8 STANDARD PROC. 500-512.

28. Affidavit of New Matter Discovered for Bill of Review.

(Title, etc.)

I, J. C. P., the defendant, make oath and say, that since the time of pronouncing the decree in this cause, I, the deponent, have discovered new matter of consequence in the said cause, particularly that the plaintiff, on, etc., did, etc. (state the substance of the newly discovered matter), which I, this deponent, could not possibly know, so as to make use thereof, in my defense, at the time of pronouncing the said decree. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2185.

29. Petition for Leave To File Bill of Review on Ground of Discovery of New Matter.

(Title, etc.) Showeth,

That your petitioner has exhibited his bill in this honorable court against X. Y., for the purpose of (state general object of original bill) and praying (state the prayer).

That the said X. Y. being duly served with process, appeared to the said bill and put in his answer. And the said cause being at issue, was brought to a hearing before _____, on, etc., whereupon a decree was made in effect as follows: (set forth the substance of the decree).

That said decree has since been duly enrolled (or entered of record and judgment thereon rendered). And your petitioner further showeth, that since the time of making and entering said decree, your petitioner has discovered new matters important and material in the said cause; particularly (here set forth the new matters), which new matters your petitioner did not know, and could not, by reasonable diligence have known, so as to make use thereof in the said cause, before and at the time of making and entering the said decree.

Your petitioner, therefore, humbly prays, that he may have leave to file a bill of review against the said C. D. for the purpose of obtaining a review and reversal of the said decree; and

that all further proceedings under the same may be stayed. And, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2169.

B. Interlocutory Applications and Proceedings Subsequent.

1. Affidavit.

See the title "**Motions**" in this volume.

2. Jurats.

See the title "**Motions**" in this volume.

3. Motions.

See the title "**Motions**" in this volume; U. S. Eq. Rule, Nos. 2, 5, 6, 8 STANDARD PROC. 500-512.

4. Petitions.

See the title "**Petitions**" in this volume.

5. Scandal and Impertinence.

See the title "**Surplusage and Scandal**" in this volume; U. S. Eq. Rule, No. 21, 8 STANDARD PROC. 500-512.

6. Election.

See the title "**Choice and Election of Remedies**" in this volume.

7. Payment Into Court.

See the title "**Deposit in Court**" in this volume.

8. Production of Papers.

See the title "**Discovery**" in this volume.

9. Preliminary Injunctions.

See the title "**Injunctions**" in this volume; U. S. Eq. Rule, No. 73, 8 STANDARD PROC. 500-512.

10. Ne Exeat.

See the title "**Ne Exeat**" in this volume.

11. Receivers.

See the title "**Receivers**" in this volume.

12. Petition To Withdraw Plea or Demurrer.

Showeth,

That the plaintiff having exhibited his bill in this honorable court against your petitioner, your petitioner put in his plea (or demurrer) thereto, since which your petitioner is advised to make other defense to the said bill.

Your petitioner therefore humbly prays, that he may be at liberty to withdraw his plea (or demurrer) upon payment of costs.

And, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2161.

13. Petition That Feme Covert May Answer Separate From Her Husband.

The humble petition of ———, wife of the defendant ———.

Showeth,

That the plaintiff has exhibited his bill in this honorable court against your petitioner and her said husband (and others), to which your petitioner has appeared.

That your petitioner's said husband is residing at ———, out of the jurisdiction of this court (or that your petitioner and husband are living separate and apart from each other, or that the said bill is filed in respect of your petitioner's separate estate and interest in the estates (or funds) in question in this cause).

Your petitioner therefore humbly prays, that your petitioner may be at liberty to put in her answer to the plaintiff's said bill separate from her husband.

And, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2161.

14. Affidavit for Order To Examine Witness Abroad.

(Title, etc.)

1. This cause is now at issue, and I, this deponent, am desirous of proceeding therein.

2. I have several witnesses to examine in support of the case made by my bill (or answer), who now live and reside at ——— and ——— (and particularly A. B., C. D., and E. F.), who can, as I believe, prove the truth of the allegations made in the ——— paragraphs of my bill (or answer).

3. The several witnesses above-named are, as I believe and am advised, material and necessary witnesses for me in this cause, and without their testimony I cannot safely proceed to a hearing; but that with the testimony of those witnesses, I am advised and believe, I shall be able to make a good defense in this cause (or can establish my right to relief in this cause). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2184.

15. Notice of Motion for Decree.

(Title, etc.)

Take notice, that this court will be moved before, etc., at the expiration of ——— after the date hereof, or as soon after as counsel can be heard by, etc., of counsel for the plaintiff, that a decree may be made in this

cause in accordance with the prayer of the plaintiff's bill. Dated, etc.

Yours, etc.,

A. B.,

Plaintiff's solicitor.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2152.

16. *Petition To Enter Decree Nunc Pro Tunc.*

(Title, etc.) Showeth,

That the decree (or order) made in this cause, bearing date, etc., has been drawn up and passed by the registrar, but the time for entering the same, according to the rules of this court, being elapsed,

Your petitioner humbly prays, that the said decree (or order) may be entered nunc pro tunc.

And, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2163.

17. *Leave To Enter Decree Nunc Pro Tunc.*

Upon motion, etc., who alleged that the time for entering the decree (or order) made in this cause, and dated on the _____ day of _____, expired on the _____ day of _____; this court doth order, that the said decree (or order) be entered nunc pro tunc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2351.

18. *Notice of Motion To Vacate Enrolment of Decree.*

(Title, etc.)

Take notice, etc., that the enrolment of the decree (or order) dated the _____ day of _____, made by his honor, _____, may be vacated. Dated, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2153.

ERRORS, ASSIGNMENT OF.

I. *Assignment of Error in Supreme Court,* 478

II. *Notice To Join,* 478

III. *Joinder of Error,* 479

IV. *Special Plea to Assignment of Error,* 479

V. *Replication to Plea of Release,* 479

VI. *Assignments of Error of Fact,* 479

A. *Death of Plaintiff Before Trial,* 479

B. *Death of Defendant Before Trial,* 480

C. *Coverture,* 480

D. *Pleas to Assignments of Error of Fact,* 480

1. *To Assignment of Death,* 480

2. *To Assignment of Coverture,* 480

E. *Circuit Roll on Error in Fact,* 480

For other forms, see 8 STANDARD PROC. 519.

CROSS-REFERENCES:

CERTIORARI:

Assignment of Errors.

INFANTS:

Assignment, Infancy as an Error of Fact;

Plea to Assignment of Error of Infancy as an Error of Fact.

I. *Assignment of Error in Supreme Court.*

Supreme court. (In error.) Of the term of _____, in the year of our Lord one thousand eight hundred and _____ C. D., plaintiff in error, v. A. B., defendant in error.

Afterwards, to-wit, on the _____ Monday of _____ in this same term, before the justices of the supreme court (of judicature of the people) of the state of New York, at the _____ in the city of _____, comes the said C. D., by G. H., his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to-wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in the law for the said A. B. to have or maintain his aforesaid action thereof against the said C. D., there is also error in this, to-wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said A. B. against the said C. D., whereas by the law of the land the said judgment ought to have been given for the said C. D. against the said A. B. And the said C. D. prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and the proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, etc. Burr. App. 410, §766; Till. Forms 157.

II. *Notice To Join in Error.*

Please to take notice that the defendant in error in this cause is hereby required to join in error in twenty days after service of a copy of the assignment of errors and of this notice, or his default will be entered. (Dated,

signed and directed in the usual form.) Burr. App. 204, §395.

III. Joinder in Error in Supreme Court.

And hereupon, afterwards, to-wit, on the _____ Monday of _____, in _____ term, in the year of our Lord one thousand eight hundred and _____, the said A. B., by E. F., his attorney, freely comes here into court, and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and he prays that the said supreme court of judicature, before the aforesaid justices thereof now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error; and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, etc. Burr. App. 416, §777; Till. Forms 159.

IV. Special Plea To Assignment of Error, Release.

And the said A. B., by E. F., his attorney, comes and says that the said C. D. ought not further to prosecute or maintain his writ of error aforesaid against him the said A. B., because he says that after the judgment aforesaid in form aforesaid, recovered, and before the day of suing out the said writ of error, to-wit, on the _____ day of _____, at _____, he the said C. D., by his certain writing of release, sealed with the seal of him the said C. D., and to the court now here shown, the date whereof is the same day and year aforesaid, did remise, release, and forever quitclaim to the said A. B., his heirs, executors and administrators, all and all manner of error and errors, writ and writs of error, and all benefits and advantages of the same, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, omitted, done or suffered, in, about, touching or concerning the judgment aforesaid, obtained against him the said C. D. by the said A. B. in the said _____ term, then last past, in the said (court of common pleas in and for the county of _____), at the (courthouse in the town of _____ in said county) for _____ dollars of debt, besides costs of suit; or in, about, touching or concerning any process, declaration, plea, entry, or other proceedings whatsoever of or

in any manner concerning the same judgment; as by the said writing of release more fully appears. And this he the said A. B. is ready to verify. Wherefore he prays judgment, if the said C. D. ought further to prosecute his writ of error aforesaid against him the said A. B., etc. Burr. App. 415, §775; Till. Forms 160; 2 Humph. Prec. 1102.

V. Replication To Plea of Release To Assignment of Error.

And the said C. D. says that he, by reason of anything by the said A. B. in his said plea above alleged, ought not to be barred from further prosecuting and maintaining his writ of error aforesaid against the said A. B. on the judgment aforesaid, because he says that the said writing of release by him the said A. B., in manner and form aforesaid above pleaded in bar of the errors aforesaid by the said C. D. above assigned, is not the deed of him the said C. D. And this he the said C. D. prays may be inquired of by the country, etc. Burr. App. 416, §776; Till. Forms 160.

VI. Assignments of Error of Fact.

A. Assignment of Error, Death of Plaintiff Before Trial as an Error of Fact.

Supreme court. (In error.) Of the term of _____ in the year of our Lord one thousand eight hundred and _____ C. D. v. A. B.

Afterwards, to-wit, on the _____ Monday of _____, in this same term, before the said justices of the supreme court (of judicature) aforesaid, at the _____ in the city of _____, comes the said C. D., by G. H., his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to-wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said A. B. against the said C. D. in the plea aforesaid; when in truth and in fact the said A. B., in the plea aforesaid named, before the trial of the issue joined in the record aforesaid, between the parties aforesaid, and before the giving of the judgment aforesaid, to-wit, on, etc. (state the time), at, etc. (state the place), died; therefore in that there is manifest error; and this he the said C. D. is ready to verify. Wherefore he prays that the judgment aforesaid,

for the error aforesaid, may be revoked, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment aforesaid, etc. Burr. App. 412, §769; Till. Forms 155.

B. Assignment of Error, Death of Defendant Before Trial as an Error of Fact.

Afterwards, to-wit, on the _____ Monday of _____, in this same term, before the said justices of the supreme court of judicature aforesaid, at the (courthouse in the city of _____), comes the said C. D., by G. H., his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to-wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said A. B., as well against the said I. J. as against the said C. D., when in truth and in fact the said I. J., in the plea aforesaid named, before the trial of the issue joined in the record aforesaid, between the parties aforesaid, and before the giving of the judgment aforesaid, to-wit, on, etc. (state the time), at, etc. (state the place), died; therefore in that there is manifest error: And this he the said C. D. is ready to verify. Wherefore he prays that the judgment aforesaid, for the error aforesaid, may be revoked, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the judgment aforesaid, etc. Burr. App. 413, §770; Till. Forms 156.

C. Assignment of Error Coverture as an Error of Fact.

Afterwards, to-wit, on the _____ Monday of _____, in this same term, before the said justices of the supreme court of judicature aforesaid, at the _____ in the city of _____, come C. D. and E., his wife, which said E. was and is impleaded in this suit by the name of E. N., in their proper persons, and say that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to-wit, that before the day of exhibiting the bill of the said A. B. against the said E., by the name of E. N., and before the giving of the judgment aforesaid, to-wit, on, etc. (state the time), at, etc. (state

the place), aforesaid, the said E. intermarried with and took to husband the said C. D., and that she the said E., at the time of exhibiting the bill aforesaid, and also at the time of giving the judgment aforesaid, was and yet is covert of the said C. D., then and yet her husband, to-wit, at _____ aforesaid; therefore in that there is manifest error: And this they the said C. D. and E., his wife, are ready to verify, wherefore they pray that the judgment aforesaid, for the error aforesaid, may be revoked, annulled and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the judgment aforesaid, etc. Burr. App. 412, §768; Till. Forms 154.

D. Pleas To Assignments of Error of Fact.

1. Plea To Assignment of Error, Death as an Error of Fact.

And hereupon the said A. B., by E. F., his attorney, freely here in court comes, and says that by reason of anything above for error assigned, the judgment aforesaid ought not to be revoked, annulled or held for nothing;* because he says that the said I. J. in the plea aforesaid named is yet living in full life, to-wit, at, etc. (state the place), without this, that he the said I. J., before the trial of the issue aforesaid, joined in the said record between the parties aforesaid, died, in manner and form as the said C. D. hath above alleged. And this he the said A. B. is ready to verify. Wherefore he prays that the judgment aforesaid may be in all things affirmed, etc. Burr. App. 415, §774.

2. Plea To Assignment of Error, Coverture as an Error of Fact.

(As in VI, D, 1, to the *, and then as follows): because he says that the said E., at the time of (exhibiting the bill) aforesaid, was not, nor is covert of the said C. D., in manner and form as the said C. D. and E. have above alleged. And of this he the said A. B. puts himself upon the country, etc. Burr. App. 414, §773.

E. Judgment Record Circuit Roll on Error in Fact.

Afterwards, to-wit, on the _____ Monday of _____, in the term of _____, in the year one thousand eight hundred and _____, before the said justices of the supreme court of

judicature of the people of the state of New York, at the _____ in the city of _____, comes the aforesaid defendant, by G. H., his attorney (or G. H., his guardian, by the said court hereunto specially admitted), and brings into the said court, before the said justices thereof now here, a certain writ of the said people to correct errors of and upon the premises aforesaid; which said record and proceedings now remain in the said court, before the said justices thereof now here; and prays that the said writ may be allowed: and by the same court, before the aforesaid justices thereof now here, the said writ is allowed to him, etc., which said writ follows in these words, that is to say:

The people of the state of New York, to the justices of the supreme court of judicature of the people of the state of New York, greeting: Because in the record and proceedings, and also in the giving of judgment, etc. (copy the writ of error to the end).

And hereupon the said defendant says that in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error in this, to-wit, that, etc. (copy the assignment of errors).

And the said plaintiff thereupon, by E. F., his attorney, freely comes into court and says that by reason of anything above for error assigned, the judgment aforesaid ought not to be revoked, etc. (copy the plea).

Therefore the issue above joined is ordered, by the said supreme court, to be tried at the circuit court appointed to be held at the (city hall of the city of New York), in and for the said (city and county of New York), on the _____ Monday of _____ next. Burr. App. 71. §140a; Till. Forms 169.

ESTOPPEL.

- I. Plea in Estoppel, 481
- II. Plea, Estoppel in Pais, Inconsistent Affidavit, 481
- III. Plea, Estoppel in Pais, Silence, 482
- IV. Replication by Way of Estoppel, 482
- V. Answer Interposing Estoppel, 483
- VI. Answer, Setting Up Deed, 483
- VII. Answer, Acquiescence, 483
- VIII. Bill Setting Up Equitable Estoppel Against Suit at Law, 483

CROSS-REFERENCE:

REPLICATION AND REPLY:

Replication by Way of Estoppel to Plea in Abatement.

I. Plea in Estoppel.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says, that he, the said plaintiff, ought not to be admitted to say or allege that (stating the allegation in the declaration to which the estoppel relates); because he says that (here state the matter by which the plaintiff is estopped). And this he is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to be admitted against his own acknowledgment by his deed aforesaid (or otherwise, according to the matter of the estoppel), to say or allege that, (stating as before, the allegation to which the estoppel relates), etc. Burr. App. 371, §671; Archb. Pl. 212a; Steph. Pl. 402.

II. Plea, Estoppel in Pais, Inconsistent Affidavit.

"That said plaintiff is estopped, and ought not to be permitted, to maintain his said action against this defendant, for the reason that said plaintiff was the secretary and bookkeeper of the Sullivan Timber Company, a corporation organized under the laws of Florida, at the time and for a long period prior to the date of filing of a bill in equity, in this honorable court, by said Sullivan Timber Company, against M. H. Sullivan, defendant herein, on the 22d of May, 1893, claiming divers sums of money upon various grounds; and among items alleged and claimed, in said bill of Sullivan Timber Company, of M. H. Sullivan, the defendant, is the sum of \$9,151, for salary of clerks and employes, etc., as set out in paragraph 15 of said bill, and alleging that said employes and clerks were occupied in the private business of said M. H. Sullivan, in writing letters, telegrams, etc., while they were paid by the Sullivan Timber Company; and defendant alleges that plaintiff was one of the employes of the Sullivan Timber Company claimed to have been occupied in the business of defendant, and during the same period of time claimed by plaintiff in this suit, and that the plaintiff in this suit furnished the

data for said charge in said bill in equity, and made affidavit that same was correct. That afterwards, to-wit, on the 7th day of June, 1894, by agreement in writing, all suits pending and matters in controversy between said Sullivan Timber Company and M. H. Sullivan, including suit in equity in this court, in which said item for clerk hire, etc., was claimed, were settled and adjusted, and by the express terms of said agreement each party mutually released the other from all claims of any kind then existing or that should thereafter arise from the organization or operation of said Sullivan Timber Company. And defendant alleges that R. F. McConnell, as secretary of said Sullivan Timber Company, participated in the negotiations leading to said settlement, and signed said agreement in writing aforesaid, as secretary of said Sullivan Timber Company; and defendant alleges that plaintiff's claim in this suit is one growing out of the business relations between said Sullivan Timber Company and defendant, and that same was covered by paragraph 15 of said bill in equity in this court, and settled and adjusted as aforesaid, and that said plaintiff, by reason of the premises, is estopped from asserting a claim in his own right in this suit against this defendant, and this the defendant is ready to verify.

"Wherefore he prays judgment if the plaintiff ought to be admitted against his aforesaid dealings and actions to maintain this his suit against this defendant." *Sullivan v. McConnell*, 73 Fed. 130, 19 C. C. A. 400.

III. Plea, Estoppel in Pais, Silence.

"That said plaintiff had full knowledge of the height of said dam and of the manner and extent to which the said dam set the water back on her land; that in the year 1879, the defendant, desiring to purchase said mill, made inquiries concerning the dam and the right of the then owners to maintain said dam at the height at which it was then erected, which was the same height which said dam now is; that this defendant was a stranger in the locality of said mill and resided in the state of Michigan, which plaintiff well knew; that defendant was ignorant concerning the rights of the then owners of the said mill and was seeking for information upon which to

act in the purchase of said mill, as the plaintiff well knew; that he was informed before he purchased, that the said dam as then constructed was at the same height at which it has stood for more than twenty years, and that the owners of the mill had the lawful right against the plaintiff and all others, to maintain said dam at its then height; that plaintiff knew that he was about to purchase said mill and dam and knew that he was inquiring concerning the right of the owners to maintain the dam at the height it then was, and knew that he had been informed that the dam was at the height at which the then owners had the lawful right to maintain it, and no more, and knew that the defendant was ignorant of the truth in the matter of the height of the dam, and that he was inquiring for the purpose of purchasing and was about to purchase, relying on the information above set out, which he had received concerning the rights of the owners of the mill to maintain said dam at its then height, and yet she stood by well knowing of said facts, and permitted the defendant to purchase said mill for the sum of \$8,000, without in any manner disclosing to the defendant that said dam raised the water on her land to any greater height than the old dam did." *Anderson v. Hubble*, 93 Ind. 570.

IV. Replication by Way of Estoppel.

And the said plaintiff says, that the said defendant ought not to be admitted or received to plead the said plea by him (secondly) above pleaded, as to so much thereof, wherein he alleges that, etc. (stating the part of the plea to which the estoppel relates); because he says, that, etc. (here state the ground of estoppel, either by the pleadings and verdict in a former suit, or by a bond, etc., and conclude as follows): and this he, the said plaintiff, is ready to verify. Wherefore he prays judgment, if the said defendant ought to be admitted or received against the said record (or, against his own acknowledgment by his deed aforesaid), to plead the plea by him (lastly) above pleaded in this suit, that, etc. (stating and concluding with the allegation in that part of the plea to which the estoppel relates). *Burr. App.* 386, §710; 3 Chit. Pl. 1144.

V. Answer Interposing an Estoppel.

That the plaintiff ought not to be admitted to say (here state the matter to which the estoppel is interposed, e. g., that said premises belonged to M. N.), because he says that (here state the subject-matter of the estoppel, e. g., that the plaintiff, on or about the _____ day of _____, 18—, conveyed said premises to the defendant by deed, containing a full covenant of warranty). 2 Abb. Forms 33.

VI. Answer, Setting Up Deed as Estoppel.

That the said deed was executed and delivered to the defendant for a full and fair consideration, without fraud or misrepresentation on the part of the defendant, and with a full understanding and knowledge of all its terms and provisions, and that the plaintiffs are estopped from denying the terms and provisions thereof, and that they fail in their said complaint to state any equitable ground for the interference of the court to abrogate, alter, change, modify or in any way reform or correct the same. *Johnson v. East Carolina Land & R. Co.*, 116 N. C. 926, 21 S. E. 28.

VII. Answer, Acquiescence as Estoppel.

For another and further defense and answer herein, defendant says that on the _____ day of _____, A. D. 1885, he entered upon the construction of a brick building situate on the north twenty-nine feet of the lot above described, and with the knowledge, consent and acquiescence of plaintiff T. D. Evans, defendant contracted with plaintiff to pay and did pay one-half of the costs of constructing the said wall with the agreement that it should stand and be used as a partition wall between said Evans and defendant.

That with the knowledge, acquiescence and consent of plaintiff Evans, this defendant constructed his building on said lot, covering twenty-eight and one-sixth feet on the north side thereof, beginning on the east end and extending back _____ feet thereon, and placed lasting and valuable improvements thereon. Wherefore, plaintiff Evans is estopped from claiming title to the land occupied by said building described above, and he prays judgment accordingly and for costs.

Evans v. Kunze, 128 Mo. 670, 674, 31 S. W. 123.

VIII. Substance of Bill Setting Up Equitable Estoppel Against Suit at Law.

The bill averred, in substance, that, in August and September, 1869, Davis executed six promissory notes, amounting to about \$15,725, to the order of Henry P. Wakelee, and delivered them to him, and that they subsequently became the property of the plaintiff; that on or about September 30, 1869, Davis was adjudged a bankrupt upon his own petition, by the district court for the district of California, and the notes in question were duly proved against his estate; that on July 8, 1873, the bankruptcy court granted the said Henry P. Wakelee leave to bring an action upon these notes, and that such action was begun by publication of a summons, under the laws of the state, and without personal service upon Davis; that on November 18, 1873, Davis not appearing, and no service having been made upon him, judgment was entered against him in the sum of \$22,760.26. The bill further alleged that on December 23, 1875, Davis filed in the bankruptcy court a petition for his discharge, and that Wakelee thereupon filed specifications of opposition which Davis moved to dismiss, upon the ground that Wakelee, subsequent to the commencement of the proceedings in bankruptcy, had, by leave of court, brought suit upon such notes, obtained judgment thereon, "and that said judgment still stood of record in said fifteenth district court, and was in full force." That such motion came on for argument, and it was there claimed by counsel duly authorized to represent Davis, that, by reason of the above facts, the original debt of Davis to Wakelee, which had been proved up in the bankruptcy proceedings, had become merged in the judgment obtained November 18, 1873, in the state court of California, and thereby became a new debt, created since the adjudication of Davis as a bankrupt. That such judgment was subsisting, valid, and enforceable, and would not be barred, discharged, or in anywise affected by the discharge of the defendant in bankruptcy. That by reason thereof, Wakelee had no standing, was not interested in the bankruptcy proceedings, and was not,

therefore, competent to oppose the discharge of Davis. That upon such motion an order was made by the district court in bankruptcy that Wakelee's proof of debt be canceled, and his specifications of opposition to the discharge be dismissed and set aside. That Wakelee relied upon the claims and admissions of Davis and of his counsel, and accepted as correct and binding the order of the district court dismissing his opposition, and did not appeal therefrom. That the order was accepted by Davis, who subsequently obtained his discharge. That the judgment was subsequently assigned to Angelica Wakelee, the plaintiff, and in equity was of full and binding force and validity by reason of the facts above stated; but that in sundry actions instituted upon such judgment between Davis and the then owner of the judgment, Davis claimed and set up that the judgment was void, because of the lack of jurisdiction of the court wherein it was entered, for the reason that he was not personally served with process, and did not appear in the action, and also pleaded his discharge in bankruptcy as a bar to a recovery upon such judgment. That plaintiff is about to commence an action at law upon such judgment against Davis in the state of New York, wherein defendant now resides; and that she is informed that, under the law of the state of New York, the facts herein set forth cannot be pleaded in the plaintiff's complaint in aid of her cause of action, but that such action must be brought upon such judgment alone, and that it is necessary to allege in the complaint either the facts showing the jurisdiction of the court, or that the judgment was duly entered, which cannot be truthfully done. Wherefore plaintiff prayed for the assistance of a court of equity to adjudge Davis to be estopped by his conduct, and that he be enjoined from asserting that the debts proved up by Wakelee against him were not merged in the judgment, or from asserting the invalidity of the judgment, or that the same does not constitute a new debt unaffected by Davis' final discharge in bankruptcy. *Davis v. Wakelee*, 156 U. S. 680, 15 Sup. Ct. 555, 39 L. ed. 578.

ESTRAYS.

I. Indictment for Using Estray, 484

II. Indictment for Converting Estray, 484

I. Indictment for Using Estray.

"One bay horse of the value of one hundred dollars, not of his own property, but of the property of some other person, to the grand jurors unknown, which said bay horse was then and there an estray, did take up and use, without first complying with the laws regulating estrays, contrary to the statute," etc. *State v. Carabin*, 33 Tex. 697.

II. Indictment for Converting Estray.

"On or about the 10th day of June, 1880, at the county of Fulton and State of Indiana, the defendant did then and there take up five estray sheep, then and there being found, the property of one Martin L. Conner, of the value of \$3 each, and did then and there unlawfully, knowingly and wilfully convert the same to his own use before the title to the said sheep had been vested in him according to law." *Greene v. State*, 79 Ind. 537.

EXAMINATION OF PARTIES BEFORE TRIAL.—See DISCOVERY.

EXAMINATION OF PERSONS ACCUSED OF CRIME.—See PRELIMINARY EXAMINATION.

EXCEPTIONS.—See BILLS OF EXCEPTIONS.

EXECUTION.—See JUDGMENTS AND DECREES, ENFORCEMENT OF.

EXECUTORS AND ADMINISTRATORS.

I. Actions at Law, 486

A. *Declarations*, 4861. *By Executor*, 4862. *By Administrator*, 4873. *Against Executor*, 4884. *Against Administrator*, 4885. *Against Executor or Administrator in Debt*, 488B. *Plea of Ne Unques Executor*, 488C. *Replications*, 4881. *To Plea of Ne Unques Executor*, 4882. *To Plea of Statute of Limitations*, 489

II. Actions Under Code, 489

A. *Complaints*, 489

1. *Commencement of Complaint*, 489
 2. *Plaintiff's Appointment as Executor*, 489
 3. *Plaintiff's Appointment as Administrator*, 489
 4. *Defendant's Appointment as Executor*, 489
 5. *Defendant's Appointment as Administrator*, 489
- B. *Answers*, 489
1. *Executor Renounced*, 489
 2. *Fully Administered*, 490

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Bill by Administrator Against Trustee.

ANNUITIES:

Bill for Dower and Annuity Against Executors, Devisees in Trust.

ARREST IN CIVIL CASES:

Capias at Suit of Executor Non-bailable;

Capias at Suit of Administrator;

Capias Against Executor;

Capias Against Administrator;

Affidavit by Executor or Administrator.

BONDS:

Complaint on Administrator's Bond.

CREDITORS' SUITS:

Bill by Creditors Against Executors.

CROSS-BILL:

Cross-Bill by Administrator De Bonis Non To Have Release Executed.

DECEDENTS' ESTATES:

Application for Administration;

Citation on Application for Administration;

Order Appointing Administrator;

Inventory by Executor and Administrator;

DECLARATION AND COMPLAINT:

Commencement of Declaration, Where Executor Is Plaintiff;

Commencement, Where Administrator Is Plaintiff;

Commencement of Declaration, Where Executor Is Defendant;

Commencement of Declaration, Where Administrator Is Defendant.

GENERAL ISSUE AND GENERAL DENIAL:

Plea of Non-Assumpsit by Executor or Administrator.

INTERPLEADER:

Bill by Executor, in Nature of Interpleader To Obtain Instructions of Court.

JUDGMENTS:

Judgment Against Executor or Administrator.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias for Executor or Administrator on Judgment for Testator or Intestate;

Fieri Facias for Executor or Administrator;

Fieri Facias Against Executor or Administrator on Judgment Against Testator or Intestate;

Fieri Facias Against Executor or Administrator for Damages De Bonis Testatoris;

Execution Against Property in Hands of Personal Representatives, Etc.

LANDLORD AND TENANT:

Complaint, Lessor Against Executor for Rent.

PARTNERSHIP:

Complaint by Administrator of Deceased Partner Against the Survivor.

PLEA IN EQUITY:

Plea, Defendant Never Administrator;

Plea to Bill by Administrator, Supposed Intestate Living;

Plea to Bill of Revivor, Plaintiff Not Administrator;

Plea to Revivor, Defendant Never Administrator;

Plea to Bill for Rescission, Plaintiff Not Administrator.

REVIVOR:

Bill of Revivor and Supplement;

Death of Plaintiff and Birth of Heir of Defendant;

Bill of Revivor by Administrator, Executor Renouncing;

Petition by Executor, Administrator or Heir of Deceased Plaintiff;

Petition by Surviving Plaintiff To Compel Representative To Revive;

Petition by Defendant To Revive Action, Plaintiff Dead;

Order by Consent, Substituting Executors, Without Prejudice to Proceedings Already Had;

Order To Show Cause on Petition by Defendant To Revive;

Order To Show Cause on Petition by Defendant To Revive, Absolute;

Affidavit on Motion of Plaintiff on Death or Disability of Defendant;

Order To Show Cause on Petition by Defendant To Revive, Alternative;

Notice of Motion To Abate Action Unless Revived;

Order Abating Action Unless Revived;

Order Reviving Action.

Notice of Motion on Behalf of Plaintiff on Death or Disability of Defendant;

Notice of Motion To Revive on Death or Disability of Plaintiff;

Order of Revivor on Motion of Plaintiff on Death or Disability of Defendant;

Order on Attachment, and Death of Defendant Before Publication Completed;

Affidavit on Motion To Abate Action Unless Revived.

SCIRE FACIAS:

Scire Facias by Executor of Sole Plaintiff After Interlocutory Judgment and Before Inquiry;

Scire Facias by Executor of Sole Plaintiff After Final Judgment;

Scire Facias by Administrator After Final Judgment in Assumpsit.

SET-OFF AND COUNTERCLAIM:

Answer, Set-Off by Executors;

Answer, Set-Off in Action by Executors.

TROVER AND CONVERSION:

Complaint for Conversion by Administrator.

VENDOR AND PURCHASER:

Complaint by Vendor Against Executor.

WILLS:

Bill by Husband of Legatee Against Executor.

I. Actions at Law.

A. Declarations.

1. Declaration by Executor in Assumpsit for Work Done by Testator.

A. B., executor of the last will and testament of J. K., deceased, plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc. (or complains by declaration filed pursuant to the statute of C. D., defendant in this suit), of a plea of trespass on the case upon promises: For that whereas the said defendant on, etc., at, etc., was indebted to the said J. K., in his lifetime, in the sum of (one thousand) dollars, for the work and labor of the said J. K. by the said J. K. before that time done, etc., and being so indebted, etc. (as in the ordinary count for work and labor, laying the promise to "the said J. K. in his lifetime").

And whereas also, afterwards, and in the lifetime of the said J. K., to-wit, on, etc., aforesaid, at, etc., aforesaid, in consideration that the said J. K. had

before that time done, etc. (quantum meruit count, laying the promise in the same way). And the said A. B., executor as aforesaid, avers that the said J. K. in his lifetime therefore reasonably deserved to have, etc., whereof, etc. Yet the said defendant, not regarding his said several promises and undertakings, hath not as yet paid the several sums of money, or any or either of them, or any part thereof, to the said J. K. in his lifetime, or to the said plaintiff, executor as aforesaid, since the death of the said J. K. (although often requested so to do); but he to do this hath wholly refused, and still refuses to pay the same, or any part thereof, to the said plaintiff, executor as aforesaid. * To the damage of the said plaintiff as executor as aforesaid of (one thousand) dollars, and therefore he brings his suit.

And the said plaintiff brings into court here the letters testamentary of the said J. K., deceased, whereby it fully appears to the said court here that the said plaintiff is executor of the said last will and testament of the said J. K., deceased, and hath the execution thereof, etc.

E. F., attorney for plaintiff.

(Counts may be inserted at the *, if the case admit of it, on promises to the plaintiff as executor, thus):

And whereas also the said defendant afterwards, in the lifetime of the said J. K., deceased, to-wit, on, etc., aforesaid, at, etc., aforesaid, was indebted to the said J. K. in the further sum of one thousand dollars for the work and labor, care and diligence, of the said J. K. by him the said J. K. before that time done, performed and bestowed, in and about the business of the said defendant, and for the said defendant, and at his special instance and request; and also in the further sum of one thousand dollars for divers goods, wares and merchandise, by the said J. K. before that time sold and delivered to the said defendant, and at his like special instance and request; and also in the further sum of one thousand dollars, for money by the said J. K. before that time lent and advanced to, and paid, laid out and expended for the said defendant, and at his like special instance and request; and also in the further sum of one thousand dollars, for other money by the said defendant before that time

had and received, to and for the use of the said J. K.

And the said defendant being so indebted, and the said several sums of money being and remaining wholly due and owing, unpaid and unsatisfied, he the said defendant, in consideration thereof, afterwards, and after the death of the said J. K., to-wit, on, etc., at, etc., aforesaid, undertook, and then and there faithfully promised the said plaintiff as executor as aforesaid, to pay him the said sum of money in this count mentioned, when he the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to-wit, on, etc., last aforesaid, at, etc., aforesaid, accounted with the said plaintiff as executor as aforesaid, of and concerning divers other sums of money from the said defendant to the said plaintiff as executor as aforesaid, before that time due and owing, and then in arrear and unpaid; and upon that accounting the said defendant was then and there found to be in arrear, and indebted to the said plaintiff as executor, as aforesaid, in the further sum of one thousand dollars; and being so found in arrear and indebted, he the said defendant, in consideration thereof, afterwards, to-wit, on, etc., last aforesaid, at, etc., aforesaid, undertook, and then and there faithfully promised the said plaintiff as executor as aforesaid, to pay him the said sum of money last mentioned whenever afterwards he the said defendant should be thereunto requested. Yet the said defendant, not regarding his said several (three) last mentioned promises and undertakings, so by him in manner and form aforesaid made, hath not yet paid the several sums of money in the (three) last mentioned counts specified, or any or either of them, or any part thereof, to the said plaintiff, executor as aforesaid (although often requested so to do). But the said defendant to pay the same or any part thereof, hath hitherto altogether refused, and still doth refuse; to the damage, etc. Burr. App. 560, §1096; 2 Chit. Pl. 102.

Conclusions of Declaration, Where Executor is Plaintiff (in Assumpsit), With Profert of Letters Testamentary.

(The breach is thus): Yet the said defendant, not regarding his said several promises and undertakings, hath not as yet paid the said several sums

of money, or any or either of them, or any part thereof, to the said J. K., in his lifetime, or to the said plaintiff, executor as aforesaid, since the death of the said J. K. (although often requested so to do); but he to do this hath wholly refused, and still refuses to pay the same, or any part thereof to the said plaintiff: To the damage of the said plaintiff as executor as aforesaid, of (one thousand) dollars, and therefore he brings his suit, etc. (Add the profert thus): And the said plaintiff brings into court here the letters testamentary of the said J. K., deceased, whereby it fully appears to the said court here that the said plaintiff is executor of the said last will and testament of the said J. K., deceased, and hath the execution thereof, etc.

E. F., plaintiff's attorney.

Burr. App. 330, §595; 2 Chit. Pl. 102.

2. Declaration by an Administrator.

A. B., administrator of all and singular the goods, chattels and credits which were of J. K., deceased, at the time of his death, who died intestate, plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody of, etc. (or as in last form), of a plea of trespass on the case upon promises: For that whereas the said defendant, on, etc., at, etc., was indebted to the said J. K. in his lifetime, etc., and being so indebted, etc. (as in last form, laying the promises to "the said J. K. in his lifetime"; and the breach will be as follows): Yet the said defendant, not regarding his said promises and undertakings, hath not as yet paid the said sums of money, or any part thereof, to the said J. K. in his lifetime, or to the said plaintiff, administrator as aforesaid, since the death of the said J. K. (although often requested so to do), but he so to do hath hitherto wholly refused, and still refuses to pay the same, or any part thereof, to the said plaintiff, administrator as aforesaid (counts on promises to the administrator as such may be inserted here, if the case admit, as in last form, substituting "administrator" for "executor"; otherwise the declaration concludes thus): To the damage of the said plaintiff as administrator as aforesaid of ——— dollars, and therefore he brings his suit, etc.

And the said plaintiff brings into

count here the letters of administration of all and singular the goods, chattels and credits which were of the said J. K. at the time of his death, and which letters were, after the death of the said J. K., to-wit, on the _____ day of _____, in the year, etc. (the date of the letters), at, etc. (the venue), aforesaid, granted to the said plaintiff by R. S., surrogate of the county of _____, which gives sufficient evidence to the said court here of the grant of administration to the said plaintiff as aforesaid, etc.

E. F., plaintiff's attorney.

Burr. App. 562, §1096a.

3. Declaration Against Executor in Assumpsit.

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., executor of the last will and testament of J. K., deceased, defendant in this suit, being in custody, etc. (or by declaration, etc.), of a plea of trespass on the case upon promises: For that whereas the said J. K. in his lifetime, to-wit, on, etc., at, etc., was indebted to the said plaintiff, etc., and being so indebted the said J. K., in consideration thereof, etc., undertook and faithfully promised the said plaintiff well and truly to pay, etc. (laying the promises by the testator), yet the said J. K. in his lifetime, and the said C. D., executor as aforesaid, since the death of the said J. K., have not, nor hath either of them, as yet paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiff, although often requested so to do. But to pay the same, or any part thereof, to the plaintiff, the said J. K. in his lifetime wholly refused, and the said C. D., executor as aforesaid, hath ever since the death of the said J. K. hitherto wholly refused, and still refuses, so to do. (Counts on promises by the executor follow here, when proper.) To the damage of the said plaintiff of _____ dollars; and therefore he brings suit, etc.

E. F., attorney for plaintiff.

Burr. App. 563, §1097.

4. Declaration Against an Administrator.

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., administrator of all and singular the goods, chattels and credits, which were of J. K., deceased, at the time of his death, who died intestate, defendant

in this suit, being in custody, etc. (or by declaration, etc.), of a plea of trespass on the case upon promises: For that whereas the said J. K. in his lifetime, to-wit, on, etc. (as in last form, substituting "administrator" for "executor"). Burr. App. 563, §1097a.

5. Declaration Against an Executor or Administrator, in Debt.

Supreme court. Of _____ term, etc.

(City and) county (of _____), ss.:

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., executor, etc. (or "administrator," etc., as in last form), being in custody, etc., of a plea that the said defendant render to the said plaintiff the sum of _____ dollars, lawful money of the United States of America, which he unjustly detains from him. For that whereas (set forth the cause of action). Burr. App. 563, §1097b.

B. Plea of *Ne Unques Executor*.

And the said defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he the said defendant never was, and is not executor of the last will and testament (or administrator of the goods, chattels and credits) of the said J. K., deceased, in manner and form as the said plaintiff hath above, in his said declaration, in that behalf alleged. And this he is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 372, §674; 3 Chit. Pl. 941, 942; Yates' Forms 278.

C. Replications.

1. Replication to Plea of *Ne Unques Executor*.

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that the said defendant at the time of the (commencement of this suit) was, and from thence hitherto hath been, and still is, executor of the last will and testament of the said J. K., deceased, and hath administered divers goods and chattels which were of the said J. K., deceased,

at the time of his death, as executor of the last will and testament of the said J. K., deceased, to-wit, at, etc. (venue), aforesaid. And this, etc. Burr. App. 378, §689; 3 Chit. Pl. 1162.

2. *Replication to Plea of Statute of Limitations, Plaintiff Sued as Executor Within One Year of Decease.*

Because he says that the said J. K. (the testator or intestate) died within the said six years next after the said causes of action so accrued to him as aforesaid, to-wit, at, etc., on, etc., and that within one year next after his death the said plaintiff commenced this suit. And this, etc. Burr. App. 384, §707.

II. Actions Under Code.

A. Complaints.

1. *Commencement of Complaint by Executor or Administrator, Where He May Sue in His Own Right.*

The plaintiff above named, complaining as administrator of the estate (or executor of the will) of M. N., deceased, alleges: 1 Abb. Forms 143.

2. *Complaint, Allegation of Plaintiff's Appointment as Executor.*

II. That thereafter, and before this action (or on the _____ day of _____, 18—), said M. N. died, leaving a will, by which the plaintiff was appointed the sole executor thereof (or this plaintiff and C. D. were appointed executors thereof).

III. That on the _____ day of _____, 18—, said will was duly proved and admitted to probate in the office of the surrogate of the county of _____, and letters testamentary thereupon were thereafter duly issued and granted to this plaintiff, as sole executor, by the surrogate of said county; and this plaintiff thereupon duly qualified as such executor, and entered upon the discharge of the duties of his said office. 1 Abb. Forms 142.

3. *Complaint, Allegation of Plaintiff's Appointment as Administrator.*

That thereafter and before this action (or on the _____ day of _____, 18—), said A. B. died intestate, and that on the _____ day of _____, 18—, letters of administration upon the estate of said A. B., deceased, were duly issued and granted

to this plaintiff by the surrogate of the county of _____, of this state, appointing this plaintiff administrator of all the goods, chattels and credits which were of said deceased, and that this plaintiff thereupon duly qualified as such administrator, and entered upon the discharge of the duties of his said office. 1 Abb. Forms 140.

4. *Complaint, Allegation of Defendant's Appointment as Executor or Administrator With the Will Annexed.*

II. That thereafter, and before this action (or on the _____ day of _____), said M. N. died, leaving a will (appointing the defendant his executor).

III. That the defendant, by an order or determination of the surrogate of the county of _____, duly made on the _____ day of _____, was appointed, and now is, the executor of said will (or the administrator of his estate with the will annexed). 1 Abb. Forms 143.

5. *Complaint, Allegation of Defendant's Appointment as Administrator.*

II. That thereafter (or on the _____ day of _____, 18—), said M. N. died intestate.

III. That on the _____ day of _____, at _____, an order or determination of the surrogate of the county of _____ was duly made, appointing the defendant administrator of the goods, chattels and credits of said M. N., and that he is now such administrator. 1 Abb. Forms 141.

B. Answers.

1. *Answer, That Executor Renounced.*

I. That said (executor), after the death of the testator, and on or about the _____ day of _____, 18—, by writing signed by him, and attested by two witnesses, and proved to the satisfaction of the surrogate of the county of _____, before whom said will was proved, renounced said appointment as executor (leaving said co-executor, who is still living, sole executor of said will); which renunciation was duly filed in the office of said surrogate.

II. That said co-executor has duly qualified and taken upon himself the execution of said will, and is now such executor.

(Or, II. That thereupon letters of

administration with said will annexed were issued upon said M. N.'s estate to one O. P. by the said surrogate, by an order duly made on the _____ day of _____, 18—). 2 Abb. Forms 37.

Note.—Some jurisdictions require also an averment that the accounts of the executor have been settled and that he has delivered over the assets of the estate as required by law. Cogburn v. McQueen, 46 Ala. 551.

2. *Answer, That the Estate is Fully Administered (Plene Administravit).*

That he has fully administered all the goods and chattels which were of the said M. N., deceased, at the time of his death, and which have ever come to the hands of the said defendant as executor (or as administrator) as aforesaid, to be administered; and that he has not had, at the commencement of this action, or at any time since, any goods or chattels which were of the said M. N., deceased, at the time of his death, to be administered. 2 Abb. Forms 37.

EXEMPTIONS.—See HOMESTEAD AND EXEMPTION.

EXHIBITS.

For forms, see 8 STANDARD PROC. 804.

EXTORTION.

Indictment Against a Constable for Extortion.

Middlesex, to-wit: The jurors for our lady the queen upon their oath present, that J. S., late of the parish of B., in the county of M., baker, on the third day of August, in the ninth year of the reign of our sovereign lady Victoria, then being one of the constables of the said parish, at the parish aforesaid, in the county aforesaid, did take and arrest one J. N., by color of a certain warrant, commonly called a bench warrant, which he the said J. S. then and there alleged to be in his possession; and that the said J. S. afterwards, and whilst the said J. N. so remained in his custody as aforesaid, to-wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, corruptly, deceitfully, extorsively, and by color of his said office, did extort, receive, and take of and from the said J. N. the sum of

five shillings, as and for a fee due to him the said J. S. as such constable as aforesaid, for the obtaining and discharging of the said warrant, as he the said J. S. then and there alleged; whereas in truth and in fact, no fee whatever was then due from the said J. N. to the said J. S. as such constable as aforesaid in that behalf; in contempt of our said lady the queen and her laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our lady the queen, her crown and dignity. Archb. Cr. Pl. 581.

EXTRADITION.

I. International Extradition, 490

- A. *Complaint Before Commissioner*, 490
- B. *Statement as to Deposition*, 491
- C. *Statement as to Agency*, 491
- D. *Warrant by Commissioner for Arrest of Fugitive*, 491
- E. *Commitment by Commissioner*, 491
- F. *Warrant by Secretary of State To Deliver Prisoner*, 492

II. Interstate Extradition, 492

- A. *Requisition by Governor*, 492
- B. *Warrant for Arrest of Fugitive*, 493
- C. *Sheriff's Return*, 493

I. International Extradition.

A. *Complaint Before Commissioner.*

"First. That one Whitaker Wright did heretofore and in the month of December, 1900, in the city of London, in that part of the United Kingdom of Great Britain and Ireland called England, and within the jurisdiction of his said Britannic majesty, commit the crime of fraud as a director of a company, to-wit, did heretofore and in the month of October, in the year 1899, and in the month of December, 1900, at the city of London, aforesaid, then being a director of a certain body corporate, to-wit, the London & Globe Finance Corporation, unlawfully make, circulate, and publish certain reports and statements of accounts of the said corporation, which were false; the said Whitaker Wright, then well knowing the said reports and statements to be false, with intent thereby to deceive and defraud the shareholders or members of the said corporation.

Second. That the said Whitaker

Wright is a fugitive from the justice of the kingdom of Great Britain and Ireland, and is now within the territory of the United States.

Third. That the crime of which the said Whitaker Wright has so as aforesaid been guilty is an offense within the treaty between the United States and Great Britain.

Fourth. That deponent's information and belief are based upon messages received by cable from his majesty's secretary of state for foreign affairs, one of the said messages stating that a warrant had been issued in England for the apprehension of the said Whitaker Wright for the offense herein charged and directing deponent to apply for a provisional warrant, under the treaty for extradition between the United States and Great Britain.

That deponent has, since the apprehension of the said Whitaker Wright yesterday, cabled to his majesty's said foreign secretary for fuller details as to said crime, and an answer is directly expected, but that the said Whitaker Wright may be detained, pending the arrival of such information, deponent asks for a provisional warrant herein." *Wright v. Henkel*, 190 U. S. 40, 23 Sup. Ct. 781, 47 L. ed. 948.

B. Complaint, Statements as to Depositions in His Possession by Representative of Foreign Government.

"Are properly and legally authenticated so as to entitle them to be received and admitted as evidence for similar purposes by the tribunals of Russia." *Grin v. Shine*, 187 U. S. 181, 193, 23 Sup. Ct. 98, 47 L. ed. 130.

C. Complaint, Statement of Agency of Complainant.

"The duly accredited official agent and representative of the German empire at Chicago and also the kingdom of Prussia, forming a part of said German empire." *Terlinden v. Ames*, 184 U. S. 270, 22 Sup. Ct. 484, 46 L. ed. 534.

D. Warrant by Commissioner for Arrest of Fugitive.

"Whereas, complaint has been made on oath under the treaty between the United States and her majesty, the late queen of Great Britain and Ireland, concluded and signed at Washington, on the 9th day of August, 1842, and of the supplementary treaty between the same high contracting parties,

signed July 12, 1889, before me, Thomas Alexander, one of the commissioners appointed by the district court of the United States for the southern district of New York, and also commissioner especially appointed to execute the acts of congress, entitled 'An act for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivering up of certain offenders,' approved August 12, 1848 (9 St. at L. 302, ch. 167, U. S. Comp. St., 1901, p. 359), and of the several acts amendatory thereof, that one Whitaker Wright did heretofore, during the month of October, in the year 1899, and in the month of December, 1900, in the city of London, in that part of the united kingdom of Great Britain and Ireland called England, and within the jurisdiction of his said Britannic majesty, commit the crime of fraud as a director of a company, to-wit, did heretofore, in the month of October, in the year 1899, and in the month of December, 1900, at the city of London aforesaid, then being a director of a certain body corporate, to-wit, the London and Globe Finance Corporation, unlawfully make, circulate, and publish certain reports and statements of accounts of the said corporation, which were false; the said Whitaker Wright then well knowing the said reports and statements to be false, with intent thereby to deceive and defraud the shareholders or members of the said corporation; that the said Whitaker Wright is a fugitive from justice of the kingdom of Great Britain and Ireland, and is now within the territory of the United States; that the crime of which the said Whitaker Wright has so as aforesaid been guilty is an offense within the treaty between the United States and Great Britain." *Wright v. Henkel*, 190 U. S. 40, 23 Sup. Ct. 781, 47 L. ed. 948.

E. Commitment by Commissioner.

United States of America, southern district of New York, ss. In the matter of Thomas Kaine.

This case having been heard before me, on requisition, through Anthony Barclay, esquire, her Britannic majesty's consul at the port of New York, that the said Kaine be committed for the purpose of being delivered up as a fugitive from justice, pursuant to the provisions of the treaty made between

the United States and Great Britain, August 9th, 1842, I find and adjudge that the evidence produced against the said Kaine is insufficient in law to justify his commitment on the charge of assault with intent to commit murder, had the crime been committed within the United States. Wherefore I order that the said Thomas Kaine be committed, pursuant to the provisions of the said treaty, to abide the order of the president of the United States in the premises.

Given under my hand and seal, at the city of New York, this 29th day of June, 1852.

(Signed) Joseph Bridgman (L. S.)
United States commissioner for the southern district of New York.

Directed to the marshal of the southern district of New York. *In re Kaine*, 14 How. (U. S.) 103, 121, 14 L. ed. 345.

F. Warrant by Secretary of State To Deliver Prisoner to Agent of Foreign Government.

Department of State, Washington, July 17th, 1852. To all whom these presents shall come, greeting:

Whereas, John F. Crampton, envoy extraordinary and minister plenipotentiary to her majesty the queen of Great Britain and Ireland, hath made requisition, in conformity with the 10th article of the treaty between the United States and Great Britain, for the mutual surrender of fugitive criminals, concluded at Washington the 9th day of August, 1842, for the delivery up to justice of Thomas Kaine, charged with the crime of assault with an intent to commit murder, in the county of Westmeath, Ireland.

And whereas the said Thomas Kaine hath been found in the state of New York, within the jurisdiction of the United States, and has, by proper affidavit, and in due form, been brought before Joseph Bridgman, a commissioner duly appointed by the United States circuit court for the southern district of New York, in the second circuit, for examination of said charge of assault with intent to commit murder. And whereas the said commissioner hath deemed the evidence sufficient to authorize the commitment of said Thomas Kaine, and has, accordingly, committed him. All of which appears by a copy of the proceedings transmitted to this department.

Now, these presents are to require of the United States marshal for the southern district of New York, or of any other public officer or person having charge or custody of said Thomas Kaine, to surrender and deliver him up to Anthony Barclay, her Britannic majesty's consul at the port of New York, or to any other person or persons duly authorized to receive said fugitive, and conduct him to Great Britain for trial.

In testimony whereof I have hereunto signed my name, and caused the seal of this department to be affixed, at Washington, this 17th day of July, A. D. 1852, and of the independence of the United States the seventy-seventh.

(Seal.)

(Signed.) W. Hunter, acting secretary of state.

In re Kaine, 14 How. (U. S.) 103, 126, 127, 14 L. ed. 345.

II. Interstate Extradition.

A. Requisition by Governor of Demanding State.

"State of New York, executive chamber. David B. Hill, governor of the state of New York, to his excellency the governor of the state of Georgia:

Whereas, it appears by a copy of an indictment which I certify to be authentic and duly authenticated, in accordance with the laws of this state, that William S. Roberts stands charged with the crime of grand larceny in the first degree, committed in the county of New York, in this state, and it has been represented to me that he has fled from justice of this state, and may have taken refuge in the state of Georgia; now, therefore, pursuant to the provisions of the constitution and laws of the United States in such cases made and provided, I do hereby require that the said William S. Roberts be apprehended and delivered to Philip Reilly, who is authorized to receive and convey him to the state of New York, there to be dealt with according to law.

In witness whereof I have hereunto signed my name and affixed the privy seal of the state, at the city of Albany, this twenty-second day of April, in the year of our Lord one thousand eight hundred and eighty-five.

(Seal of the state of New York.)

David B. Hill.

By the governor: William G. Rice,
private secretary."

Roberts v. Reilly, 116 U. S. 80, 83, 84, 6 Sup. Ct. 291, 29 L. ed. 544.

B. Warrant for Arrest of Fugitive by Governor of State of Refuge.

State of New York, executive chamber. The governor of the state of New York to the chief of police, Albany, N. Y., and the sheriffs, undersheriffs and other officers of and in the several cities and counties of this state authorized by subdivision 1 of section 827 of the code of criminal procedure to execute this warrant:

It having been represented to me by the governor of the state of Tennessee that Charles E. Cockran stands charged in that state with having committed therein, in the county of Davidson, the crimes of larceny and false pretenses, which the said governor certifies to be crimes, under the laws of the said state, and that the said Charles E. Cockran has fled therefrom and taken refuge in the state of New York; and the said governor of the state of Tennessee having, pursuant to the constitution and laws of the United States, demanded of me that I cause the said Charles E. Cockran to be arrested and delivered to Vernon Sharpe, who is duly authorized to receive him into his custody and convey him back to the said state of Tennessee; which said demand is accompanied by copies of indictment and other documents duly certified by the said governor of the state of Tennessee to be authentic and duly authenticated and charging the said Charles E. Cockran with having committed the said crimes and fled from the said state and taken refuge in the state of New York;

You are hereby required to arrest and secure the said Charles E. Cockran, wherever he may be found within this state and thereafter and after compliance with the requirements of section 827 of the code of criminal procedure to deliver him into the custody of the said Vernon Sharpe, to be taken back to the said state from which he fled, pursuant to the said requisition; and also to return this warrant and make return to the executive chamber within thirty days from the date hereof of all your proceedings had thereunder, and of the facts and circumstances relating thereto.

Given under my seal and the privy seal of the state, at the capitol in the

city of Albany, this 13th day of March, in the year of our Lord one thousand nine hundred and two.

(L. S.) B. B. Odell, Jr.

By the governor: James G. Graham, secretary to the governor.

Hyatt v. Corkran, 188 U. S. 691, 692, 693, 23 Sup. Ct. 691, 47 L. ed. 657.

C. Sheriff's Return.

“Georgia, Richmond county:

Executed the within warrant by arresting William S. Roberts and delivering him, pursuant to the mandate of the governor, to Philip Reilly, agent on the part of the state of New York, at one p. m., April 26, 1885.

W. Daniel, sheriff, R. C., Ga.”

Roberts v. Reilly, 116 U. S. 80, 86, 87, 6 Sup. Ct. 291, 29 L. ed. 544.

FACTORS AND BROKERS.

I. Declarations, 493

- A. *Factor, for Commission*, 493
- B. *Against Factor for Selling on Credit*, 494
- C. *Declaration for Commission as Real Estate Broker, Oral Agreement*, 494

II. Complaints, 494

- A. *Against Note Broker for Proceeds*, 494
- B. *For Commissions*, 495
- C. *Against Factor Under Del Credere Commission*, 495
- D. *Against Factor for Price Received*, 495
- E. *By Stockbroker for Money Advanced*, 495
- F. *Complaint, Commission for Sale of Merchandise*, 496
- G. *Complaint for Money Advanced by Merchandise Broker*, 496

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Bill for Accounting Against Brokers.

SALES:

Complaint Against Buyer, Contract Made by Broker.

I. Declarations.

- A. *Declaration by Factor for Commission*.

For that whereas the said defendant heretofore, to-wit, on the ——— day of ———, in the year of our Lord ———, at ——— in the county of ———, was indebted to the said plaintiff in the sum of ——— of lawful money, etc., for the work and labor, care and diligence, journeys and

attendance of the said plaintiff, by him the said plaintiff before that time done, performed and bestowed, as the factor and agent of the said defendant, in and about the selling and disposing of divers goods, merchandise, and chattels, and in and about other the business of the said defendant, and for the said defendant and at his special instance and request, and being so indebted, etc. (the quantum meruit thereon is), had before that time done, performed and bestowed, other his work and labor, care and diligence, journeys and attendances, as the factor and agent of the said defendant, in and about the selling and disposing of divers other goods, merchandise and chattels, and in and about other the business of the said defendant, and for the said defendant, he the said defendant undertook, etc. 2 Chit. Pl. 78.

B. Declaration Against Factor for Selling on Credit Contrary to Orders.

For that whereas heretofore, to-wit, on, etc. (venue), in consideration that the said plaintiff, at the special instance and request of the said defendant, had caused to be delivered to the said defendant certain goods and chattels, to-wit, one hogshead of tallow of the said plaintiff, of great value, to-wit, of the value of ——— l. of lawful money of Great Britain, to be sold and disposed of for ready money, by the said defendant, for certain commission and reward, to be therefor paid by the said plaintiff to the said defendant, he the said defendant undertook and then and there faithfully promised the said plaintiff not to sell or dispose of the said goods and chattels to any person or persons whatsoever, otherwise than for ready money; yet the said defendant, not regarding his said promise and undertaking, but contriving and intending to injure and defraud the said plaintiff in this respect, did afterwards, to-wit, on the day and year aforesaid, at, etc. (venue), aforesaid, sell and dispose of the said goods and chattels upon credit, and otherwise than for ready money, that is to say, to one R. H. at and for a certain sum of money, to-wit, the sum of ——— l, and which said sum of ——— l is still wholly unpaid to the said plaintiff, and the said R. H. having since become insolvent, he the said plaintiff is likely to lose the same, to-wit, at, etc. (venue), aforesaid.

(Add money counts, etc.) 2 Chit. Pl. 348.

C. Declaration for Commission as Real Estate Broker, Oral Agreement.

And the plaintiff says, that on or about the 30th day of August, 1883, the defendant employed the plaintiff to procure a purchaser for a certain lot of land and dwelling house thereon, situated on Webster street, in the city of Somerville, in the county of Middlesex, belonging to the defendant, and agreed and promised to pay the plaintiff therefor one hundred dollars, and in pursuance of said agreement the plaintiff did procure such purchaser, and the defendant owes the plaintiff one hundred dollars, and interest thereon from the fifth day of November, when he demanded the same.

And the plaintiff says, that on or about the thirtieth day of August, 1883, the defendant employed the plaintiff to procure a purchaser for a certain lot of land and dwelling house thereon, situate on Webster street, in the city of Somerville, in the county of Middlesex, belonging to the defendant, and promised to pay the plaintiff therefor the usual and customary commission for procuring such purchaser, and the usual and customary commission in such case is two and one-half per cent. on the purchase money, and that was twenty-eight hundred dollars, and the said commission thereon is seventy dollars, and the defendant owes the plaintiff said sum of seventy dollars, and interest thereon from November 5, when he demanded the same. *Desmond v. Stebbins*, 140 Mass. 339, 5 N. E. 150.

II. Complaints.

A. Complaint Against Note Broker for Proceeds of Note Discounted.

I. That on the ——— day of ———, 18—, at ———, the plaintiff employed the defendant to sell or procure to be discounted a promissory note, the property of the plaintiff, made by one M. N. (here describe the note), and thereupon the plaintiff delivered the same to the defendant, who undertook to sell it or procure it to be discounted for a reasonable commission, and to pay the proceeds over to the plaintiff.

II. The plaintiff further states, on information and belief, that on the ——— day of ———, 18— (or

thereafter and before the _____ day of _____, 18—, but on what particular day he is not informed), the defendant procured said note to be discounted by one O. P., and received as the proceeds thereof the sum of _____ dollars.

III. (As in II, D.)

IV. That the plaintiff, on the _____ day of _____, 18—, at _____, duly demanded from the defendant payment of the sum of _____ dollars being the balance of the proceeds after deducting his commission, but no part thereof has been paid. 1 Abb. Forms 185.

B. *Complaint for Commissions of Broker.*

I. That the defendant is indebted to the plaintiff on an account for the work, labor and services of the plaintiff, as broker, in the purchase (or sale, or both) for defendant of stocks, bonds and negotiable securities (or of real estate in _____), to the amount of _____ dollars, performed at the request of the defendant, between the _____ day of _____, 18—, and the _____ day of _____, 18—, in the sum of _____, and interest thereon from the _____ day of _____, 18—.

II. That no part thereof has been paid (except the sum of, etc.). 1 Abb. Forms 201.

C. *Complaint Against Factor Under Del Credere Commission.*

I. That on the _____ day of _____, 18—, the plaintiffs employed the defendants to sell certain goods and merchandise of the plaintiffs, of the value of _____ dollars, upon commission, and then delivered the same to them; and the defendants then promised to sell the same, and to be responsible to the plaintiffs for the price thereof.

II. That as the plaintiffs are informed and believe, thereafter and on or before the _____ day of _____, 18—, but on what particular day or days they are not informed, and cannot state, the defendants sold said goods and merchandise for the sum of _____ dollars, on a credit of _____ months from the time of such sale; which credit expired before the commencement of this action.

III. (As in II, D.)

IV. The plaintiffs further state on information and belief that the sum

of _____ dollars, being the price of said goods and merchandise after deducting said charges, became due and payable to these plaintiffs from the defendants on the _____ day of _____, 18—.

V. That on the _____ day of _____, 18—, at _____, the plaintiffs demanded payment of the same from the defendants, but that no part of the same has been paid. 1 Abb. Forms 184.

D. *Complaint Against Factor for Price Received by Him for Goods Sold.*

I. That on the _____ day of _____, 18—, at _____, the plaintiff employed the defendant to sell upon commission (here designate the goods), the property of the plaintiff, and thereupon delivered the same to him for that purpose.

II. The plaintiff further states upon information and belief, that thereafter, and before the _____ day of _____, 18—, but on what particular day or days he is not informed, the defendant sold said goods for the sum of _____ dollars, which sum he thereupon received.

III. That, as this plaintiff is informed and believes, the just charges of the defendants for the commissions and expenses therein, amount to _____ dollars, and no more.

IV. That on the _____ day of _____, 18—, the plaintiff demanded of the defendant payment of the balance of said price remaining after deducting said charges; but that no part of the same has been paid. 1 Abb. Forms 183.

E. *Complaint by Stockbrokers for Money Advanced on Account of Their Principal.*

I. That the plaintiffs are partners, doing business in the city of New York as bankers and brokers, under the firm name of W. S. & M.

II. That as stockbrokers, on or about the _____ day of _____, 18—, they purchased for and on account of the defendant, and at his request, the following stocks (designating the stocks and prices); said stocks to be paid for by the defendant at the expiration of thirty days from the day of purchase, with the right to the defendant to pay for said stocks at any time before the expiration of said thirty days, should he so elect.

III. That it is the custom of brokers in such cases to purchase the stocks in their own names, without disclosing the name of their principal; and in case of the failure of the principal in paying the purchase money, to resell the stocks without notice to or demand upon him or tendering him the stock, and to charge him with the deficiency and their commissions, which custom the defendant then well knew.

IV. That according to said custom, the plaintiffs purchased said stocks in their own names, and without disclosing the defendant's name.

V. That on or about the _____ day of _____, 18—, the defendant paid to the plaintiffs, on account of the said purchase of stock, _____ dollars.

VI. That at the expiration of the said thirty days, the defendant having failed to pay the balance due for said stocks, the plaintiffs, being liable therefor, paid for the same, and to reimburse themselves, did, in accordance with the custom of brokers in such cases, without notice to or demand upon the defendant, or a tender to him of said stocks, sell the same on his account, at (stating the price, it being below cost).

VII. That there is now due and payable to the plaintiffs from the defendant, on account of the said purchase of stock, the sum of _____ dollars, together with the sum of _____ dollars for commission for the purchase and sale of said stocks. 1 Abb. Forms 168.

F. *Complaint, Commissions for Sale of Merchandise.*

The plaintiff, complaining of the defendant, alleges as follows:

First. That the plaintiff is a broker in the city of Charleston, state of South Carolina, carrying on a brokerage business in fertilizers, phosphate rock, and similar products, and was so at the times hereinafter mentioned; and that the defendant, Wappoo Mills, was at the times hereinafter mentioned, and now is, a corporation created by and under the laws of the state of South Carolina, and having its principal office and place of business in the county of Berkeley. Second. That the plaintiff, as such broker, sold for account of said defendant, on June 5th, 1890, 2,000 tons dissolved bone to the Caddo Fertilizer Co., the brokerage on which,

at the accustomed rate agreed upon, was \$200, and was to be paid by the defendant. That the plaintiff has received from the defendant sixty-eight dollars on account of said brokerage, but the balance of \$132 is still due and unpaid, although demanded of the defendant. All of which will more fully appear, on reference to the broker's memorandum of sale, bill, and account, heretofore rendered defendant, and copies of which are hereto annexed, as exhibits A, B, C, and made part of this complaint. Wherefore the plaintiff demands judgment against the defendant, in the sum of \$132 and costs. Verified. *Fairly v. Wappoo Mills*, 44 S. C. 227, 22 S. E. 108.

G. *Complaint for Money Advanced by Merchandise Broker.*

That plaintiff is, and at all times hereinafter mentioned has been, doing business as a broker and buyer, on commission, in the county of Santa Barbara, state of California; that as such broker, between the twenty-sixth day of July, 1889, and the twenty-ninth day of March, 1890, plaintiff advanced in Santa Barbara, in the county and state aforesaid, the sum of \$697.69 for defendants, at defendants' instance and request, in the purchase of certain Lima and other beans, and other products of California; that defendants promised to pay the same to plaintiff, and although often requested so to do, defendants have neglected and still neglect to pay the same to plaintiff, or any part thereof. *Rogers v. Duff*, 97 Cal. 66, 31 Pac. 836.

FALSE IMPRISONMENT.

I. Declaration, 497

II. Complaints, 498

- A. *False Imprisonment*, 498
- B. *Against Corporation*, 498
- C. *Against Officer and Sureties*, 499

III. Pleas, 499

- A. *Justification on Suspicion*, 499
- B. *Justification by Officer*, 500
- C. *Justification by Justice of the Peace*, 501

IV. Answers, 501

- A. *Denial of Arrest*, 501
- B. *Denial of Want of Probable Cause*, 501
- C. *On Suspicion of Felony*, 501
- D. *By Officer on Suspicion*, 501

E. *Under Criminal Process*, 502

F. *Under Civil Process*, 502

G. *On Order of Arrest*, 502

V. Indictment for False Imprisonment,
502

For other forms, see 8 STANDARD
PROC. 959, 960.

CROSS-REFERENCE:

ASSAULT AND BATTERY:

Complaint for Assault and Battery
and False Imprisonment.

I. Declaration for False Imprisonment
(a).

For that the said defendant on, etc., with force and arms, etc., made an assault upon the said plaintiff, to-wit, at etc., and then and there seised and laid hold of the said plaintiff, and with great force and violence, pulled and dragged about him, the said plaintiff, and then and there gave, and struck the said plaintiff, a great many violent blows and strokes, and also then and there forced and compelled the said plaintiff to go from and out of a certain dwelling house, situate and being, at, etc., into the public street there, and then and there forced and compelled him to go in and along divers public streets to a certain police office situate and being, at, etc., and then and there imprisoned the said plaintiff, and kept and detained him in prison there, without any reasonable or probable cause whatsoever, for a long space of time, to-wit, for the space of

— then next following, contrary to the laws and customs of this state, and against the will of the said plaintiff, whereby he, the said plaintiff, was then and there not only greatly hurt, bruised and wounded, but was also, thereby, then and there greatly exposed and injured in his credit and circumstances, to-wit, at, etc., aforesaid. And also, for that the said defendant on, etc., with force and arms, etc., made another assault on the said plaintiff, to-wit, at, etc., and then and there beat, bruised, and ill-treated him, the said plaintiff, and then and there imprisoned him, the said plaintiff, and kept and detained him in prison there, without any reasonable or probable cause whatsoever for a long time, to-wit, for the space of ——— hours, then next following; contrary to the laws and customs of this state, and against the will of the said plaintiff. And also for that the said defendant, on, etc., with force and arms, etc.,

made another assault on the said plaintiff, to-wit, at, etc., and then and there again beat, bruised, wounded, and ill-treated him (in so much that his life was thereby then and there greatly despaired of), and other wrongs to the said plaintiff then and there did, etc. Burr. App. 299, §565; 2 Chit. Pl. 857.

Note.—As to the necessity of alleging special damage in order to admit proof of same, the practice in the state where the form is to be used must be consulted, as in some states special damage must be alleged in order to admit such proof, while in others special damages may be proven though not alleged.

Declaration for False Imprisonment (b).

State of West Virginia, Wayne county, to-wit:

Hiram Bloss complains of John Plymale, Jesse Spurlock, William P. Spurlock, Hurston Spurlock, Hugh Bowen, Milton J. Ferguson, James Ferguson, Achilles M. C. Davis, Edmund Osborn, Samuel Wellman and John Jarrell, Jr., of a plea of trespass on the case, for that heretofore, to-wit: on the 10th day of April, 1863, at the county of Wayne, aforesaid, the said defendants unlawfully, and without any reasonable or probable cause, did arrest, seize, lay hold of, arrest and imprison the said plaintiff, and did then and there unlawfully, forcibly, and against the will of the said plaintiff, force and compel the said plaintiff to go with them to the city of Richmond, and did then and there unlawfully, forcibly, and against the will of the said plaintiff, confine and imprison him in a certain loathsome and filthy prison, for a long space of time, to-wit: for the space of six months, during all of which time he was compelled by the said defendants to subsist upon unwholesome and insufficient food, by reason whereof the health of the said plaintiff became, and was, greatly impaired; and he was subjected to great suffering, hardships and expense, and has been, and is otherwise greatly injured, to-wit: at the county aforesaid.

And for that, also, afterwards, to-wit: on the day and year aforesaid, at the county aforesaid, the said defendants, in and upon the body of the said plaintiff, did make an assault, and him, the said plaintiff, did then and there unlawfully, and without any reasonable or probable cause, arrest and imprison

for a long space of time, to-wit: for the space of six months; and other wrongs to the said plaintiff then did, to-wit: at the county aforesaid. Wherefore and by reason of the premises, the said plaintiff has been, and is, greatly injured, and sustained damages to the amount of 10,000 dollars. And therefore he brings this suit. *Bloss v. Plymale*, 3 W. Va. 394.

II. Complaints.

A. *Complaint for False Imprisonment (a).*

1. That on the _____ day of _____, 18____, at _____, the defendant maliciously, and with intent to injure the plaintiff, by force (compelled the plaintiff to go with him to a police office, or, to the county jail, or the like, there situate, and there) imprisoned this plaintiff, and then and there detained him unrestrained of his liberty, for the space of _____ hours, without reasonable cause, and without any right or authority so to do, and against the will of the plaintiff; whereby the plaintiff was not only bruised and wounded, but was also injured in his credit, and was prevented from attending to his necessary affairs and business during that time, and was compelled to expend _____ dollars in costs and counsel-fees in obtaining his discharge, to his damage _____ dollars. 1 Abb. Forms 484.

Complaint for False Imprisonment (b).

"The plaintiff N. M. Newell complains of James H. Akin and says that heretofore, on the 8th day of May, 1876, the said defendant unlawfully and forcibly restrained the plaintiff of his liberty, and did unlawfully and falsely imprison him for a long space of time, to-wit: for the space of twelve hours, whereby the plaintiff was greatly injured against his will. Wherefore he demands damages against the defendant in the sum of five thousand dollars and for his costs." *Akin v. Newell*, 32 Ark. 605.

B. *Complaint Against Railroad Company and Agent for False Imprisonment.*

"Plaintiff further says that the defendant Dwyer was at the day aforesaid, and for more than a year prior thereto had been, the agent and employe of said railroad company for the purpose of detecting, arresting and prosecuting all persons who should, in

any way, unlawfully obstruct the railroad aforesaid in said county. That on the _____ day of November, 1882, the railroad track aforesaid was obstructed by some person, or persons unknown to this plaintiff and without his knowledge, direction or consent, and thereupon said railroad company directed the defendant Dwyer to arrest the persons who had so obstructed said road and caused them to be criminally prosecuted for such obstructions in the courts of said county; that pursuant to said direction so received from said company, and in the discharge of his authority as the agent and employe of said railroad company as aforesaid, the defendant Dwyer thereupon proceeded to detect and arrest and prosecute criminally in the courts of said county the person or persons who had so obstructed the railroad aforesaid, and in so doing said Dwyer assaulted, arrested and falsely imprisoned plaintiff at said county on the _____ day of December, 1882, without any legal authority so to do, upon the charge made by said Dwyer against him, said plaintiff, of unlawfully obstructing said railroad in said county on the day the same was obstructed, as aforesaid, to-wit, on the _____ day of November, 1882; that thereupon said Dwyer placed handcuffs upon his wrists, and in company with others, in said Dwyer's employ, by threats of personal violence to him, said plaintiff, and by catching hold of the plaintiff's person, compelled the plaintiff to go with him, said Dwyer, from his home in Knox county, Indiana, distant from Emison's Station about three miles, to said station, in the night over a dark road, in the woods where it was cold and disagreeable, at which station said Dwyer compelled said plaintiff to get into a car on said railroad provided by said railroad company for that purpose, and said Dwyer thereupon, by means of said car, carried said plaintiff upon said railroad a distance of ten miles, at which point said Dwyer put said plaintiff off of said car in the woods in the middle of the night, and in the darkest kind of a night, from which point said plaintiff was compelled to and did wander home, a distance of twelve miles, on foot as best he could." *Evansville & T. H. R. Co. v. McKee*, 99 Ind. 519.

Note.—Alleging that the arrest was "at the instigation and procurement of" the corporation has been held suf-

ficient on demurrer. *American Exp. Co. v. Patterson*, 73 Ind. 430.

C. Complaint Against Officer and Sureties for False Imprisonment.

The plaintiff alleges:

1. That the general election held in and for the county of Edgecombe, state of North Carolina, on the first Tuesday in November, 1892, the defendant, Nathan Boyd, was duly elected constable in and for the county aforesaid, township No. 1, for and during the period of two years next ensuing after the first Monday in December of said year.

2. That thereafter, to-wit, on the first Monday of December, 1892, the said Nathan Boyd, executed his official bond as constable in the penal sum of one thousand dollars, with the above named Jno. C. Daney and Orren James as sureties thereto, payable to the state of North Carolina and conditioned for the "faithful discharge of all duties devolving upon him as such constable and according to law," which said bond was thereafter duly accepted and approved by the proper authorities.

3. That the said Nathan Boyd thereupon took and subscribed the proper oath of office and entered upon the duties of the said office, and thereafter, to-wit, the 17th day of December, 1893, acting as constable in and for the said township and county, and under color of his said office, arrested the relator herein and imprisoned him in the jail or "lock-up" used for such purposes by the municipal authorities of the town of Princeville, and there confined him forcibly and against his will, from 10 o'clock a. m., till 5 o'clock p. m., restraining him of his liberty and subjecting him to hardships, privations, humiliation and disgrace.

4. That the arrest and imprisonment of the relator as aforesaid was without legal process or color thereof and not in due course of law.

5. That the course and conduct of the defendant Boyd, as aforesaid, was in wanton and reckless disregard of the rights of the relator and wholly without excuse or justification in law.

6. That by reason of the said false arrest and imprisonment, the said relator was detained from his business and restrained of his liberty, to his great loss and damage, and in mind, body and reputation has sustained in-

juries, in all amounting to the sum of one thousand dollars.

Therefore, the plaintiff relator demands judgment for the full penalty of said bond, to-wit, one thousand dollars, and the costs of this action." *Warren v. Boyd*, 120 N. C. 56, 26 S. E. 700.

III. Pleas.

A. Plea Justifying Imprisonment on Suspicion of Felony.

Because, he says, that before and at the time when, etc., to-wit, on, etc., aforesaid, at, etc. (venue) aforesaid (here state the felony to have been committed, and the causes of suspicion against the plaintiff, and which, in the plea in question, was stated as follows:) "the said plaintiff was the servant of the said defendant, and was then and there living and residing in the house of him the said defendant; and the said plaintiff, so being such servant as aforesaid, to-wit, at etc., divers goods and chattels, to-wit, 20 pair of silk stockings and 100 yards of lace, of great value, to-wit, of the value of ———, the property of the said defendant, had been and were feloniously stolen, taken, and carried away from out of the possession of the said defendant, and afterwards, to-wit, on, etc., at, etc., divers, to-wit, 20 bundles, containing the said goods and chattels so feloniously taken and carried away as aforesaid, were found and discovered hidden and concealed in a certain cellar of and belonging to the house of the said defendant, and to which the servants of the said defendant had access, and the said bundles, containing the said goods and chattels, being so found and discovered as aforesaid, were immediately seized and taken away by the said plaintiff, the said plaintiff then and there averring that the same were the property of her the said plaintiff, and the said plaintiff then and there endeavored to burn and make away with the said bundles, with their contents aforesaid, and did actually burn divers, to-wit, 10 of the said bundles, so containing the said goods and chattels, the property of the said defendant as aforesaid"; wherefore the said defendant having good and probable cause of suspicion, and vehemently suspecting the said plaintiff to have been guilty of or concerned in the stealing and carrying away of the said goods and chattels of the said defend-

ant, and to have feloniously taken and carried away the same, did, at the said time when, etc., gently lay hands on the said plaintiff, and did give the plaintiff in charge to one W. S. then and there being a constable and peace officer of and for our lord the king, in and for the (city of London) aforesaid, and then and there requested the said constable and peace officer to take the said plaintiff into his custody, and safely keep her until she could be carried and conveyed, and to carry and convey her before some one of the justices assigned to keep the peace of our said lord the king within and for the city of London, and to hear and determine divers felonies and misdemeanors committed within the said city of London, to be examined by and before such justice, touching and concerning the premises, and to be further dealt with according to law; and on that occasion the said W. S., so being such constable and peace officer as aforesaid, at the request of the said defendant, did then and there gently lay his hands upon the said plaintiff, take the said plaintiff into his custody, and as soon as conveniently could be, to-wit, on the said — day of —, in the year aforesaid, the said plaintiff was carried and conveyed in custody to and before sir W. L., knt., and alderman of the city of London, and one of the justices assigned to keep the peace of our said lord the king within and for the said city of London, and also to hear and determine divers felonies and misdemeanors committed within the said city, to be examined by and before the said Sir W. L. touching and concerning the premises, and to be further dealt with according to law, and the said plaintiff was then and there detained by order of the said Sir W. L. until and upon the — day of —, in the year aforesaid, when she the said plaintiff was examined by the said Sir W. L. touching and concerning the premises, and the said plaintiff was afterwards discharged out of custody by the said Sir W. L.; and by means of the said several premises aforesaid, the said plaintiff was imprisoned, and kept and detained in prison, for the said several spaces of time in the said declaration mentioned, the same being a reasonable time for that purpose, and lawful and just for the cause aforesaid, which are the supposed trespasses in the introductory part of this plea mentioned,

and whereof the said plaintiff hath above complained against the said defendant, and this he is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against him, etc. 3 Chit. Pl. 1081.

B. Plea of Justification by Officer.

“And for further answer, defendant says that on the 8th day of July, 1873, the defendant was marshal of the town of Frankfort,” etc., “duly appointed, qualified, and acting as such; that at that date there was an ordinance in force, passed by the board of trustees of said town, and duly signed by the members of said board, and attested by the clerk of said town, entitled ‘an ordinance prohibiting the disturbance of the peace and other misdemeanors in the town of Frankfort,’” etc., “passed by the board of trustees of said town at a meeting held February 5th, 1873, a copy of which ordinance is filed herewith, and made part of this answer; that at the date mentioned in the complaint, to-wit,” etc., “the plaintiff was found by defendant, within the corporation of said town of Frankfort, at the hour of eleven o’clock, on the night of said 8th day of July, 1873, in a state of gross intoxication, so that he was unable to walk or stand without support from some other person; that when so found by this defendant plaintiff was prostrated on the sidewalk of said town from the effects of intoxicating liquors; that in pursuance of his duties as marshal of said town, and in obedience to the ordinance aforesaid, defendant arrested plaintiff and conveyed him to the place designated and used by order of said board of trustees for the safe keeping of persons guilty of a violation of the ordinances of said town; that at the time of making said arrest and incarceration, plaintiff was in such a state of intoxication as to be entirely unconscious of any acts then transpiring; that as soon as plaintiff was in a condition to be taken before a justice of the peace to answer for said violation of the ordinance aforesaid, the defendant did take him before Joseph Baum, a justice of the peace of said town, and then and there filed an affidavit, charging the plaintiff with said violation of said ordinance, to which said charge the plaintiff pleaded guilty, and was fined,” etc., “as shown by a certified transcript

of the proceedings herewith filed." *Scircle v. Neeves*, 47 Ind. 289.

C. Plea, Justification by Justice of the Peace.

And the said defendant, Joseph L. Davis, by his attorney, Puterbaugh, comes and defends the force and injury, etc., when, etc., and says, *actio non*, because he says, that the said plaintiff ought not to have or maintain his aforesaid action thereof, in the second count of said declaration mentioned, because he says, that the said defendant was, and is now, an acting justice of the peace, in and for said county, and having jurisdiction of matters of such nature, the said defendant, Joel B. Ketchum, at the county and state aforesaid, on the 2nd day of November, A. D. 1859, made oath, that there was danger that the debt or claim of such Joel B. Ketchum against said George W. Outlaw, amounting to \$94.69, will be lost unless the said George W. Outlaw be held to bail, and stated the cause of such danger, so as to satisfy the said Joseph L. Davis that there was reason to apprehend such loss. Thereupon Joseph L. Davis did issue a warrant commonly called a *capias* ad respondendum, in the name of the People of the State of Illinois, directed to any constable of said county, commanding him to take the body of the said plaintiff, and to bring him forthwith before the said Joseph L. Davis, unless special bail be entered, and if such special bail be entered, then to command him to appear before the said Joseph L. Davis at Mackinaw, on the 7th day of November, at 2 o'clock p. m., to answer the complaint of said Ketchum, for a failure to pay him a certain demand not exceeding one hundred dollars, and to make due return, as the law directs; which said *capias* ad respondendum, the said Joseph L. Davis, as such justice of the peace, then and there delivered into the hands of E. B. Hibbard, the said Hibbard being then and there a constable of said Tazewell county, to execute, and the said Hibbard, in pursuance, and in obedience to the command of said writ, as constable as aforesaid, gently laid his hands upon said plaintiff and arrested him, using only necessary force, and brought said plaintiff before said Joseph L. Davis for trial, on the day and year last aforesaid, when the said George W. Outlaw confessed judgment

for the amount of said claim, whereupon the said plaintiff was then and there released from such arrest, which is the same supposed trespass in the said second count in said declaration mentioned, whereof the said plaintiff hath complained of them, and this the said defendant is ready to verify. Wherefore he prays judgment, etc. *Outlaw v. Davis*, 27 Ill. 467.

Note.—Held sufficient under statute that the party made oath, affidavit not being required.

IV. Answers.

A. Answer, Denial of Arrest.

That the defendant did not cause said order of arrest (or said process) to be issued. 2 Abb. Forms 133.

B. Answer, Denial of Want of Probable Cause.

That the defendant did not falsely or maliciously, or without probable and reasonable cause, cause the plaintiff to be arrested. 2 Abb. Forms 133.

C. Answer, Justification of Arrest on Suspicion of Felony.

I. That immediately before the time mentioned in the complaint, a felony was committed (here briefly state the felony and causes of suspicion against the plaintiff).

II. That thereupon the defendant, having reasonable cause to suspect the plaintiff of having committed such felony,* arrested him and carried him before M. N., a justice of the peace of the town of _____ (or other magistrate), to be dealt with according to law.

III. That the above acts are the same of which plaintiff complains. 2 Abb. Forms 133.

D. Answer, Justification by Officer, of Arrest on Suspicion of Felony.

I. That at and immediately before the time mentioned in the complaint, the defendant was a constable of the town of _____ (or designate other official character).

II. That he was then informed by (here state sources of information), that a felony had been committed, in the robbery of (here state felony, and the grounds of suspicion of the plaintiff).

III. That thereupon, believing such information to be true, and acting thereon, as was his duty to do (continue as in the preceding form, from the *). 2 Abb. Forms 134.

E. Answer, Justification, by Officer of Arrest Under Criminal Process.

I. That before and at the time of the committing of the alleged trespasses, he, the said defendant, was a constable within and for the town of _____, in the county of _____.

II. That a warrant duly issued by one M. N., under his hand and seal, the said M. N. then being a justice of the peace within and for the said town of _____, and directed to any constable of said _____, then was delivered to this defendant as such constable to be executed; whereby he was commanded to arrest the said plaintiff, and have him forthwith before said justice, or some other justice of the peace for said county of _____, there to answer to the charge of having feloniously stolen and carried away the goods and chattels of one _____, to the value of _____ dollars (setting forth the tenor of the writ or warrant according to its effect).

III. That by virtue of the said warrant so issued, he, the said defendant, did arrest the said plaintiff, and had him in his custody until he, as soon as he conveniently could, took, the said plaintiff before the said justice of the peace, to answer to the complaint aforesaid, as will appear by his return, duly entered on the said warrant (or, writ, etc.), which are the acts of which the plaintiff complains. 2 Abb. Forms 134.

F. Answer, Justification, by Officer, of Arrest Under Civil Process.

I. That at the time mentioned in the complaint, the defendant Y. (the officer) was a sheriff of the county of _____, in this state.

II. That on the _____ day of _____, 18____, the defendant X. (the one at whose suit the process was issued, or, if he is not made a defendant, one X., naming the judgment creditor) duly recovered a judgment in the supreme court of this state, in and for the county of _____ (or other court), against the said A. (the plaintiff in the present action), for the sum of _____ dollars, in an action in which the said A. might have been arrested, as provided in section _____ of the code of procedure, which judgment, at the time mentioned in the complaint, was in force, and wholly unsatisfied (or, unsatisfied in part).

III. That on the _____ day of _____, 18____, an execution against

the property of the plaintiff in this action was duly issued on said judgment, and afterwards was returned wholly unsatisfied (or, unsatisfied in part).

IV. That afterwards, and on or about the _____ day of _____, 18____, an execution against the person of the plaintiff in this action was duly issued upon said judgment, and delivered to the defendant Y. (the sheriff) to be executed.

V. That by virtue of the said execution, and before the return day thereof, the defendant Y. gently laid his hands upon the plaintiff in order to arrest him, and take and detain him under the said execution, which is the same act of which the plaintiff complains.

VI. That the defendant Z., by the command of the defendant Y., and in his aid and assistance, did gently lay their hands upon the plaintiff in order to take him into custody; and the defendant Y. detained him in custody under said execution, according to law; which acts are the same of which the plaintiff complains. 2 Abb. Forms 135.

G. Answer, Justification by Officer Under Order of Arrest.

I. (As in preceding form.)

II. That on or before the time mentioned in the complaint, an order was duly made by the supreme court of this state, in and for the county of _____ (or other court or officer); whereby (here recite the command of the order).

III. That on, etc., said order was delivered to the defendant (the officer) to be executed.

IV. That by virtue of said order (continue as in preceding form). 2 Abb. Forms 136.

V. Indictment for False Imprisonment.

On March 9, A. D. 1877, "with force and arms, in the county of Smith and state of Texas, did then and there unlawfully and wilfully arrest and detain one W. W. Moss, in the peace of God and our said state then and there being, against his consent and without any express warrant or authority of law; the said detention being then and there effected by the said C. T. Herring (and the other) by threats of violence, and the threats being then and there of such a character as was calculated

to operate upon and to inspire the said W. W. Moss with a just fear of serious injury to his person, and then and there to restrain the said W. W. Moss, the party detained, from removing from one place to another as he might then and there see proper, contrary," etc. *Herring v. State*, 3 Tex. App. 108.

Note.—Indictment held amply sufficient to support verdict and judgment under statute.

FALSE PERSONATION.

- I. Indictment, Personation of Owner of Stock, 503
- II. Indictment, Personation of Bail, 503
- III. Indictment, Receiving Process as Another, 503
- IV. Indictment, Obtaining Property or Money by False Personation, 503
- I. Indictment for False Personation of Owner of Stock.

(Commencement, see *Malicious Mischief*, I, A), in the county aforesaid, feloniously did falsely and deceitfully personate one J. N., the said J. N. then and there being the owner of a certain share and interest in certain stock and annuities, which were then transferable at the Bank of England, to-wit (state the amount and nature of the stock): and that the said J. S. thereby did then and there transfer the said share and interest of the said J. N. in the said stock and annuities, as if he the said J. S. were then and there the lawful owner thereof; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity. Archb. Cr. Pl. 401.

- II. Indictment for False Personation of Bail.

(Commencement as above)—in the county aforesaid, before the right honorable Sir James Parke, knight, one of the barons of her majesty's court of exchequer, at Westminster (the said Sir James Parke, knight, then and there having lawful authority to take any recognizance of bail in any suit then depending in the said court), then and there feloniously did acknowledge a certain recognizance of bail, in the name of J. N., in a certain cause then depending in the said court, wherein A. B. was plaintiff and C. D. defend-

ant, he the said J. N. not being then and there privy or consenting to the said J. S., so acknowledging such recognizance in his name as aforesaid; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity. Archb. Ch. Pl. 401.

- III. Indictment, Allegation of Falsely Receiving Process as Another.

"In a certain proceeding instituted in the second circuit court of Shelby county, by Annie C., against her husband, R. B. Davidson, for divorce, 'did falsely, fraudulently, and feloniously personate the said R. B. Davidson and accept and receive from the officer charged with the execution of process, service of the same, together with a copy of the bill filed in said cause, with the intent then and there to prejudice the interest of said R. B. Davidson.' " *Edgar v. State*, 96 Tenn. 690, 36 S. W. 379.

- IV. Information, Obtaining Property or Money by False Personation (a).

"*Dolveney V. White* is accused by the prosecuting attorney of King county, State of Washington, by this information, of the crime of larceny, committed as follows: He, the said Dolveney V. White, in King county, State of Washington, on the 23d day of March, 1893, unlawfully and falsely did represent himself to one Sam Steve, an Indian, that he, the said Dolveney V. White, was then and there a duly authorized agent of the Singer Sewing Machine Company, the same being a corporation duly organized and existing under and by virtue of the laws of the state of New Jersey, and duly and legally doing business and having a place of business in said King county, State of Washington; and the said Dolveney V. White not then and there being the agent of the said Singer Sewing Machine Company, and in said assumed character, did then and there receive from the said Sam Steve one sewing machine of the value of \$70 in lawful money, the property of the said Singer Sewing Machine Company, with the intent then and there and thereby to convert the said sewing machine to his own use, the said Sam Steve intending then and there to deliver the said sewing machine to the said Singer Sewing Ma-

chine Company, the agent of whom was misrepresented as aforesaid, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Washington. Dated at Seattle in county and state aforesaid this 12th day of January, 1894.

“John F. Miller,

“Prosecuting Attorney.

“State of Washington, County of King,
ss.:

“John F. Miller, being first duly sworn upon oath, deposes and states that he is prosecuting attorney for King County, State of Washington; that he has read the foregoing information and knows the contents thereof; that the statements and allegations made and contained therein are true as alleged.

“John F. Miller.

“Subscribed and sworn to before me this 13th day of January, 1894.

“T. W. Gordon,

“Clerk of the Superior Court.

“By P. D. Hughes, Deputy.”

State v. White, 12 Wash. 417, 41 Pac. 182.

*Indictment, Obtaining Property or Money
by False Personation (b).*

“A. B. did falsely personate C. D. with intent to defraud, and, in such assumed character, received one hundred dollars, intended to have been delivered to the said C. D.” Ala. Crim. Code (1896), §4923, No. 47.

FALSE PRETENSES.—See OBTAINING
PROPERTY BY FALSE PRETENSES.

FILING.

I. Affidavit To Compel Filing of Pleadings, 504

II. Certificate That Pleadings Are Not Filed, 504

III. Order on Certificate, 504

IV. Notice of Motion To Take Evasive Answer Off File, 504

V. Motion To Dismiss, Failure To File, 504

I. Affidavit To Compel Filing of Pleadings.

A. B., the defendant's attorney, being duly sworn, says that the summons and complaint (and reply) were served in this action more than ten days since; that the place of trial is laid in the county of _____. And that said summons and complaint (and reply)

have not been filed in said county, as appears by the annexed certificate of the clerk thereof. 2 Abb. Forms 207.

II. Certificate That Pleadings Are Not Filed.

I, M. N., clerk of the county of _____, do hereby certify that no complaint (or, answer, or, reply) in the above entitled action has been filed in my office.

(Date.)

(Signature.)

2 Abb. Forms 207.

III. Order on Certificate That Pleadings Are Not Filed.

It appearing to my satisfaction that the (complaint) in this action has not been filed, let the plaintiff file the same with the clerk of the county of _____, within _____ days after service of a copy of this order; or let the same be, in default thereof, deemed abandoned.

(Judge's signature.)

2 Abb. Forms 207.

IV. Notice of Motion To Take Evasive Answer Off the File (In Equity).

Take notice, etc., etc., that the answer of the defendant _____ in this cause, filed, etc., may be taken off the file, with costs to be paid by the said defendant. Dated, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2151.

V. Motion To Dismiss, Failure To File Pleading.

On the 3d day of December, 1878, a motion was filed in the following words: “Comes now the said defendants and move the court here to dismiss this said action and shows the court the following grounds therefor. That said plaintiff has no petition on file as required by a previous order of this court.

James Laird,

B. F. Smith and

A. H. Bowen,

Attorneys for defendants.”

Clutz v. Carter, 12 Neb. 113, 10 N. W. 541.

FINDINGS AND CONCLUSIONS.

I. Findings and Conclusions, 505

A. On Promissory Note, 505

B. On Innkeeper's Liability, 505

C. Notice of Exceptions to Findings of Fact, 505

D. Notice of Exceptions to Conclusions, 506

CROSS-REFERENCE:

PRELIMINARY EXAMINATION:

Finding of Probable Cause on Preliminary Examination (a, b).

I. Findings and Conclusions.

A. *Findings in Action on Promissory Note.*

In this action, tried before the court without a jury, I make and file the following findings of fact and conclusions of law:

Findings of fact.*

I. That at the time of making the note hereinafter mentioned, the plaintiff, and one C. D., were partners in business, under the firm name of A. B. & Co.

II. That on the _____ day of _____, 18____, at _____, the defendant made his promissory note in writing, dated on that day, and thereby promised to pay to the plaintiff and C. D., under said firm name, _____ dollars, in _____ months after said date.

III. That no part thereof has been paid.

IV. That on the _____ day of _____, 18____, at _____, said C. D. died leaving the plaintiff sole surviving partner of said firm.

Conclusions of law:

I. The cause of action against the defendant survived to the plaintiff on the death of C. D.

II. The defendant is indebted to the plaintiff on said note for _____ dollars.

Judgment is therefore rendered for the plaintiff in the sum of _____ dollars, with costs. 2 Abb. Forms 465.

B. *Findings in an Action on Innkeeper's Liability.*

(As in I, A, to the *.)

I. That on the _____ day of _____, 18____, the defendant was a common innkeeper at the town of _____, in this state.

II. That on said day the defendant received and entertained the plaintiff as a guest at his inn, for hire.

III. That the inn of the defendant was upon the seashore, and in connection with it the defendant maintained bathing houses for the safe-keeping of the clothing, wardrobe, and such money and jewelry of his guests as are usually carried upon the person of guests and patrons of his inn and bathing house.

IV. That while the plaintiff was

then and there his guest, the defendant undertook for compensation paid him by the plaintiff to keep safely in one of his said bathing houses, the clothing and such articles of jewelry and valuables as the plaintiff then had upon his person, while the plaintiff should bathe.

V. That plaintiff thereupon put into the said bathing house his clothing, his pocket book containing money, and such other property as is usually carried upon the person, of the value of _____ dollars, and left the same in the possession and charge of the defendant.

VI. That while the plaintiff was there bathing, his pocket book and money were, by the negligent and dishonest management of the defendant and his servants, lost and stolen.

VII. That the said inn was upon the seashore; and that facilities for bathing according to the customs of the neighborhood, and as the defendant then well knew, were a part of the accommodations necessary to be afforded by the innkeepers in that vicinity.

VIII. That the defendant did not provide or maintain a safe for the reception of the money, valuables, or jewelry of his guests.

Conclusions of law:

I. That the defendant is liable for the money so lost in his capacity of innkeeper.

II. That defendant is liable for the money so lost, by reason of his negligence and misconduct as bailee for hire of said property.

III. That the defendant is responsible for the negligence and misconduct of his servants in the course of their ordinary employment.

IV. That the money so lost by plaintiff was such a sum as he might reasonably carry on his person.

V. That plaintiff is not entitled to recover his expenses of advertising his loss, or in employing police officers to recover his said pocket book.

Judgment is therefore rendered for the plaintiff in the sum of _____ dollars, with costs. 2 Abb. Forms 465.

C. *Notice of Exceptions to Findings of Fact.*

I. Take notice that the plaintiff (defendant) hereby excepts to the findings of fact in the above entitled action in so far as they find in the third finding that the contract was an entire

contract; that the plaintiffs agreed in writing that they would furnish the lumber itemized; that the bill was for lumber required to complete the contract.

II. That he also excepts to said findings in so far as they find in the fourth finding, that the general delivery of the lumber itemized was on or about June 13th, 1904; that the principal contractor and the plaintiffs checked over said bill; that they agreed to deduct \$88.00.

III. That he also excepts to said findings in so far as they find in the fifth finding, that the lumber purchased after the first order was delivered between the tenth and twenty-third day of September, 1904; that the lumber was purchased on independent orders at the usual and customary prices; that the lumber amounted to one hundred six and 95/100 dollars; that the principal contractor agreed to pay \$8.00 for each working day thereafter from September 1, 1904, that the plant was not in operation.

IV. That he also excepts to said findings in so far as they find in the sixth finding, that the defendant refused further payment because the plant would not concentrate ores; that the contractor worked on the plant to remedy its defects.

V. That he also excepts to said findings in so far as they find in the eighth finding, that it seems to be an undisputed proposition that the contractor or its assigns has no right to demand anything more from the mining company since settlement with them, etc. From records of Taylor v. Dall Lead & Zinc Co., 131 Wis. 348, 111 N. W. 490.

Note.—In some jurisdictions exceptions are required to findings of fact; in others to conclusions of law.

D. Notice of Exceptions to Conclusions of Court or Referee.

I. Take notice, that the plaintiff excepts to the first of the conclusions of law found herein by Mr. Justice ——— (or, by Hon. ———, referee).

II. That he also excepts to the second of said conclusions of law.

III. That he also excepts to the third of said conclusions of law, in so far as it is thereby decided that the plaintiff is estopped from asserting his claim against the defendant for the value of the goods delivered to S. T.

IV. That he also excepts to said conclusions of law generally, in that it is not decided that upon the facts proved herein, the defendant is indebted to the plaintiff, upon an account stated, for ——— dollars. 2 Abb. Forms 481.

FINES.—See PENALTIES, FORFEITURES AND FINES.

FIRE ARMS.—See WEAPONS.

FOOD LAWS.—See PURE FOOD LAWS.

FORCIBLE ENTRY AND DETAINER.

I. Declaration on Statute for Forcible Entry, 506

II. Complaint for Forcible Entry, 507

III. Indictment for Forcible Entry, 507

For other forms, see 8 STANDARD PROC. 1109.

CROSS-REFERENCE:

INJUNCTIONS:

Injunction Against Proceeding for Dispossession.

I. Declaration on Statute for Forcible Entry.

For that after the making of a certain act of parliament, made at a parliament holden at Westminster, in the county of Middlesex, in the reign of Henry the Sixth, late King of England, entitled, "The duty of justices of the peace, where land is entered upon or detained with force," and at the time of the committing of the grievances by the said defendant as hereinafter next mentioned, the said plaintiff was seized (that is to say) in his demesne as of fee, of and in a certain dwelling house (or "close," according to the fact), with the appurtenances, situate in the parish of ——— in the county of ———, and the said plaintiff being so seized thereof, the said defendant not regarding the said statute, heretofore, and after the making of the said statute, and whilst the said plaintiff was so seized, to-wit, on, etc., with force and arms, etc., broke and entered the said messuage (or, close, etc.) of the said plaintiff, and then and there in a forcible manner put out and dispossessed the said plaintiff thereof, and in a forcible manner, and with a strong hand, kept and continued the said plaintiff so put out and disseized for a long space of time, to-wit, from thence hitherto, and, etc. (Here several trespasses on the land at common law

were stated, but it was thought that they ought to be omitted, on the ground that treble damages cannot be given under the statute for any damage subsequent to the forcible entry; a third count, however, was added, to enable the plaintiff to try that point). By means whereof the said plaintiff, for and during the time aforesaid, lost and was deprived of the profits, benefits, and advantages which might and otherwise would have arisen and accrued to him from the possession, use, occupation, and enjoyment of his said messuage, to-wit, at, etc. (venue) aforesaid. And other wrongs to the said plaintiff then and there did, in contempt of, and against the peace of our said lord the king, and to the great damage of the said plaintiff, and against the form of the statute in such case made and provided. 2 Chit. Pl. 865.

II. Complaint for Treble Damages for Forcible Entry or Detainer.

I. That at the time hereinafter mentioned, the plaintiff was owner of a freehold estate in a certain farm and dwelling house, barns, and sheds thereon, in the possession of the plaintiff, situate at _____.

II. That on the _____ day of _____, 18____, the defendant forcibly entered thereon, and in a forcible manner disseized the plaintiff, and ejected and put him out of said lands and tenements, and by force and with a strong hand kept him out therefrom, to his damage _____ dollars; whereby the defendant, by force of section _____ of the statute "Of Trespass on Lands," forfeited and became liable to pay treble the amount of said damages. 1 Abb. Forms 472.

III. Indictment for Forcible Entry and Detainer.

Middlesex, to-wit: The jurors for our lady the Queen upon their oath present, that J. S., late of the parish of B., in the county of M., gentleman, K. T., of the same parish, carpenter, and L. W., of the same parish, laborer, together with divers other persons, to the number of six or more, to the jurors aforesaid unknown, on the third day of August, in the ninth year of the reign of our sovereign lady Victoria, with force and arms, to-wit, with pistols, swords, sticks, staves, and other offensive weapons, at the parish aforesaid, in the county aforesaid, into a

certain barn and a certain orchard there situate and being, and then and there in the possession of one J. N., unlawfully, violently, forcibly, injuriously, and with a strong hand, did enter; and the said J. S., K. T., and L. W., together with the said other evil-disposed persons, to the jurors aforesaid unknown, as aforesaid, then and there, with force and arms, to-wit, with pistols, swords, sticks, staves, and other offensive weapons, unlawfully, violently, forcibly, injuriously, and with a strong hand, the said J. M. from the possession of the said barn and orchard did expel, amove, and put out; and the said J. M. so as aforesaid expelled, amoved, and put out from the possession of the said barn and orchard, then and there with force and arms, to-wit, with pistols, swords, sticks, staves, and other offensive weapons, unlawfully, violently, forcibly, injuriously, and with a strong hand did keep out, and still do keep out, and other wrongs to the said J. N. then and there did: to the great damage of the said J. N., and against the peace of our lady the Queen, her crown and dignity. Archb. Cr. Pl. 713.

FORECLOSURE.—See MORTGAGES.

FORFEITURES.—See PENALTIES, FORFEITURES AND FINES.

FORGERY.

I. Indictments, 507

- A. *Forging Bond*, 507
- B. *Promissory Note and Indorsement*, 508
- C. *Deed and Acknowledgment*, 508
- D. *Bank Check*, 509
- E. *Execution of Court*, 510
- F. *Having in Possession Forged Bank Note*, 510
- G. *Having in Possession Fictitious Check*, 511
- H. *Forgery of Grain Check*, 511
- I. *Forged Instrument Lost*, 511

For other forms, see 8 STANDARD PROC. 1143, 1144, 1173.

I. Indictments.

A. *Indictment for Forging a Bond*. Nottingham. That B. W., late of, etc., and W. M., late of, etc., on, etc., with force and arms, at, etc., aforesaid, feloniously did falsely make, forge and counterfeit, and did cause and procure to be falsely made, forged and counterfeited, a certain bond, purporting to be signed by one J. L., then

deceased, in his lifetime, with the mark of him the said J. L., and to be sealed and delivered by the said J. L. in his lifetime, the tenor of which said bond is as follows: "Know all men, etc. (here set out the bond verbatim), the mark of J. x L. Sealed and delivered in the presence of ———, the mark of A. B., C. D.," with an intent to defraud W. B. and T. W., executors of the last will and testament of the said J. L., of the sum of two hundred and fifty pounds, against the form of the statute, etc., and against the peace, etc. And the jurors, etc., do further present, that the aforesaid B. W. and W. M. afterwards, to-wit, on the said, etc., at, etc., aforesaid, a certain false, forged and counterfeited bond, purporting to have been signed by the said J. L., then deceased, in his lifetime, with his mark, and to have been sealed and delivered by the said J. L. in his lifetime, with force and arms, feloniously did utter and publish as a true bond, which said bond so as aforesaid falsely made and counterfeited, is in words and figures following (here set out the bond), with an intent to defraud the said W. B. and T. W., executors of the last will and testament of the said J. L., of the sum of two hundred and fifty pounds, the said B. M. and W. M., at the time of publishing the said last mentioned false, forged and counterfeit bond, by them as aforesaid, then and there well knowing, and each of them well knowing, the said bond to have been false, forged and counterfeited, against the form of the statute, etc., and against the peace, etc. 3 Chit. Cr. L. 1065b.

B. Indictment for Forgery, Promissory Note and Indorsement.

"The jurors for the state, upon their oath, present that Charles E. Cross and Samuel C. White, both late of the county of Wake and state aforesaid, on the 8th day of March, in the year of our Lord one thousand eight hundred and eighty-eight, and within the jurisdiction of this court, at and in the county aforesaid, unlawfully and feloniously, of their own head and imagination, did wittingly and falsely make, forge and counterfeit, and then and there wittingly assent to the falsely making, forging and counterfeiting, a certain promissory note for the payment of money, which said forged

promissory note is of the tenor following, that is to say:

"\$6,250.00. March 8th, 1888.

"Four months after date we, D. H. Graves, principal, and W. H. Sanders, the other subscribers, sureties, promise to pay the State National Bank of Raleigh, North Carolina, or order, sixty-two hundred and fifty dollars, negotiable and payable at State National Bank of Raleigh, N. C., with interest at the rate of eight per cent. per annum after maturity until paid, for value received, being for money borrowed, the said sureties hereby agreeing to continue and remain bound for payment of this note and interest, notwithstanding any extension of time granted from time to time to the principal debtor, waiving all notice of such extension of time from either payor or payee; and I do hereby appoint Samuel C. White, cashier, my true and lawful attorney, to sell any or all collaterals we may have in his hands to pay this claim, if I should fail to do so when said claim falls due, after giving me ten days' notice of his intention to sell the same, and pay any surplus that may remain to me.

"D. H. Graves.

"W. H. Sanders."

"And upon the back of which said false, forged and counterfeited promissory note is stamped and written, 'D. D. H. Graves. \$6,250.00. July 8th,' with intent to defraud, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state." State v. White, 11 Cr. L. Mag. 231, 232, 233.

C. Indictment for Forgery, Deed and Acknowledgment.

"And the said prosecuting attorney of said county, prosecuting as aforesaid, further gives the court now here to understand and be informed that heretofore, to-wit, on the 25th day of August, A. D. 1876, at the township in the county of Hillsdale aforesaid, one Eleanor Van Alstine died seised of certain real estate, situate in the township of Somerset aforesaid, in the county aforesaid, and known and described as the southeast quarter of the northwest quarter of section twenty-six, town five south, range one west, and that afterwards, heretofore, to-wit, on the 16th day of April, A. D. 1877, at the township of Somerset, in the county aforesaid, Charles Van Alstine,

Charles A. Parker and Edwin C. Cleveland did falsely and feloniously make, forge and counterfeit a certain paper writing, being, or purporting to be, a deed or conveyance from the aforesaid Eleanor Van Alstine, to the said Charles Van Alstine, of the aforesaid described lands, situate in the township of Somerset, in said county, and did then and there falsely and feloniously make, forge and counterfeit on the back of the aforesaid deed or conveyance a certain other paper writing, being, or purporting to be, a certificate of acknowledgment of the execution by the said Eleanor Van Alstine of the aforesaid deed or conveyance from the aforesaid Eleanor Van Alstine to the said Charles Van Alstine, before the said Charles A. Parker, a notary public in and for the county of Lenawee, and state of Michigan, which said deed or conveyance was of a nature proper to be recorded according to the law; and the same, together with the said certificate of acknowledgment, afterwards, to-wit, on the 16th day of April, A. D. 1877, was duly recorded in the office of the register of deeds in and for the county of Hillsdale and state of Michigan, in liber 72 of deeds, on page 611, with intent to defraud, contrary to the form of the statute in such case made and provided," etc. *People v. Van Alstine*, 6 Cr. L. Mag. 715, 719.

D. Indictment for Forgery (Bank Check).

"City and county of New York, ss.:

The jurors of the people of the state of New York, in and for the body of the city and county of New York, upon their oath, present: That George B. Clements, late of the first ward of the city of New York, in the county of New York aforesaid, on the 3d day of September, in the year of our Lord one thousand eight hundred and sixty-one, with force and arms, at the ward, city and county of New York, aforesaid, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly aid and assist in the false making, forging and counterfeiting, a certain instrument and writing, commonly called a bank check, which said false, forged and counter-

feited instrument and writing, is as follows, that is to say:
'No. 492.

Jersey City, Sept. 3, 1861.

THE BANK OF JERSEY CITY.

Pay to the order of Livermore, Clews & Mason, twenty-four hundred sixty-six dollars and ninety-three cents.

M. Barker & Son.

Certified by Sparks, Bank, J. C.
\$2,466.93.'

With intent to injure and defraud Charles F. Livermore, Henry Clews and Henry M. Mason, and divers other persons to the jurors aforesaid unknown, against the form of the statute in such case made and provided, and against the peace of the people of the state of New York and their dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present: That the said George B. Clements, late of the ward, city and county aforesaid, afterward, to-wit, on the day and year last aforesaid, with force and arms, at the ward, city and county aforesaid, feloniously and falsely did utter and publish as true, with intent to injure and defraud the said Charles F. Livermore, Henry Clews and Henry M. Mason, and divers other persons to the jurors aforesaid unknown, a certain false, forged and counterfeited instrument in writing, commonly called a bank check, which said last mentioned false, forged and counterfeited instrument and writing is as follows, that is to say:

'No. 492.

Jersey City, Sept. 3, 1861.

THE BANK OF JERSEY CITY.

Pay to the order of Livermore, Clews & Mason, twenty-four hundred sixty-six dollars ninety-three cents.

M. Barker & Son.

Certified by Sparks, Bank, J. C.
\$2,466.93.'

The said George B. Clements, at the said time he so uttered and published the last mentioned false, forged and counterfeited instrument and writing as aforesaid, then and there well knowing the same to be false, forged and counterfeited, against the form of the statute in such case made and provided, and against the peace of the people of the state of New York and their dignity.

-----, district attorney."

Clements v. People, 5 Park. Cr. (N. Y.) 337, 338.

Note. Reversed on error because proof showed only certificate on check to be forged.

E. Indictment for Forgery. Execution of Court.

That L. Y., late of, etc., falsely, unlawfully and wickedly devising, contriving and intending, one A. K., late of the same parish and county, yeoman, unjustly, maliciously and injuriously to aggrrieve, oppress and impoverish, on, etc., with force and arms, at, etc., aforesaid, of his wicked mind, invention and imagination, unlawfully, knowingly, subtly and falsely, did forge and counterfeit a certain writing engrossed on parchment, in form and to the likeness and similitude of a writ of our lord the king, of fieri facias, to the tenor following, that is to say, George, etc. (here set out the forged writ with accuracy). And the jurors, etc., do further present that the said L. Y. of his wicked mind, invention and imagination, afterwards, to-wit, on, etc., at, etc., aforesaid, the said false, forged and counterfeit writing, falsely forged, purporting to be a writ of fieri facias, subtly, falsely, knowingly and deceitfully, did pronounce and publish, and then and there, to-wit, on the same, etc., at, etc., aforesaid, subtly, falsely, knowingly and deceitfully, as a true writ of our said lord the king, of fieri facias, did cause to be delivered to the then sheriff of Salop, for execution to be made thereof, and afterwards, to-wit, on, etc., at, etc., aforesaid, did cause to be seized and taken, divers goods and chattels of the said A. K. by pretense of that writ, to the great damage and oppression of the said A. K. to the evil example, etc., and against the peace, etc. And the jurors aforesaid, upon their oath aforesaid, do further present that the said L. Y. on, etc., with force and arms, at, etc., aforesaid, of his wicked mind, intention, imagination, a certain false, forged and counterfeit writing, engrossed on parchment, falsely forged, in form and to the likeness and similitude of a writ of our said lord the king, of fieri facias, issuing out of the said court of our said lord the king, of common pleas, unlawfully, subtly, knowingly and deceitfully did pronounce and publish, as a true writ of our said lord the king, whose tenor follows, that is to say (set out the writ), he the said L. Y. then and there, to-

wit, on the same, etc., at, etc., aforesaid, well knowing the same to be falsely forged and counterfeited, and the same, then and there, to-wit, on the same, etc., at, etc., aforesaid, unlawfully, subtly, knowingly and deceitfully did cause to be delivered to the then sheriff of Salop, for execution to be made thereof, and afterwards, to-wit, on the same, etc., at, etc., aforesaid, did cause to be seized and taken, divers goods and chattels of the said A. K. by virtue of that writ, to the great damage and oppression of the said A. K., to the evil example, etc., and against the peace, etc. 3 Chit. Cr. L. 1045.

F. Indictment, Having in Possession Forged Bank Note.

“City and county of New York, ss.:

The jurors of the people of the state of New York, in and for the body of the city and county of New York, upon their oath, present: That William Smith, late of the first ward of the city of New York, in the county of New York aforesaid, and John Tomlinson, late of the same place, on the thirteenth day of August, in the year of our Lord one thousand eight hundred and sixty-one, with force and arms at the ward, city and county aforesaid, feloniously had in their possession a certain forged and counterfeited negotiable promissory note, for the payment of money, to-wit, the sum of five dollars, commonly called a bank note, purporting to have been issued by a certain corporation or company, called the Judson Bank, duly authorized for that purpose by the laws of the state of New York, a further description of which said last mentioned forged and counterfeited negotiable promissory note for the payment of money, is to the jurors aforesaid unknown, with intention to utter and pass the same as true, and to permit, cause and procure the same to be so uttered and passed, with the intent to injure and defraud one Charles Meyer, and divers other persons to the jurors aforesaid unknown, he the said William Smith and John Tomlinson, then and there well knowing the said last mentioned forged and counterfeited promissory note, for the payment of money, to be forged and counterfeited as aforesaid, against the form of the statute in such case made and provided, and against the peace of the people of the

state of New York and their dignity.
_____, district attorney.”

Tomlinson v. People, 5 Park. Cr. (N. Y.) 313.

G. Indictment, Having in Possession Fictitious Check, With Intent To Utter.

“And the grand jurors aforesaid, upon their oath aforesaid, do further say and present that Chas. F. Allen, at the county of Jackson, state of Missouri, on the thirteenth day of August, 1892, unlawfully did have in his possession and custody a certain false, forged and counterfeit check purporting to be made by H. A. Faunce, a fictitious person, and purporting to be drawn on the Midland National Bank, a banking corporation duly organized according to the laws of the state of Missouri, which said false, forged and counterfeit check is of the tenor following:

‘Kansas City, Mo., Aug. 13, 1892.
Midland National Bank \$28, No. 57.
Capital, \$500,000.

Pay to Harry F. Allen, for wages \$28.50-100.

Twenty-eight . . . 50-100 dollars.

(Signed) H. A. Faunce,’
with the felonious intent to utter, pass, sell and exchange the said false, forged and counterfeit check as true to Julius Stein and Sigmund Stein, parties doing business under the name and style of the National Clothing Company, with intent to defraud them, the said Julius Stein and Sigmund Stein, parties as aforesaid; he, the said Charles F. Allen, then and there well knowing the said check to be false, forged and counterfeit, against the peace and dignity of the state.” State v. Allen, 110 Mo. 548, 22 S. W. 792.

H. Indictment, Forgery of Grain Check.

“First count: In the name and by the authority of the state of Kansas, I, Jno. C. Sheridan, county attorney in and for the county of Miami, in the said state of Kansas, who prosecute for and on behalf of said state, in the district court of said district, sitting in and for the said county of Miami, and duly empowered to inform of offenses committed within said county of Miami, come now here and give the court to understand and be informed, that on or about the 24th day of January, 1884, at the county of Miami, in the state of Kansas, one S. W. Lee,

with the intent then and there to defraud, feloniously and wilfully did falsely make, forge and counterfeit a certain instrument of writing, to-wit, a grain check for the payment of money, to-wit, the sum of thirty-five dollars and seventy-five cents (\$35.75), the same purporting to be the act of another person, to-wit, of one M. Reed, which said false, forged and counterfeited grain check is of the purport, value and effect as in the following copy. thereof, to-wit:

‘Louisburg, Kan., January 24, 1883.
M. Reed: Pay L. Johnson, for corn, gross _____, tare _____, net _____, bu. _____, at _____, cts., \$35.75.

M. Reed,
Per J. H. R., Weigher.’

by which said false, forged and counterfeited grain check a pecuniary demand and obligation was then and there purported to be created, contrary to the form of the statute in such case made and provided.” State v. Lee, 32 Kan. 360, 4 Pac. 653.

I. Indictment, Forged Instrument Lost.

“The grand jury aforesaid, on their oaths aforesaid, do further charge and present that the said John T. Callahan, on April 23d, 1887, at said county and State aforesaid, did then and there unlawfully, feloniously and falsely forge and counterfeit a certain promissory note for the payment of money, by then and there unlawfully, feloniously and falsely forging, counterfeiting and signing the name of John M. Henry to said false, forged and counterfeited note as one of the makers thereof, which said note was dated April 23d, 1887, due in one year after date, payable to the order of Reed & Mackenbach, calling for two hundred dollars, with eight per cent. interest from maturity, and purporting to have been executed by J. T. Callahan, Samuel Hanlin and John M. Henry; that said note has been destroyed, or is in the possession of some one to the grand jury unknown; that the grand jury are unable to set out the same according to its tenor; with intent to defraud William H. Reed and Charles A. Mackenbach, of the firm of Reed & Mackenbach, contrary to the form of the statute, in such case made and provided, and against the peace and dignity of

the State of Indiana." *State v. Callahan*, 124 Ind. 361, 24 N. E. 732.

Note—Held sufficient where instrument has been lost.

FORMER ACQUITTAL OR CONVICTION.—See **ARRAIGNMENT AND PLEA.**

FORTHCOMING BONDS.

Forthcoming Bond, Condition of.

"The condition of the above obligation is such that whereas the said David P. Marum has instituted an action before Eugene McGinnis, a justice of the peace of Preston county, State aforesaid, to recover the possession of one gray horse of the value of one hundred dollars from the said Bratt, who holds the same as deputy sheriff of said county by virtue of tax receipts against Calhoun and Evans; and whereas the said Marum desires to have immediate possession of said horse; now therefore, if said Marum shall pay all costs and damages, which may be awarded against him or sustained by any person by reason of such suit, and shall have the said horse forthcoming to answer any judgment or order of the justice respecting the same made at any time during the pendency of the action, then the above obligation to be void, otherwise shall remain in full force and virtue." *Bratt v. Marum*, 24 W. Va. 653.

FRAUD AND DECEIT.

I. Declarations, 512

- A. *False Warranty of Horse*, 512
- B. *False Warranty of Cable*, 513
- C. *Deceit in Selling Smaller Quantity*, 513
- D. *Deceit in Selling Smaller Quantity of Land*, 514
- E. *Misrepresentation as to Quantity of Business*, 514
- F. *Misrepresentation to Third Persons, Credit Obtained*, 515

II. Complaints, 516

- A. *Fraudulently Selling Smaller Quantity of Land*, 516
- B. *Fraudulently Delivering Smaller Quantity*, 516
- C. *Fraudulently Misrepresenting Value of Good-Will*, 517
- D. *Fraudulently Representing Goods To Be Seller's Property*, 517
- E. *Fraudulently Misrepresenting Value of Stock*, 517
- F. *Fraudulently Obtaining Goods on Credit*, 518

G. *Fraudulently Obtaining Credit for Another*, 518

III. Defenses, 518

- A. *Denial of Falsity*, 518
- B. *Denial of Scienter*, 518
- C. *Answer, Denial of Fraud in Obtaining Deed*, 518
- D. *Plea, False Representations as to Existence of Patent*, 518
- E. *Rejoinder, Denial of Fraud in Obtaining Judgment*, 519

CROSS-REFERENCES:

BILLS AND NOTES:

- Answer That the Note Was for Goods Sold by Means of Deceit.*

RESCISSON AND CANCELLATION:

- Complaint To Cancel a Contract for Fraud.*

SALES:

- Complaint, Sale and Delivery, Anticipating and Avoiding Defense of Payment;*
- Complaint, Sale and Delivery, Anticipating and Avoiding Defense of an Unexpired Credit;*
- Complaint Against Fraudulent Buyer, Seeking Injunction Restraining Sale Pending Suit.*

TROVER AND CONVERSION:

- Complaint by Seller Against Fraudulent Buyer of Goods for Damages for Conversion.*

WARRANTY:

- Declaration for False Warranty of Horse.*

I. Declarations.

- A. *Declaration for False Warranty of Horse.*

For that whereas the said plaintiff heretofore, to-wit, on, etc., at, etc. (venue), at the special instance and request of the said defendant, bargained with the said defendant to buy of the said defendant a certain (horse), at and for a certain price or sum of money, to-wit, the sum of £———, and the said defendant by then and there falsely and fraudulently warranting the said (horse) to be (sound and quiet in harness), then and there sold the said (horse) to the said plaintiff for the said sum of £———, which was then and there paid by the plaintiff to the said defendant; whereas, in truth and in fact, the said (horse) was, at the time of the said warranty and sale thereof (unsound, unsteady, restive and ungovernable in harness, and hath from thence hitherto so remained and continued. And the said plaintiff in fact

saith that the said defendant, by means of the premises, on the day and year aforesaid, at, etc. (venue), aforesaid, falsely and fraudulently deceived the said plaintiff on the sale of the said (horse) as aforesaid, and thereby the said (horse) afterwards, to-wit, on the day and year aforesaid, not only became of no use or value to the said plaintiff, but also then and there greatly kicked, hurt, injured and spoiled a certain other horse of the said plaintiff, of great value, to-wit, of the value of £——, and thereby also the said plaintiff was then and there put to great expense of his moneys, in the whole amounting to a large sum of money, to-wit, the sum of £——, in and about the feeding and taking care of and selling and disposing of the said (horse), to-wit, at, etc. (venue), aforesaid. 2 Chit. Pl. 679.

B. Declaration for False Warranty of Cable.

For that whereas the said plaintiffs, heretofore, to-wit, on, etc., at, etc. (venue), at the special instance and request of the said defendants, bargained with the said defendants to buy of them the said defendants a certain cable, at and for a certain price or sum of money, to-wit, the sum of, etc., of lawful money of Great Britain: and the said defendants then and there, by falsely and fraudulently warranting the said cable to be a new British-made cable, then and there sold the said cable to the said plaintiffs, for the said sum of £——, then and there paid by the said plaintiffs to the said defendants for the same; whereas in truth and in fact the said cable, at the time of the said warranty and sale, was not a new British-made cable, but was then and there a cable made of the materials of an old rotten unlaid Russian cable, and of half clean hemp, and other toppings, and hemp from which the staple part thereof had been taken away by the manufacturer, contrary to the statute in such case made and provided. And the said plaintiffs in fact say that the said defendants, by means of the premises, on the day and year aforesaid, at, etc., aforesaid, falsely and fraudulently deceived them the said plaintiffs on the sale of the said cable as aforesaid. By means whereof the said plaintiffs, confiding in the said warranty, used and employed the said first mentioned cable as a

cable in and for a certain ship or vessel of the said plaintiffs called the *Shakespeare*; and afterwards, to-wit, on, etc., whilst the said ship or vessel was anchored by the said last mentioned cable, in a certain place called Yarmouth Roads, the said last mentioned cable, from its being so made as aforesaid, then and there broke, and the said ship or vessel was in imminent peril of being wrecked, and the lives of the crew thereof were greatly endangered, and also thereby the said plaintiffs were forced and obliged to, and necessarily did, lay out and expend a large sum of money, to-wit, the sum of £——, of like, lawful money, in and about purchasing and getting on board the said ship or vessel, a certain other cable for the said ship or vessel, in the place of the said first mentioned cable, and also thereby the said ship or vessel was greatly delayed in a certain voyage in which she was then engaged, and the said plaintiffs lost and were deprived of divers large profits and gain, which they otherwise would have made from the earnings of the said ship or vessel, to-wit, at, etc., aforesaid. 2 Chit. Pl. 682.

C. Declaration for Deceit in Selling Smaller Quantity of Coal Than Pretended.

For that whereas, before the committing of the grievance by the said defendant hereinafter next mentioned, to-wit, on, etc., at, etc. (venue), the said plaintiff, at the special instance and request of the said defendant, bargained for and agreed to buy of the said defendant, and the said defendant then and there sold to the said plaintiff, a large quantity, to-wit (two chaldrons and a half of coals, wharf measure), at and for a certain price or sum of money, to-wit, at and after the rate or price of £—— of lawful money of Great Britain, for each and every chaldron thereof; and the said defendant afterwards, to-wit, on the day and year aforesaid, at, etc. (venue), aforesaid, fraudulently and deceitfully contriving and craftily and subtly intending to deceive and defraud the said plaintiff in this behalf, did fraudulently and deceitfully deliver to the said plaintiff a certain quantity of coals, as and for the said quantity of coals so bargained for and sold to the said plaintiff as aforesaid, whereas in truth and in fact the said coals so de-

livered to the said plaintiff by the said defendant as aforesaid, at the time of the delivery thereof as aforesaid, were deficient in the full quantity which they ought to have contained, and wanted of the said quantity which they ought to have contained, divers, to-wit, twenty bushels of coals, as the said defendant then and there well knew; and so the said plaintiff saith that the said defendant falsely and fraudulently deceived and defrauded the said plaintiff in the said sale, and thereby he the said plaintiff lost, and was deprived of all the benefit and advantage which he might and would otherwise have derived and acquired from the said sale, and hath been, and is, by means of the premises, otherwise greatly injured and damaged, to-wit, at, etc. (venue), aforesaid. 2 Chit. Pl. 685.

D. Declaration for Deceitfully Selling Land for Greater Quantity Than it Was.

For that whereas the said plaintiff, on, etc., at, etc. (venue), bargained with the said defendant to buy of him a certain piece or parcel of ground of the said defendant called, etc., situate and being in the parish of ———, in the county of ———, and the said defendant then and there, to-wit, at, etc. (venue), aforesaid, well knowing the said close to contain a much less quantity than (three acres) of land, to-wit, the quantity of (two acres and a half) of land only, by then and there, to-wit, at, etc. (venue), aforesaid, falsely and fraudulently warranting the said close to contain (three acres) of land, then and there, to-wit, at, etc. (venue), falsely, fraudulently and deceitfully, sold the said close to the said plaintiff, at and for a certain sum of money, to-wit, the sum of £———, of lawful money of Great Britain to be therefore paid by the said plaintiff to the said defendant, and which was then and there, to-wit, at, etc., aforesaid, accordingly paid for the same; whereas in truth and in fact the said close, so as aforesaid sold by the said defendant to the said plaintiff did not contain (three acres) of land, but, on the contrary thereof, contained a much less quantity than (three acres) of land, to-wit, the quantity of (two acres and a half) only; by means of which premises the said defendant lost great gains and profits which he otherwise would have made and derived from the pur-

chase of the said close, and was put to great charge and expense, to-wit, at, etc. (venue); and so the said plaintiff in fact saith that the said defendant, on, etc., aforesaid, falsely and fraudulently deceived him, to-wit, at, etc., aforesaid. 2 Chit. Pl. 687.

E. Declaration for Misrepresentation as To Quantity of Business.

For that whereas, before and at the time of the committing of the grievances by the said defendant, as hereinafter next mentioned, the said defendant was possessed of a certain public house, called and known by the sign of the ("Sun"), and carried on therein the trades and business of a publican and victualer, and dealer in wines and spirits, to-wit, at, etc. (venue). And the said defendant then and there represented to the said plaintiff that he was possessed of a certain lease, of and in the said premises, to-wit, for the term of ———, etc. (according to the fact); and the said defendant being desirous of selling and disposing of the said lease and the good-will of the said premises, and trades and business, heretofore, to-wit, on, etc. (day of misrepresentation, or about it), at, etc. (venue), aforesaid, wrongfully and injuriously contriving and intending to deceive, defraud and injure the said plaintiff in this behalf, then and there falsely, fraudulently and deceitfully represented and asserted to the said plaintiff that (let the misrepresentations here stated agree as nearly as possible with the misrepresentations made use of, and which in the case upon which this form was drawn were as follows: the said public house was then and there doing between seven and eight butts a month, and about £——— or £——— in spirits), whereupon, heretofore, to-wit, on the day and year last aforesaid, at, etc. (venue), aforesaid, the said plaintiff, confiding in the said representations and assertions of the said defendant, at the special instance and request of the said defendant, bargained with him to buy of him the said defendant's interest in the said unexpired lease of his said premises, and the said good-will, at and for a certain sum, to-wit, the sum of £———, and the household furniture, fixtures, utensils, and effects, then upon the said premises, at and for a large sum of money, to-wit, the sum of £———. And the said defendant, by then and there false-

ly, fraudulently and deceitfully pretending and representing to the said plaintiff that the said false, fraudulent and deceitful representation of the said defendant was true, then and there sold the said lease and premises and good-will to the said plaintiff, at and for the said sum of money, to-wit, the said sum of £——. And the said plaintiff, afterwards, to-wit, on the day and year aforesaid, at, etc. (venue), aforesaid, paid the said defendant the said sum of money for the same; whereas in truth and in fact the said trades and businesses of the said public house had not been, nor were they before, or at the time of the making of the said false representation and assertion, between seven and eight butts a month, but had been and were much less, to-wit, one butt a month; and whereas, in truth and in fact, there had not been sold or disposed of at the said public house, to the amount of from £—— to £—— in spirits, but, on the contrary, much less spirits, that at the rate of from £—— to £—— a month had been sold and disposed of in and from the said public house, to-wit, to the amount of about £—— in spirits per month, as the said defendant, at the time of his making his said false and deceitful representation well knew; and the said plaintiff further saith that the said defendant, by means of the premises, on the day and year aforesaid, at, etc. (venue), aforesaid, falsely and fraudulently deceived the said plaintiff on the said sale, and thereby the said lease, trades and business have become, and are, of no use or value to the said plaintiff; and the said plaintiff hath sustained great trouble, expense and loss, to-wit, an expense and loss of £——, in and about the carrying on the said trades and businesses in the said house and premises, and endeavoring to dispose of the said lease, trades and businesses, to-wit, at, etc. (venue), aforesaid. 2 Chit. Pl. 688.

F. Declaration, Misrepresentation to Third Person Whereby Credit Was Obtained.

“That the firm of T. H. Hinchman & Sons (composed of the above named plaintiffs) are wholesale dealers in groceries, drugs, etc., in the city of Detroit, county of Wayne, and State of Michigan, and that they were thus engaged and have been since the 1st day of July, 1887, and that since said last

mentioned date, in the course of trade, the said defendant, Ambrose A. Weeks, became indebted to the firm of T. H. Hinchman & Sons, composed of the parties above named, in the sum of \$1,202.61 for goods, wares, and merchandise sold and delivered by plaintiffs to the said Ambrose A. Weeks, defendant herein; and that said indebtedness was created and credit given by plaintiffs to defendant upon the basis that the statements and representations of defendant as to his financial responsibility, more particularly hereinafter referred to, were true in substance and in fact.

“That the said firm of T. H. Hinchman & Sons is a member of Dun’s Commercial Agency, a company organized and existing for the purpose of collecting information as to the circumstances, standing, and pecuniary reliability of merchants and dealers throughout the country, and keeping accounts thereof, so that the subscribers of the agency, when applied to by customers to sell goods to them on credit, may, by resorting to the agency, or to the lists which it publishes, ascertain the standing and responsibility of the customers to whom its purpose is to extend credit.

“That on or about the 19th day of December, A. D. 1887, the said Ambrose A. Weeks, with intent to obtain a standing and credit, and to extend information therefor, stated and represented to said Dun’s Commercial Agency, its agents and servants, in substance, among other things, that he then had and owned a stock of goods, wares, and merchandise, and that he had made an inventory of such stock, which showed an amount of goods on hand amounting to \$4,000 or thereabouts; that he then owned a house and lot, store and barn, at Grattan, in said county, for which he paid the sum of \$3,550 or thereabouts; that he had that fall built an addition to his store building, and that it was filled with goods; that he then owed \$1,500 on his residence, which was secured by a mortgage, which would mature a year from that fall, and that he had offered to pay up the mortgage, but the mortgagee would not take the money until it became due; that he also then owned 20 acres of land, worth \$800 or thereabouts, which was free and clear from all incumbrances; that he had good accounts amounting to \$400, and personal

property worth \$1,000, besides household goods, furniture, etc., which were valued at \$2,500; that he then had notes and cash worth about \$300; and that in July or August, 1886, his (the said Ambrose A. Weeks') wife gave him as a present a sum of \$2,000, which she received from the estate of Thomas Byrne, with which he (the said Weeks) purchased a team of horses, which he used in his business, making his gross assets, in round numbers, upwards of \$10,000; and that his total sales during the two years he had been in the trade amounted to \$21,000; that his liabilities consisted of a mortgage on his said residence of \$1,500, and about \$1,000 for merchandise.

"Plaintiffs further aver that the substance of such information was reported by said Dun's Commercial Agency to the said plaintiffs; and that the said plaintiffs, in making and continuing the sale of the goods to the said Ambrose A. Weeks, after the making of such report, and especially during the time the goods for which the indebtedness in this action arose, relied upon the said statements so made to the said commercial agency, and believed the same to be true, and that such sales were made, and such credit granted and extended, upon the basis of such representations.

"Plaintiffs further aver that such representations were untrue in substance and in fact, and were known to be so by said defendant; and that afterwards, and on or about the 29th day of December, 1888, the said Ambrose A. Weeks made a general assignment for the benefit of his creditors. And they, the said plaintiffs, allege that in the fall of 1887, and at the time of making such reports and permitting them to be spread abroad for the purposes aforesaid, the said Ambrose A. Weeks was owing to merchandise creditors between \$1,200 and \$1,500, and was owing to his wife the sum of \$2,700, and was largely indebted otherwise; and that he then had on hand a stock of only about \$2,600; and that the said Ambrose A. Weeks was at such time insolvent, and unable to pay his debts in full; and that, by means of such false and fraudulent representations upon the part of the said defendant, they, the said plaintiffs, lost and were wholly deprived of their said goods, wares, and merchandise, and became and were, and ever since have

been, unable to secure, collect, or enforce payment for the same, or any part thereof, and lost and became deprived of the value thereof; to the great damage of them, the said plaintiffs, to-wit, in the sum of \$10,000. Therefore they bring suit." *Hinchman v. Weeks*, 85 Mich. 535, 48 N. W. 790.

II. Complaints.

A. *Complaint for Fraudulently Selling Tract of Land for More Than it Was.*

I. That the plaintiff, on the _____ day of _____, 18—, bargained with the defendant to buy of him a piece of land of the said defendant, situate in (very briefly designate it), which said piece of land the defendant then, with intent to deceive and defraud the plaintiff, falsely and fraudulently represented to him to contain _____ acres, when the defendant then well knew that it contained only _____ acres.

II. That the plaintiff, then confiding in the truth of said representations, and supposing said piece of land to contain the said quantity of _____ acres, agreed to pay for said land, and did then pay therefor to the said defendant the sum of _____ dollars.

III. That in truth the said piece of land did not contain _____ acres, but only _____ acres, whereby the said plaintiff has sustained damages, to the amount of _____ dollars. 1 Abb. Forms 432.

B. *Complaint for Fraudulently Delivering Smaller Quantity Than Agreed for.*

I. That the plaintiff, on the _____ day of _____, 18—, at _____, bought of the defendant, and the defendant sold and agreed to deliver to the plaintiff (briefly designate the merchandise and price, *e. g.*, thus, ten tons of coal, for the price of _____ dollars per ton).

II. That the defendant afterwards, and on the _____ day of _____, 18—, intending to defraud the plaintiff, fraudulently and deceitfully delivered to him only (nine tons of coal) as and for the said quantity of (ten tons), so bargained for and sold, and pretending it so to be, though then well knowing that the (coal) so delivered did not contain the quantity bargained for and sold, but only (nine tons), to the damage of the plaintiff _____ dollars. 1 Abb. Forms 435.

Note.—This complaint should contain an allegation that plaintiff paid defendant for ten tons of coal. Elligood v. De Festetics, 8 N. Y. Supp. 851.

C. Complaint for Fraudulently Misrepresenting Value of Good-Will of Business Sold.

I. That on the _____ day of _____, 18____, at _____, the defendant being engaged in business as _____, and having offered to sell out the (stock, fixtures, and) good-will of his said business to the plaintiff, did, with intent to deceive and defraud the plaintiff, falsely and fraudulently represent to him that the said business, as theretofore conducted by defendant, was a profitable business, and that the net profits thereof, realized by the defendant during the year ending the _____ day of _____, 18____, had exceeded the sum of _____ dollars (or otherwise, as the representations were).

II. That this plaintiff, relying on said representations, purchased of defendant the (stock, fixtures, and) good-will of defendant, and paid him therefor the sum of _____ dollars.

III. That in truth, and as defendant then well knew, said representations were false, and said business was not and never had been a profitable business, and the defendant had not realized any profits whatever from the same during the year ending the _____ day of _____, 18____ (or otherwise state specifically the particulars in which the representations were false).

IV. That by reason of the premises, this plaintiff was misled, to his damage _____ dollars. 1 Abb. Forms 433.

D. Complaint Against Seller of Chattels for Fraudulently Representing Them To Be His Property.

I. That on the _____ day of _____, 18____, at _____, the defendant having offered to sell to the plaintiff a certain horse did, with intent to deceive and defraud the plaintiff, falsely and fraudulently represent to him that said horse was the property of defendant (or otherwise, as the representations were).

II. That the plaintiff, relying on said representations, purchased said horse of the defendant, and paid him therefor the sum of _____ dollars.

III. That, in truth, and as defendant then well knew, said representations were false, and said horse was not the property of the defendant, but was the property of one M. N. (or otherwise state specifically the particulars in which the representations were false).

IV. That thereafter, the said M. N. sued this plaintiff in the _____ court (or, before Q. R., a justice of the peace for the town of _____), to recover the value of said horse; and although this plaintiff (employed one O. P., a competent attorney of the supreme court of this state, to defend and) used due diligence in the defense of said suit, the said M. N. recovered a judgment against the plaintiff (duly given by said justice) for the sum of _____ dollars, which this plaintiff has since paid (or, which judgment still remains outstanding and in full force).

V. That by reason of the premises, this plaintiff has been misled, to his damage _____ dollars. 1 Abb. Forms 434.

E. Complaint for Fraudulently Misrepresenting Value of Stock in a Corporation Taken in Payment for Services.

I. That on the _____ day of _____, 18____, at _____, the defendant having offered to the plaintiff that he would assign and transfer to him _____ shares of the par value of _____ dollars each, of the capital stock of the M. N. company, a corporation, incorporated under the laws of _____, and doing business in _____, upon consideration that the plaintiff should render services (by himself and his servants) in _____ (state briefly the nature of the services agreed to be rendered) did, with intent to deceive and defraud the plaintiff, falsely and fraudulently represent to him that said stock was of the market value of _____ dollars, and that defendant had paid all charges, calls, and assessments laid or to be laid upon said shares by said company or the trustees or directors thereof (or otherwise, as the false representations were).

II. That the plaintiff, relying upon said representations, then and there agreed with the defendant to render (by himself and his servants) all necessary services that should be required by the defendant in said, etc.), to the

value, at the market prices for such services, of _____ dollars (or otherwise state fully the nature and the value of the services agreed to be rendered), and thereafter proceeded to, and did render (and cause to be rendered) said services (state facts showing how far the contract was performed by plaintiff).

III. That, in truth, and as defendant then well knew, the said stock was not then of the market value of _____ dollars; but, on the contrary, the said company was then insolvent, and the stock worthless and unsalable in the market; and the defendant had not paid all charges, calls, and assessments laid upon said shares; but, on the contrary, a special assessment of _____ per cent. on the par value of said shares had been theretofore duly imposed upon them by the directors of said company, which assessment had not been paid by defendant, but then remained (and still remains) a charge upon said shares (or otherwise state specifically the particulars in which the representations were false).

IV. That by reason of the premises, the plaintiff has been misled, to his damage, _____ dollars. 1 Abb. Forms 435.

F. Complaint for Fraudulently Obtaining Goods on Credit.

I. That on the _____ day of _____, 18____, at _____, the defendant, with intent to deceive and defraud the plaintiff by inducing the plaintiff to sell goods for him, falsely and fraudulently represented to the plaintiff that he was solvent, and worth _____ dollars over all his liabilities (or otherwise, as the representations were).

II. That the plaintiff, relying on said representations, was thereby induced to sell (and deliver) to him (briefly designate the goods), of the value of _____ dollars.

III. That the said representations were false in that (stating what respect), and were then known by the defendant to be so.

IV. That no part of the price thereof has been paid (and, if the goods were not delivered, and that the plaintiff in preparing and shipping the said goods, and in stopping them in transit, expended _____ dollars), to his damage _____ dollars. 2 Abb. Forms 431.

G. Complaint for Fraudulently Obtaining Credit for Another.

I. That on the _____ day of _____, 18____, at _____, the defendant, with intent to deceive and defraud the plaintiff, falsely and fraudulently represented to him that one M. N. was in good credit and safe to be trusted, and worth the sum of _____ dollars over and above his debts and liabilities (or otherwise, as the fraudulent representations were).

II. That the plaintiff relying on said representations, sold and delivered (briefly designate the goods), of the value of _____, to said M. N. for a credit of _____ months; but although said term has expired, said M. N. has neglected and refused to pay for said goods.

III. That in truth, and as defendant then well knew, said M. N. was, at the time of such representations, insolvent, and not in good credit, nor safe to be trusted, nor worth anything over and above his debts and liabilities.

IV. That by means of said premises the plaintiff has wholly lost said goods, and the value thereof, to his damage _____ dollars. 1 Abb. Forms 431.

III. Defenses.

A. Answer, Denial of Falsity.

That the representations alleged to have been made by the defendant to the plaintiff were true. 2 Abb. Forms 116.

B. Answer, Denial of Scienter.

That he did not know at the time of making said representations that they were untrue. 2 Abb. Forms 116.

C. Answer, Denial of Fraud in Obtaining Deed.

That he did not obtain the said deed (or other instrument in question) from the plaintiff by fraud or misrepresentation. 2 Abb. Forms 162.

D. Plea, False Representations as to Existence of Patent.

"That heretofore, to-wit: on the 16th of June, 1851, at, etc., one G. W. Cottingham, and the said Peter German, the payee in the said bond, were partners, and jointly interested in the ownership of an alleged patent-right to a certain medicine, known and commonly called 'Newsom's Vegetable Tonic'; and said Cottingham, as such partner, then and there offered, and

proposed to sell and convey unto him, 'the knowledge of making, vending and using, in any way, in the counties of Hot Springs, Pulaski and Saline, the said medicine, and to have all the proceeds arising from the same during the term of the patent,' and then and there the said Cottingham, falsely and fraudulently represented and stated, that said medicine had been and was regularly patented under the United States laws, and the exclusive use thereof secured thereunder; and that said parties were the sole owners of, and had the exclusive right to sell and dispose of the same, and the said defendant fully relying on the representations, so made by the said Cottingham, and having, within his reach, no other means of information in respect thereof, agreed to, and did purchase of, and from the said ——— (the name of the person is omitted; it is presumed the pleader must have intended Cottingham), the right of making, using and vending the said medicine in the said counties of Hot Springs, Pulaski, and Saline, and to receive the proceeds arising therefrom during the term of the patent, for the price and sum of eight hundred dollars, and then and there, to secure part of said price and consideration, and for no other cause or consideration whatever, he executed and delivered to the said Peter German, the said bond for \$150, in said declaration mentioned; and the said defendant in fact says, that in truth, and in fact, said persons, or either of them, never had any exclusive right to the said medicine, or right to sell the same, and that the same never had been patented under the United States laws, to any person or persons whatsoever, and the whole pretended right to the said medicine, and the representations in respect thereof, were, and are, a mere and sheer fabrication to defraud defendant. And so the said defendant says that the said contract was a gross and naked fraud upon, and that said bond was given without consideration by, defendant, and is void, and he ought not to be charged or made liable thereon, and this he is ready to verify, etc." *Brown v. Wright*, 17 Ark. 9.

E. Rejoinder, Denial of Fraud in Obtaining Judgment.

And the said defendant, as to the said replication of the said plaintiff to the said (second) plea of the said defend-

ant, says, that the said plaintiff ought not by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him, the said defendant, because he says, that the said judgment in the said (first) plea of him the said defendant first mentioned, was had and obtained for a true and just debt, really and truly owing to the said I. J., and not by the fraud or covin of him, the said defendant, or with intent to defraud the said plaintiff of his said debt, in manner and form as he, the said plaintiff, hath above in his said replication in that behalf alleged; (and the said defendant further says, that the said judgment in the said first plea of him, the said defendant, secondly mentioned, was, etc. [similar denial to each judgment]. And of this he, the said defendant, puts himself upon the country, etc.) 3 Chit. Pl. 1225; Burr. App. 390, §719.

FRAUDS, STATUTE OF.

I. Plea of Statute of Frauds, 519

II. Under Codes, 520

A. *Complaint, Allegation of Part Payment, 520*

B. *Answers, 520*

1. *Leasing or Sale of Lands, 520*

2. *Not To Be Performed Within a Year, 520*

3. *Promise To Answer for Default, Etc., 520*

4. *In Consideration of Marriage, 521*

5. *Sale of Personal Property, 521*

III. In Equity, 521

A. *Plea to Bill for Specific Performance, 521*

B. *Answer Claiming Benefit, 521*

CROSS-REFERENCES:

GUARANTY:

Plea of Statute of Frauds to Declaration on Guaranty.

SPECIFIC PERFORMANCE:

Bill for Specific Performance of Parol Agreement, Relying on Part Performance.

I. Plea of Statute of Frauds on Guaranty (a).

And the said C. D., defendant in this suit, by S. G. R., his attorney, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that by the statute entitled "Of fraudulent conveyances and

contracts relative to goods, chattels and things in action." It is enacted that every special promise to answer for the debt, default or miscarriage of another person shall be void unless such agreement, or some note or memorandum thereof, expressing the consideration, be in writing, and subscribed by the party to be charged therewith. And the said defendant avers that the said plaintiffs have brought their said action for the default (or debt, or miscarriage), of H. M., and for no other purpose whatever, and that the supposed promise and undertaking aforesaid, of the said defendant in the said declaration specified, was not and is not in writing, nor was nor is any note or memorandum thereof made as required by the said statute; and this he is ready to verify. Wherefore, he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc.

_____, attorney for deft.

Burr. App. 347, §636; Yates' Forms 297.

Plea of Statute of Frauds on Guaranty (b).

Because he saith that the several supposed promises and undertakings in the said (first and second) counts respectively mentioned, were special promises, and each of them was a special promise for the debt of another person, to-wit, the said A. P. and that no agreement in respect of, or relating to, the supposed causes of action in the (first and second) counts of the said declaration, or either of them, nor any memorandum, or note thereof, wherein the consideration or considerations for the said special promises, or either of them, was or were stated or shown, was or is in writing, or was or is signed by the said defendant, or by any other person by him thereunto lawfully authorized, according to the form of the statute in such case made and provided; and this, etc. 3 Chit. Pl. 909.

II. Under Codes.

A. Complaint, Allegation of Part Payment Where No Memorandum.

I. That on the _____ day of _____, 18____, at _____, it was mutually agreed between the plaintiff and the defendant that the defendant should sell and deliver to the plaintiff at _____, and on or before the _____ day of _____, 18____ (very

briefly designate the thing), and that the plaintiff should pay to the defendant therefor at the rate of _____ dollars per _____, amounting to _____ dollars, payable as follows:

_____ dollars at the time of making said agreement, and the residue on the delivery of the _____ as aforesaid.

II. That the plaintiff thereupon paid to the defendant the sum of _____ dollars, in pursuance of the agreement. 1 Abb. Forms 373.

B. Answers.

1. Answer, Statute of Frauds; as to Leasing or Sale of Lands (a).

That neither the defendant, nor any person by him lawfully authorized, did ever make or sign any contract or agreement in writing for making or executing any lease to the said plaintiff of the same premises, or any of them, or any part thereof, or to any such effect as is alleged; or any memorandum or note in writing of any agreement whatsoever for or concerning the demising or leasing, or making or executing, any lease of the said premises, or any of them, or any part thereof, to the plaintiff. 2 Abb. Forms 42.

Answer, Statute of Frauds; as to Leasing or Sale of Lands (b).

That neither the said lease, though for a longer period than one year (or said contract for the sale of said lands), nor any note or memorandum thereof expressing the consideration, was ever in writing and subscribed by the said _____, by whom the lease (or sale) is alleged to have been made, or by any lawfully authorized agent of said _____ (nor was said agreement ever partly performed). 2 Abb. Forms 42.

2. Answer, Statute of Frauds; as to Agreement Not to Be Performed Within a Year.

That although the said agreement by its terms was not to be performed within one year from the making thereof, neither said agreement nor any note or memorandum thereof (expressing the consideration) was ever in writing and subscribed by the said _____, who is sought to be charged therewith, or by his lawful agent. 2 Abb. Forms 43.

3. Answer, Statute of Frauds; as to Special Promise to Answer for Default, etc., of Another.

I. That the supposed promise in the

complaint alleged is a special promise to answer for the debt (or default, or miscarriage) of another person, to-wit, M. N., in said complaint mentioned.

II. That no note or memorandum of such contract (expressing any consideration) was made in writing, or subscribed by the party to be charged therewith, to-wit, this defendant (but, on the contrary, the same was wholly without consideration). 2 Abb. Forms 43.

4. *Answer, Statute of Frauds; as to Agreement in Consideration of Marriage.*

That although said alleged agreement (or promise, or undertaking) was made upon consideration of marriage, neither said agreement nor any note or memorandum thereof (expressing the consideration), was ever in writing, and subscribed by the said ———, who is sought to be charged therewith, or by his lawful agent. 2 Abb. Forms 43.

5. *Answer, Statute of Frauds; as to Sale of Personal Property.*

That although said alleged contract was for the sale of goods (or chattels, or things in action) for the price of fifty dollars or more, no note or memorandum thereof was ever made in writing, and subscribed by the said ———, sought to be charged thereby, or by his lawful agent; nor did the said (buyer) accept and receive any part of such goods (or any of the evidences of such things in action); nor did the said (buyer), at the time, pay any part of the purchase money. 2 Abb. Forms 43.

III. In Equity.

A. *Plea of Statute of Frauds, to Bill for Specific Performance.*

This defendant by protestation not confessing or acknowledging all or any of the matters and things in said complainant's bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, as to so much of the said bill as seeks to compel this defendant or any person or persons claiming under him to execute a lease in writing of the several lands and tenements in the said bill mentioned or of any of them or of any part thereof, pursuant to the pretended agreement in the bill mentioned, and as to any relief thereby prayed touching such lease and agreement, this defendant doth plead in bar, and for plea saith that by an

act of parliament made in the twenty-ninth year of the reign of his late majesty King Charles the second, entitled "An act for the prevention of frauds and perjuries;" it is amongst other things enacted that from and after the 24th day of June, 1677, no action shall be brought whereby to charge any person upon any contract of lands, tenements or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto lawfully authorized; as by the said act may appear; and this defendant avers that neither he, this defendant, nor any person by him lawfully authorized, did ever make or sign any contract or agreement in writing for making or executing any lease to the said complainant of the same premises or any of them, or of any part or parcel thereof, or to any such effect as by the said bill is suggested, or any memorandum or note in writing of any agreement whatsoever for or concerning the demising or leasing, or making or executing any lease of the said premises, or any of them, or any part or parcel thereof to the complainant. And therefore this defendant doth plead the said act of parliament and the matters aforesaid in bar to so much and such part of the said bill as seeks to compel this defendant or any person or persons claiming under him to execute a lease to the complainant of the several lands and tenements in the bill mentioned or any of them, or any part or parcel thereof, pursuant to the said pretended agreement, and as to any the relief thereby prayed touching such lease and agreement, and humbly prays the judgment of this honorable court whether he shall be compelled to make any further or other answer, etc. Van Heyth, Eq. Dr. 654.

B. *Answer, Claiming Benefit of Statute of Frauds (a).*

That by a certain statute ———, made and passed in the ——— for the prevention of fraud and perjuries, and commonly called the statute of frauds, all contracts and agreements relating to lands, except as therein is excepted, are required to be reduced into writing, and signed by the party or parties to be bound thereby; and

that the said agreement in the said bill mentioned, and therein alleged to have been made and entered into by this defendant and the said plaintiff, was not reduced into writing and executed pursuant to the said statute, and therefore this defendant insists that the same is void as against this defendant; and that he cannot be affected thereby, and this defendant claims the same benefit as if he had pleaded the same statute in this cause; and this defendant, for the reasons and under the circumstances aforesaid, is advised, and insists, that the said plaintiff is not entitled to any relief against this defendant touching the matters complained of in the said bill. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2144.

Answer, Claiming Benefit of Statute of Frauds (b).

And this defendant sets forth, in answer to the several averments of contracts, agreements, promises, and trusts concerning the premises, with, to, or for the benefit of said plaintiff, in the said bill contained, and to so much of the said bill as sets forth any pretended contract, agreement, trust or confidence between the said plaintiff and defendant, or as seeks any relief or discovery of this defendant, of or concerning any pretended contract, agreement, trust or confidence between this defendant and the plaintiff touching the said lands mentioned in said bill or any part thereof, the statute of frauds, as enacted in the laws of the state (or commonwealth) of _____ by the _____ section of the _____ chapter, and the _____ section of the _____ chapter of the _____ statutes.

And this defendant says that neither he, nor any person by him lawfully authorized thereto, did ever make or sign any note or memorandum in writing [or (if so) any writing whatsoever], or of containing any such contract, promise or agreement, or grant, or declaration [or (if so) any contract, promise or agreement, or grant, or declaration whatsoever] with, to or for the benefit of the said plaintiff, touching the said lands, or creating any estate or interest therein, or creating or declaring any trust respecting the same, in or for the benefit of the said plaintiff; and this defendant insists upon the said statutes and claims the same benefit therefrom as if he had pleaded

the same. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2145.

Answer, Claiming Benefit of Statute of Frauds (c).

I say that no agreement in writing for purchase of the said premises or any part thereof, nor any memorandum or note thereof in writing, has been made, entered into or signed by me or by any person thereunto by me lawfully authorized, and I claim the benefit of the statute passed in the twenty-ninth year of Charles the second for the prevention of frauds and perjuries, in the same manner as if I had pleaded or demurred to the plaintiff's bill. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2145.

FRAUDULENT CONVEYANCES.

- I. Complaint by Subsequent Creditor, 522
- II. Bill Requiring Grantee To Pay Over Unpaid Purchase Price, 524
- III. Decree, Conveyance in Contemplation of Insolvency Set Aside, 525

CROSS-REFERENCES:

CREDITORS' SUITS:

- Complaint Against Judgment Debtor, Assignee, and Pretended Creditor Named in Assignment, for Extrinsic Fraud;
- Complaint Against Debtors Who Transferred Assets to Third Person for His Note, and Assigned Note for Benefit of Creditors, To Set Aside Transaction as Fraudulent, and for Receiver;
- Complaint To Set Aside an Assignment Void on Its Face;
- Complaint Against Judgment Debtor, and One to Whom He Fraudulently Confessed Judgment;
- Commencement of Complaint Where Plaintiff Sues on Behalf of Other Creditors;
- Denial That Conveyance Was Fraudulent;
- Decree Setting Aside Fraudulent Conveyance, Charging Real Estate With Judgment Debt, and Not Permitting Conveyance To Stand as Security on Account of Intent To Defraud;
- Judgment in Creditors' Suit Setting Aside Conveyance With Leave To Proceed on Execution.

LIS PENDENS:

- Notice of Pendency of Action and

Proceedings To Set Aside Fraudulent Conveyance.

PLEA IN EQUITY:

Plea of Purchase Without Notice of Fraudulent Conveyance.

TRESPASS:

Answer, Goods Were Attached, and Plaintiff Fraudulent Grantee.

I. Complaint, by Subsequent Creditor.

"And now comes plaintiff, and by leave of court files his amended petition, and states that, on the sixth day of June, A. D. 1889, he recovered a judgment against the defendant, James F. Murphy, in the circuit court of the city of St. Louis, for the sum of \$701.92, and \$17.10 for his costs; that execution was duly issued on said judgment, returnable to the October term, 1889, of said court, and was returned nulla bona, and after such return plaintiff paid all of the costs of suit and execution, to-wit, the sum of \$25, and the total of said judgment and costs now remain due and unpaid.

"Plaintiff further states that, in the year 1881, plaintiff (said defendant) purchased and paid for the following described tract or parcel of land situated in city block number 1884, among others the following described piece or parcel of land situated in the city of St. Louis, state of Missouri, to-wit: A lot of ground located as follows: Beginning at the northwest corner junction of Easton and Sheridan avenues, and running thence one-half inch; thence westwardly at right angles with Sheridan avenue, one hundred and one feet and six inches to an alley; thence southwardly along said alley a distance of fifty-eight feet, two and one-half inches; thence eastwardly to a point; thence southwardly a distance of fifty-five feet to the northern line of Easton avenue; thence eastwardly along the north line of Easton avenue sixty-two feet, four and one-half inches, more or less, to the place of beginning.

"Said property is fully described in a deed of Sarah B. Curtis to James F. Murphy as trustee for his wife, Hannah Murphy, defendant herein, dated August 25, 1881, and recorded in the office of the recorder of deeds for the city of St. Louis in book 655, at page 521.

"Plaintiff further states that James F. Murphy paid for said property with his own money, and has, since the date of said purchase, placed improvements

on the same at his own expense, and paid for the same with his own money, of the value of about \$10,000.

"That all of said property, although the title to the same was placed in the name of his wife, Hannah Murphy, is owned and controlled by defendant, James F. Murphy, and he now has and enjoys the use and usufruct thereof, but the title to the same was placed in the name of himself as trustee of his wife, Hannah Murphy, for the purpose of secreting the same, and also for the purpose of hindering, delaying and defrauding his then and future creditors, and the same so remains for said purposes, and by the terms of said deed there is a contingent remainder in said James F. Murphy.

"Plaintiff further states that the said conveyance was made by the said James F. Murphy to the trustee for the use and benefit of his wife, Hannah Murphy, without any valuable consideration moving to him, but for the sole purpose of defeating his creditors then existing, and those who might subsequently become such, and especially this plaintiff, and such was the purpose and intention of the said James F. Murphy when he caused the improvements to be placed on said property, which was done when the said James F. Murphy was wholly insolvent.

"Plaintiff avers that said property is held by the said James F. Murphy as trustee for his wife, Hannah Murphy, to enable him to defraud the creditors of the latter, and prevent the collection of their just demands from him out of the same, while, in truth, the said property belongs to the said James F. Murphy, and in equity and good conscience should be subject to the payment of plaintiff's judgment.

"Plaintiff further states that the defendant, James F. Murphy, has no property held or owned by him in his own name, subject to execution, or where-with plaintiff's judgment can be satisfied.

"Plaintiff further states that the Mound City Building & Loan Association, defendant herein, has several deeds of trust, or mortgages, on said property, upon which there now remains due about the sum of \$200, and which were placed on said property in 1884, 1886 and 1889.

"Plaintiff, therefore, prays that the amount due said Mound City Building

& Loan Association be ascertained, and that the remainder of said property be subjected to the payment of plaintiff's said judgment and costs, and, if the same be not paid within a time to be limited by this court, that said property be sold by the sheriff of the city of St. Louis at public vendue, and out of the proceeds of said sale the debt of the Mound City Building & Loan Association be first paid, the homestead rights, if any, be ascertained and set apart to the party entitled thereto, and out of the said residue plaintiff's debt and demand be paid in full, together with the costs of this case, and the remainder to the parties entitled thereto, and for other and further relief." *Loehr v. Murphy*, 45 Mo. App. 519.

Note.—"With the exception of this single point of indefiniteness (date of debt), we are unable to see how it could be better drawn, unless to avoid some repetition." Opinion of Court.

II. Bill Requiring Grantee To Pay Over Balance of Purchase Price.

"State of West Virginia, Ohio county circuit court—January rules, 1868. To the Honorable E. H. Caldwell, judge of the said court, in chancery sitting:

"Your orator, Samuel Snodgrass, hereby complaining, here shows to the court that David Snodgrass, a non-resident of this State, was seized of a tract of land in the said Ohio county, containing two hundred and forty-eight acres, three roods and twenty-seven perches, lying on the waters of Short creek, in the said county, being the same tract of land conveyed by the said David Snodgrass to James L. Delaplain, dated the 8th day of June, 1867, and recorded in this county, to be more particularly referred to hereafter.

"That while owning the said tract of land, which was very saleable, the said David Snodgrass being indebted to your orator in the sum of \$960.00, made his certain promissory note in writing, bearing date the day and year last aforesaid, by which promissory note the said David Snodgrass promised to pay to your orator or his order the said sum of \$960.00, twelve months after the date thereof, with interest at the rate of six per cent., for value received, negotiable and payable at the First National Bank at Wheeling, West Virginia, and then and there delivered

the said note to your orator, a copy of which is herewith exhibited and marked 'A,' the original of which is ready to be produced; that there is now due on the said note, including interest, about \$1,060.00; that the said David Snodgrass had repeatedly promised the agent of your orator, Isaac Irwin, of Wheeling, to pay this debt, and especially when he should sell his said farm, and your orator was in hopes that he would so have done; but that the said David Snodgrass, on the 8th day of June, 1867, soon after your orator's note became due and payable, with intent to defraud your orator out of his said money so due and owing by the said note, conveyed the said tract of land for the expressed sum of \$15,184.04 to James L. Delaplain, about the value of the same, which deed passed the legal forms of such conveyance, and was recorded, and fully described the said tract of land before referred to, a certified copy of which is here exhibited and made a part of this your orator's bill and marked 'B.'

"Your orator further shows, that on the same day, the 8th day of June, 1867, the said Delaplain and wife made a deed of trust of this same land to A. J. Wilson to secure the said David Snodgrass the sum of \$8,790.43, with annual interest thereon after September 1, 1867, evidence by eight notes payable at the Merchants National Bank of West Virginia to the order of the said David Snodgrass, being for the balance of purchase money after appropriating part of the first payment and all of the second payment to the satisfaction of liens upon said land already. Said notes are dated on said day, and three of them are payable on the 1st day of September, 1868, with interest from September 1, 1867, and for the sum of \$1,243.03 cash; the other five are for \$1,012.24, each of the same date, interest payable annually on the 1st day of September, 1870; the trustee is to execute the deed upon the demand of any holder of any note after maturity, and which said deed of trust was duly recorded, and a copy is herewith exhibited and marked 'C,' and is here particularly referred to. Your orator believes and charges the fact to be, that the said land was so conveyed to the said Delaplain, who is a near relative of the said David Snodgrass, and was so received by the said Delaplain, with intent and for the purpose

of defrauding the creditors of the said David Snodgrass, especially your orator; that the said Delaplain did not pay to the said David Snodgrass the said sum of \$6,393.61, of which the said \$8,790.43 is the pretended balance, nor did the said Delaplain pay the said Snodgrass any money whatever, but gave three notes mentioned in the said deed of trust, and paid nothing else for the said land.

"Your orator further shows, that the said Delaplain is indebted to the said David Snodgrass, if the transaction was an actual sale, in the said sum of \$8,790.43, and a large unknown sum, for all of the chattel property of the said David Snodgrass which he received of him, which ought to be applied to the payment of your orator's debt. Your orator shows, that the said A. J. Wilson is the trustee for the said land and debt, and may secure the money therefor.

"All of which actings and doings are contrary to equity and conscience, and inasmuch as your orator is remediless by the rules of the common law, and is only relievable in this court as a court of equity, he therefore prays, that the said David Snodgrass, the said James L. Delaplain and A. J. Wilson be made parties defendant hereto, and that summons may issue against them. Your orator prays, that the said David Snodgrass be enjoined from receiving the money due on the said note or of transferring the same to the prejudice of your orator, and that the said Delaplain be enjoined from paying the same to the prejudice of your orator at this time; and upon the final hearing of this your orator's case, that the court order and decree, that the said sale so made of the said land be set aside for the fraud aforesaid, and be sold to satisfy your orator's said claim and his costs, or that the court order and decree, that the said James L. Delaplain, out of the money he so owes the said David Snodgrass, pay your orator's said claim, and such other and further relief as your orator's case may require, or as to the court shall seem proper and right. And your orator will ever pray, etc.

"Samuel Snodgrass,

"By Peck & Hubbard, Sol."

Goshorn's Exr. v. Snodgrass, 17 W. Va. 717.

III. Decree, Conveyance in Contemplation of Insolvency Set Aside as Fraudulent.

This court doth declare, that the indenture dated, etc., in the pleadings mentioned, is fraudulent and void as against the creditors of the insolvent debtor in the pleadings named; And doth order that the defendant deliver up the said indenture to the plaintiffs to be cancelled; and the court doth order and decree, that it be referred to, etc., to take an account of the rents and profits of the estate comprised in the said indenture received by the defendant or by any other person, etc.; and that the said defendant, within one month after the date of the master's report of the result of such account, pay the balance, if any, that shall be found to be due from him to the plaintiffs C. and W., as assignees of the estate of the said insolvent debtor." Defendant to pay plaintiffs' costs of suit, "But, in case, on taking the said account, any balance shall appear to be due to the said defendant, it is ordered that the further consideration of this cause and of the subsequent costs, be adjourned, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2273; Cazenove v. Pilkington, 1 Seton Dec. (Eng. ed. 1862) 649.

FREEHOLD.—See LIBERUM TENEMENTUM.

FRIVOLOUS AND SHAM PLEADINGS.

I. Frivolous Pleadings, 526

- A. *Notice of Motion for Judgment*, 526
- B. *Orders*, 526
 1. *For Judgment on Frivolous Demurrer, With Liberty To Plead*, 526
 2. *For Judgment on Frivolous Demurrer, Absolute*, 526
 3. *Denying Motion for Judgment*, 526
 4. *For Severance and Judgment as to One*, 526
 5. *For Judgment on Frivolous Pleading*, 526
 6. *For Judgment on Frivolous Pleading, Reserving Leave To Amend*, 526

II. Sham Pleading, 526

- A. *Affidavits*, 526
 1. *To Strike Out Sham Plea*, 526
 2. *To Falsify of Answer*, 527

3. *Corroborative, to Falsity of Answer*, 527

B. *Notices of Motion*, 527

1. *To Strike Out Sham Plea*, 527

2. *To Strike Out Sham Answer*, 527

3. *To Strike Out One Defense as Sham, and for Judgment on Other as Frivolous*, 527

C. *Order Striking Out Sham Pleading*, 527

CROSS-REFERENCE:

JUDGMENT RECORDS:

Judgment Record on Frivolous Demurrer.

I. Frivolous Pleading.

A. *Notice of Motion for Judgment on Frivolous Pleadings*.

Please take notice that on the pleadings in this action, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____ 18____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard (or will move before Mr. Justice _____, at his office in the city of _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon), for an order overruling the (answer) herein as frivolous, and for judgment thereon, and for such other or further relief as may be just (and for the costs of this motion). 2 Abb. Forms 216.

B. *Orders*.

1. *Order for Judgment on Frivolous Demurrer With Liberty To Plead*.

On motion of Mr. J., of counsel for the plaintiff, and after hearing Mr. B., of counsel for the defendant, ordered, judgment for the plaintiff on the demurrer in this cause, as frivolous (with liberty, however, to the defendant to withdraw the demurrer and plead, on payment of costs). Burr. App. 461, §928.

2. *Order for Judgment on Frivolous Demurrer*.

On reading and filing an affidavit of the due service of notice of argument in this cause, and on motion of Mr. J., of counsel for the plaintiff (no one appearing to oppose), ordered, judgment final for the plaintiff for his debt and damages, on the ground of the frivolousness of the demurrer. Burr. App. 461, §929.

3. *Order Denying Motion for Judgment on Frivolous Demurrer*.

A motion having been made on the

part of the plaintiff in this cause for judgment on the ground of the frivolousness of the demurrer, and after hearing Mr. J., of counsel for the plaintiff, in support thereof, and Mr. L. in opposition, ordered, that the said motion be denied (with costs). Burr. App. 461, §930.

4. *Order for Severance and for Judgment on Frivolous Demurrer as to One*.

This suit having been originally commenced by the above named plaintiff against the above named defendant, and one I. V., on motion of Mr. I., of counsel for the plaintiff, ordered, that the same be severed as against the said I. V., and on reading and filing notice of argument, and affidavit of service, and on like motion, ordered, judgment for the plaintiff on the ground of the frivolousness of the demurrer, and that the clerk assess the damages. Burr. App. 461, §931.

5. *Order for Judgment on Frivolous Pleading*.

At a special term, etc. (or, if at chambers, add date at foot of order).

On reading and filing the pleadings in this action, and notice of this motion (and proof of due service thereof), and on motion of Q. R., for the defendant, and after hearing S. T. (or no one appearing) in opposition thereto:

Ordered, that the answer (or the demurrer) of the defendant Y. Z. herein be overruled as frivolous;* and that the plaintiff have judgment thereon for the relief demanded in the complaint, with costs of this action, and _____ dollars costs of this motion. 2 Abb. Forms 217.

6. *Order for Judgment on Frivolous Pleading, Reserving Leave To Amend*.

(As in preceding form to the *, continuing): with leave to the defendant to answer (anew) within _____ days after service of this order upon (state terms); and that if he fail to do so, that the plaintiff have judgment thereon for the relief demanded in the complaint, with costs of this action, and _____ dollars costs of this motion. 2 Abb. Forms 217.

II. Sham Pleading.

A. *Affidavits*.

1. *Affidavit To Strike Out Sham Plea*.

A. B., the plaintiff in the above en-

titled cause, being duly sworn, says that the plea of judgment recovered (or otherwise, specifying the plea), pleaded by the defendant in said cause, and a copy whereof is hereto annexed, is wholly false and without foundation; and that there never was (any such judgment recovered) as in said plea is alleged (negating the subject-matter of the plea in terms). Burr. App. 26, §50.

2. Affidavit To Falsity of Answer.

A. B., being duly sworn, says:

I. That he is the plaintiff in the above entitled action.

II. That he has read the answer of the defendant Y. Z. herein, and that the defense of payment therein set up is wholly and absolutely false; that the defendant has never paid, or in any way satisfied, the demand set up in the complaint, nor any part thereof; nor has he ever paid, by himself or his agents, to the plaintiff, or to any of his agents, any part of the sum alleged by the said answer to have been paid.

III. That the only person ever employed by deponent to ask or receive money from the defendant is one E. F., whose affidavit is hereto annexed; and that, to the best of deponent's knowledge and belief, no other person ever asked or received anything from the defendant for account of this deponent. 2 Abb. Forms 215.

3. Corroborative Affidavit To Falsity of Answer.

E. F., being duly sworn, says:

I. That he is a clerk in the employment of the plaintiff, and attends to the collection of the debts due to the latter.

II. That he has frequently asked the defendant for payment of the amount demanded by the complaint in this action, and the defendant has always refused to pay the same, and never has paid any part thereof to deponent; nor, so far as deponent is informed and believes, to any other person. 2 Abb. Forms 215.

B. Notices of Motion.

1. Notice of Motion To Strike Out Sham Plea.

Sir: Please to take notice that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term to be held at the _____ in the city of _____, on the first Tuesday of _____ next, that the plea of (specifying the plea), pleaded by the de-

fendant in this cause, be stricken out as false (or frivolous), with costs. Burr. App. 209, §411.

2. Notice of Motion To Strike Out Sham Answer.

Take notice that on the affidavit herewith served, and on the pleadings in this action, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____-noon, or as soon thereafter as counsel can be heard, to strike out the answer herein as sham (or the first defense in the answer herein as sham, and the second defense as irrelevant); or for such other relief as may be just (with costs). 2 Abb. Forms 214.

3. Notice of Motion To Strike Out One Defense as Sham, and for Judgment on Other as Frivolous.

Please take notice that on (the affidavit herewith served, and) the pleadings in this action, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____-noon, or as soon thereafter as counsel can be heard, that the first defense in the answer herein be struck out as sham or irrelevant, and that the second defense be overruled as frivolous, and that judgment be given for the plaintiff thereon; or for such other relief as may be just (with costs). 2 Abb. Forms 216.

C. Order Striking Out Sham Pleading.

On reading and filing (describe motion papers), and on motion of Q. R. for the (defendant), and after hearing S. T. in opposition thereto (or and on proof of due service of notice of the motion, and no one appearing in opposition thereto):

Ordered, that the answer of the defendant Y. Z. in this action be stricken out as sham, with _____ dollars costs to plaintiff. 2 Abb. Forms 216.

GAMING.

I. Indictments, 528

- A. For Winning Money at Cards by Fraud, 528
- B. Card Game, 528
- C. Common Gambling, 528
- D. Dealing Faro, 528
- E. For Obtaining Money by Confidence Game, 529

I. *Throwing Dice*, 529II. *Civil Actions*, 529A. *To Recover Money Lost at Play*, 529B. *To Recover Back Wager*, 529

CROSS-REFERENCES:

ILLEGALITY, HOW PLEADED:

Answer, That the Contract Was Cover for Wager;

Answer, That Debt Was for Money Lost at Play.

MONEY HAD AND RECEIVED:

Complaint for Money Received Contrary to Statute.

I. *Indictments*.A. *Indictment for Winning Money at Cards, Etc., by Fraud*.

Middlesex, to-wit: The jurors of our lady the queen upon their oath present, that J. S., late of the parish of B., in the county of M., laborer, on the third day of August, in the ninth year of the reign of our sovereign lady Victoria, at the parish aforesaid, in the county aforesaid, by fraud, shift, cosenage, circumvention, deceit, unlawful device, and ill practice, in playing at and with cards, to-wit, at a certain game of cards called Rouge et noir, with one J. N., unlawfully did win, obtain and acquire to himself a large sum of money, to-wit, the sum of sixty pounds, of the moneys of the said J. N. (or certain valuable things, to-wit, one _____ of the value of _____, and one _____ of the value of _____,

of the goods and chattels of the said J. N., or being the property of the said J. N.); to the great damage of the said J. N., to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our lady the queen, her crown and dignity. Archb. Cr. Pl. 657.

B. *Indictment, Card Game*.

"State of Arkansas v. H. H. Hunn. Indictment. Jefferson county circuit court, Spring Term, A. D. 1879.

"The grand jury of (Gaming) county, in the name and by the authority of the State of Arkansas, accuse H. H. Hunn of the crime of gaming, committed as follows, to-wit: the said H. H. Hunn, in the county and state aforesaid, on, etc., did, then and there, unlawfully bet ten cents in money on a check, or chip, of the estimated, or representative, value of ten cents in money, on a certain unlawful game at cards then and there being played with cards, as aforesaid, which said game so

played, as aforesaid, is commonly called whist, contrary to the statute." State v. Hunn, 34 Ark. 321.

Note.—Held that the insertion of Gaming instead of Jefferson did not invalidate the indictment because of reference to the caption.

C. *Indictment, Common Gambling*.

"The grand jury of the county of Miami and state of Indiana, upon their oaths, do present, that Elmer De Haven, on the 19th day of January, in the year 1891, at the county of Miami, in the state of Indiana, and on divers other times before and after the said date, and previous to this presentment, did then and there unlawfully frequent for the purpose, and engage therein for a livelihood, gaming with cards, roulette, faro and dice, at a certain place in said county, where gambling was then and there permitted, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the state of Indiana." De Haven v. State, 2 Ind. App. 376, 28 N. E. 562.

D. *Indictment for Dealing Faro*.

The people of the state of California against Robert Beatty. State of California. In the court of sessions of the city and county of San Francisco, October term, A. D. one thousand eight hundred and fifty-eight. Robert Beatty is accused by the grand jury of the city and county of San Francisco, state of California, by this indictment, found this twenty-second day of November, A. D. one thousand eight hundred and fifty-eight, of the crime of felony, committed as follows: The said Robert Beatty, on the fifth day of November, A. D. 1858, at the said city and county, state aforesaid, with a pack of playing cards, with one Abraham M. Carter, and divers other persons, to the grand jury unknown, for the sum of twenty dollars in money, and for divers ivory checks, then and there representing money, to-wit: twenty dollars, then and there unlawfully and feloniously did deal and play a game of faro, the said game of faro being then and there a banking game, and played with cards contrary to the form, force and effect of the statute in such case made and provided, and against the peace and dignity of the people of the state of California.

H. S. Brown, district attorney.

People v. Beatty, 14 Cal. 567.

See "How To Use This Volume," Introduction, page v.

E. Indictment for Obtaining Money by Confidence Game.

State of Illinois, St. Clair county, ss.

Of the March term of the St. Clair circuit court, in the year of our Lord, 1868.

The grand jurors chosen, selected and sworn, in and for the county of St. Clair, state of Illinois, upon their oaths present, that Thomas Morton and James Stewart did, on the 18th day of February, in the year of our Lord one thousand eight hundred and sixty-eight, in the county of St. Clair aforesaid, unlawfully and feloniously obtain from one Daniel Hughes thirty dollars of his money, by means and by use of the confidence game, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the state of Illinois.

And the jurors aforesaid, in the name and by the authority aforesaid, upon their oaths aforesaid, do further present, that Thomas Morton and James Stewart, on the day and year aforesaid, and in the county aforesaid, did unlawfully and feloniously obtain from Daniel Hughes one United States legal tender treasury note, for the payment of ten dollars, and of the value of ten dollars, one bank note for the payment of ten dollars and of the value of ten dollars, and two bank notes for the payment of five dollars each and of the value of five dollars each, the personal property then and there of the said Daniel Hughes, by means and by use then and there of the confidence game; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the state of Illinois.

J. B. Hay, state's attorney.

Morton v. People, 47 Ill. 468.

F. Indictment, Throwing Dice (for Turkeys).

"The jurors for the state, upon their oath, present: That Nick De Boy, late of the county of Wake, on the 25th day of March, in the year of our Lord one thousand eight hundred and ninety-five, with force and arms, at and in the county aforesaid, unlawfully and wilfully did play at a game of chance, namely a raffle, at which money, property and other things of value were bet, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of

the State. And the jurors for the State, upon their oath, do further present: That Nick De Boy, late of the county of Wake, on the 25th day of March, in the year of our Lord one thousand eight hundred and ninety-five, with force and arms, at and in the county aforesaid, unlawfully and wilfully did bet at a game of chance, namely, a raffle at which game of chance money, property and other things of value were bet, against the form of the statute in such case made and provided, and against the peace and dignity of the State." *State v. Nick De Boy*, 117 N. C. 702, 23 S. E. 167.

II. Civil Actions.

A. Declaration To Recover Money Lost at Play.

For that the said defendant, within three months next before the commencement of this suit, to-wit, on, etc. (any day within three months before the title of the declaration, to-wit, etc. (venue) was indebted to the said plaintiff in the sum of _____ of lawful money of Great Britain, by force of the statute made and passed in the ninth year of the reign of our late Queen Anne, entitled "An act for the better preventing of excessive and deceitful gaming," being money then and there lost and paid by the said plaintiff to the said defendant, and by the said defendant then and there won of the said plaintiff by playing with dice at a certain unlawful game, commonly called or known by the name of (French hazard), at one sitting, contrary to the form of the statute in such case made and provided, whereby and by force of the statute, an action hath accrued to the said plaintiff, to demand and have of and from the said defendant the said sum of _____, parcel of the said sum above demanded. 2 Chit. Pl. 500.

B. Complaint To Recover Back a Wager.

I. That on the _____ day of _____, 18____, at _____, the plaintiff and one M. N. entered into a wager, depending on the result of the general election in this state in that year, which was then to take place (or, upon the event of a horse race then about to take place).

II. That while the event upon which said wager was made was still contingent (or, unknown, or, both) the plaintiff deposited in the hands of the

defendant, as stakeholder, the sum of _____ dollars, to abide the event of such wager, whereby an action accrued to the plaintiff, according to the provisions of the statute of betting and gaming. 1 Abb. Forms 175.

GARNISHMENT.

- I. Motion To Dismiss Writ by Garnishee, Balance in Partnership Account, 530
- II. Affidavit Claiming Exemption on Garnishment, 530
- III. Answer by Garnishee Claiming Exemption in Behalf of Defendant, 531
- IV. Answer of Garnishee, Acceptance of Order To Pay Third Party, 531
- V. Replication to Answer of Garnishee, 531
- VI. Order Directing Garnishee To Pay Money Into Court, 532
- VII. Judgment After Answer, 532
- VIII. Judgment Condemning Fund, Service by Publication, 532
- IX. Order Setting Aside Judgment Against Garnishee, 532

CROSS-REFERENCE:

ADMIRALTY:

Warrant for Arrest and for Attachment Against Goods and Chattels, and Its Effects, and Summons to Garnishee.

- I. Motion To Dismiss Writ by Garnishee, Debt, if Any, a Balance in Partnership Account.

"2. Because if said Eugene Robinson was at all indebted to said Thomas Jeynes, or had any property, money, goods, chattels, credits, or effects of his in his hands or under his control at the time said writ of garnishment was issued, such indebtedness was of such a character, and he held and controlled said goods, chattels, credits, and effects in such a way and capacity, that they could not be garnished by said plaintiff, and said writ of garnishment therefor gave said court no jurisdiction over said indebtedness from said Robinson to said Jeynes, or over any of the property, moneys, goods, chattels, credits, or effects of said Jeynes in the hands or under the control of said Robinson, for the reasons following, viz:

"If, at the time said writ was issued, said Robinson was at all indebted to said Jeynes, or had in his hands or under his control any property, money, goods, chattels, credits, or effects be-

longing to said Jeynes, he was so indebted, and had in his hands and under his control said property and money, etc., as a member of the firm of Collins, Jeynes & Co., and said indebtedness was to said Jeynes, and said property, money, etc., belonged to him, as a member of said firm, and not in any other capacity; that said firm is composed of said Jeynes, Henry Collins, and said Robinson as general partners, and said plaintiff as a special partner; that there has been no dissolution of said firm, and no accounting, settlement, or adjustment of the matters and business of said firm between its members, or between said Robinson and said Jeynes, by which the amount coming to said Jeynes from said firm has been ascertained, or by which it has been determined that at the time said writ of garnishment was issued there was any particular sum, and if so how much, due from said Robinson to said Jeynes, or any particular sum of money or other property, and if so how much and what, in the hands or under the control of said Robinson belonging to said Jeynes; that there are still many important items of account unsettled and unadjusted between said Jeynes and the other remaining members of said firm, and they must be settled and adjusted before said Robinson can tell how much he was indebted to said Jeynes, or what property or money, credits or effects, of his he had in his hands at the time said writ of garnishment was issued." *Farwell v. Chambers*, 62 Mich. 316, 28 N. W. 859.

- II. Affidavit Claiming Exemption on Garnishment.

"State of Nebraska, Douglas county.

"L. H. Webster, being duly sworn, deposes and says that he is the defendant above named, that he is a bona fide resident of Douglas county, Nebraska, and has been for eighteen years last past; that he is a married man and the head of a family, with whom he resides in said Douglas county, and whom he supports; that the money sought to be garnished in this action, in the hands of the Union Pacific Ry. Co., was earned by him during the month of March, 1884, as a laborer; that prior to the service of the garnishment herein, to secure an indebtedness due to Charles Brandes, of Omaha, he assigned to said Brandes the money

garnished in this action; that if the said money had not been assigned as aforesaid, it would have been exempt to him under the laws of this state, by reason of its being laborer's wages for less than sixty days, and he being the head of a family aforesaid. Affiant says that he only this day received notice of said garnishment, and was not aware that the court had made any order in respect to his earnings. Affiant further says that said plaintiff is well acquainted with this defendant, and well knows that the defendant is a resident of Douglas county, and that he is the head of a family, and that by reason thereof the said money is exempt to him under the laws of this state; but that the said plaintiff is taking this course for the purpose of maliciously prosecuting and annoying this defendant.

"Wherefore defendant asks that the garnishee herein may be discharged, and the order on the garnishee to pay said money into court be revoked and set aside." *Union Pac. R. Co. v. Smersh*, 22 Neb. 751, 36 N. W. 139.

III. Answer by Garnishee Claiming Exemption in Behalf of Defendant.

"Affiant further says if the said money had not been assigned as aforesaid but on the other hand was due and payable to said defendant, it would have been exempt to said defendant under the laws of this state; that said defendant is a married man and the head of a family, consisting of a wife and children, whom he supports and with whom he resides in Douglas county, and that the said money was earned by him as laborer's wages, all within sixty days immediately preceding the date of the answer aforesaid. Affiant says that said plaintiff and this court have had notice since the answer was filed herein that said money was exempt to said defendant, for the reason above set forth; but affiant believes that the said defendant up to this time has had no notice of the pending of said garnishment, and has had no opportunity to file his exemption.

"Wherefore garnishee asks to be discharged." *Union Pac. R. Co. v. Smersh*, 22 Neb. 751, 36 N. W. 139.

IV. Answer of Garnishee, Acceptance of Order To Pay to Third Party.

"John Lowery, being duly sworn," etc., "says, that he was not indebted

to said Cornelius Woodall at the time of the levy of the attachment, nor at the time of making this his answer; that he will not be indebted to him by a contract now or then in existence; that he has not in his possession, or under his control, personal or real property, or things in action, belonging to said defendant. He further says, that he employed said Woodall to do some work at the light-house at Pascagoula, in the State of Mississippi, previous to the 7th October, 1854; that said Woodall, on said 7th October, 1854, drew an order on him for \$163, in favor of one George Draper; that said order was presented to him by said Draper, on or about the 11th October, 1854, which said order he then verbally accepted, to be paid when the work was done on said light-house according to said contract with Woodall, and only for the amount which should be due to said Woodall according to said contract; that the sum due to said Woodall upon said contract is about \$120 (said contract being now finished), which sum, by reason of his acceptance of said order in favor of Draper, of right belongs to said Draper." *Easton v. Lowery*, 29 Ala. 454.

Note.—Held garnishee not entitled to discharge under above answer; that plaintiff had right to contest claim of third party.

V. Replication to Answer of Garnishee.

"And now comes said plaintiff, who sues for the use of said Eva Brown herein, and says that the said Empire Car-Roofing Company hath not, either in its original or additional answers filed herein, truly discovered the lands, tenements, goods, chattels, moneys, choses in action, credits and effects of the St. Louis Galvanizing Company, and the value thereof, in its possession, custody or charge, or from it due and owing at the time of the service of the writ herein, or at any time after, or which thereafter shall become due to the said St. Louis Galvanizing Company; and this he prays may be inquired into pursuant to the statute in such case made and provided." *Empire Car-Roofing Co. v. Macey*, 115 Ill. 390, 397, 3 N. E. 417.

Note.—This general form was held sufficient under the Illinois statute, although it did not specifically deny the matters set up in the answer upon

which the garnishee relied to defeat the action.

VI. Order Directing Garnishee To Pay Money Into Court.

"And now, on the 24th day of April, 1888, it appearing from the answer and amended answer of the Union National Bank, by J. W. Rodefer, its cashier, garnishee in the above entitled cause, that said bank had on the 15th day of March, 1888, personal property, to-wit, money in the sum of \$228, and on the 17th day of April, 1888, being the date of said bank's first answer herein, the sum of \$325 of the defendant's, George D. Edson, attorney, subject to attachment in its possession and under its control as a credit to George D. Edson, attorney: It is therefore ordered by this court that said bank forthwith pay into the clerk of this court, Frank E. Moores, out of the money under its control or in its possession at any time since the 15th day of March, 1888, belonging to or credited on its bank account books of George D. Edson, attorney, the sum of \$325, and that said bank be thereupon discharged as garnishee herein, the said money to remain in the hands of the clerk, subject to the future order of the court.

"George W. Doane,

"Judge of District Court."

Union Nat. Bank v. Hickey, 34 Neb. 300, 51 N. W. 825.

VII. Judgment After Answer, Condemning Fund in Garnishee's Possession.

"This day came the said garnishee and filed his answer, acknowledging an indebtedness to the defendants in the original judgment, in the sum of eight hundred and fifty-four and twenty-one hundredth dollars; which answer, the plaintiff consents to receive. And it appearing that the plaintiff has obtained a judgment at the February Special term of this Court, for the sum of five thousand two hundred and ninety-one and ten-hundredth dollars, against the defendants viz: Ezekiel Nichols, Andrew Poor, Henry R. Hall, Thomas E. Clark and Otis T. Peters, besides his costs. It is therefore considered by the Court, that the said sum of eight hundred and fifty-four and twenty-one hundredth dollars, be condemned in the hands of the said garnishee, towards the payment of the said judgment; and that the plaintiff

have execution therefor." Stubblefield v. Hagerty, 1 Ala. 39.

Note.—Reversed on record; sufficiency of judgment not questioned.

VIII. Judgment Condemning Fund, Service on Defendant by Publication.

"It appearing to the Court, that though the defendant was duly notified of the pendency of this suit by publication, he has not entered his appearance therein. And it appearing that the defendant is indebted to the plaintiff in the sum of \$143.75, with interest from 15th November, 1876, besides costs. And it appearing by the answer of the said garnishee Bond, that he is indebted to the said defendant in the sum of \$94.35, and no cause having been shown to the contrary: it is considered by the Court, that said sum of \$94.35 of the defendant's, so attached by the Marshal as aforesaid, be and the same is hereby condemned in the hands of said garnishees, towards the satisfaction of the plaintiff's above demand and costs; and that the plaintiff have execution thereof against the said garnishee, which said judgment was duly entered according to the rules of said court." Savin v. Bond, 57 Md. 228.

Note.—Held sufficient defense in action against garnishee by principal defendant on original debt.

IX. Order Setting Aside Judgment Against Garnishee.

"It now appearing that the summons of garnishment on the above judgment mentioned, had, for a valid consideration, been withdrawn by plaintiff's counsel, and that no answer was required thereto on the part of the said garnishee: It is hereby ordered, that the said judgment against Levy E. Byck, the said garnishee, be set aside and vacated, and that the sheriff dismiss his levy made in that behalf, and return the execution to the clerk of this Court, with the proper endorsement, at plaintiff's costs.

"In open court, June 3d, 1872.

(Signed) "William Schley,

"Judge Superior Court, Eastern Circuit."

Platen v. Byck, 50 Ga. 245.

Note.—Writs, summonses, or other process against garnishees are provided for in the statutes of the several states, which must be strictly followed to obtain jurisdiction. No general form can

be set out which can be followed with safety. Ryan, C. J., in *Steen v. Norton*, 45 Wis. 612, says: "The statute makes the service of a summons on the garnishee the commencement of an action against him. But it is a most peculiar action, out of the ordinary course of judicial proceedings. It is an anomaly, a statutory invention sui generis with no affinity to any action known to the common law. It does not proceed on liability of the garnishee to the plaintiff or any privity between them. It intrudes between the debtor and the creditor, sets aside all considerations of forbearance or composition between them, and subjects the debtor to judgment, without action or consent of his creditor. In effect, it makes one the creditor of another without privity of contract, and it may well operate unjustly."

GENERAL DEMURRER.—See DEMURRER.

GENERAL ISSUE AND GENERAL DENIAL.

I. General Issue, 533

- A. *Non Assumpsit*, 533
- B. *Non Assumpsit by Executor or Administrator*, 533
- C. *Nil Debit*, 533
- D. *Non Est Factum in Debt and Covenant*, 533
- E. *Nul Tiel Record*, 534
- F. *Non Cepit*, 534
- G. *Non Detinet*, 534
- H. *Not Guilty, Trespass*, 534
- I. *Not Guilty, Case and Trover*, 534
- J. *Not Guilty, Case and Trover, Several Defendants*, 534
- K. *With Special Plea*, 534
- L. *With Special Plea to Part*, 534
- M. *With Set-Off*, 535

II. Answers, General Denial, 535

- A. *All Allegations*, 535
- B. *One Cause*, 535
- C. *As to Part*, 536
- D. *Of Knowledge or Information*, 536
- E. *Of Knowledge or Information by Several Defendants*, 536
- F. *Of Knowledge, Etc., Explaining Ignorance*, 536

CROSS-REFERENCES:

EJECTMENT:

Plea in Ejectment, General Issue.

NOTICE OF DEFENSE:

Notice, With Plea of General Issue.

PLEAS:

Pleas to a New Assignment, General Issue and Special Plea;

Notice of Special Matter With General Issue.

I. General Issue.

A. *Plea of Non-Assumpsit.*

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury, when, etc.: and says that he did not undertake or promise, in manner and form as the said plaintiff hath above thereof complained against him. And of this he puts himself upon the country. (And the said plaintiff doth the like, etc.).

G. H., defendant's attorney.

Burr. App. 338, §613.

B. *Plea of Non-Assumpsit by Executor or Administrator.*

And the said C. D., executor (or "administrator"), as aforesaid, defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says that the said J. K., deceased, in his lifetime, did not undertake, or promise (if there be promises by the executor, etc., laid in the declaration, add: "nor did the said defendant undertake or promise") in manner and form as the said plaintiff hath above thereof complained against him. And of this he puts himself upon the country. (And the said plaintiff doth the like, etc.).

G. H., defendant's attorney.

Burr. App. 338, §614.

C. *Plea of Nil Debit.*

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says that he does not owe the said sum of money (or "the said sum of ——— dollars") above demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him. And of this he the said defendant puts himself upon the country. (And the said plaintiff doth the like, etc.).

G. H., defendant's attorney.

Burr. App. 339, §615.

D. *Plea of Non Est Factum in Debt and Covenant.*

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says that the said supposed writing obligatory (or "indenture," or "articles of agreement," etc., according to the fact) is not his deed, etc. And of this he puts himself

upon the country. (And the said plaintiff doth the like, etc.).

G. H., defendant's attorney.

Burr. App. 339, §616.

E. Plea of Nul Tied Record.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says that there is not any record of the said supposed recognition (or, if in debt upon a judgment, says, "of the said supposed recovery"), in the said declaration mentioned, remaining in the supreme court of judicature aforesaid, before the aforesaid justices thereof, in manner and form as the said plaintiff hath above, in his said declaration, alleged. (And this he the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him the said defendant, etc.).

G. H., defendant's attorney.

Burr. App. 339, §617; Till. Forms 503.

F. Plea of Non Cepit in Replevin.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says that he did not take the said (cattle, goods and chattels), in the said declaration mentioned, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him. And of this he the said defendant puts himself upon the country. (And the said plaintiff doth the like, etc.).

G. H., defendant's attorney.

Burr. App. 340, §618.

G. Plea of Non Detinet in Replevin.

(As in last form, except that for the words "he did not take" you substitute "he doth not detain.") Burr. App. 340, §619.

H. Plea of Not Guilty in Trespass.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the force and injury when, etc., and says that he is not guilty of the said supposed trespasses above laid to his charge, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him. And of this he the said defendant puts himself upon

the country. (And the said plaintiff doth the like, etc.).

G. H., defendant's attorney.

Burr. App. 340, §620.

I. Plea of Not Guilty in Case and Trover.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says that he is not guilty of the said supposed grievances above laid to his charge, in manner and form, as the said plaintiff hath above thereof complained against him, etc. And of this he the said defendant puts himself upon the country. (And the said plaintiff doth the like, etc.).

G. H., defendant's attorney.

Burr. App. 340, §621.

J. Plea of Not Guilty in Case and Trover, Several Defendants.

And the said C. D., I. J. and K. L., defendants in this suit, by F. B. C., their attorney, come and defend the wrong and injury when, etc., and say that they are not, nor is either of them, guilty of the said supposed grievances above laid to their charge, or any or either, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them. And of this they put themselves upon the country. (And the said plaintiff likewise, etc.).

F. B. C., atty. for defendants.

Burr. App. 341, §622.

K. Plea of General Issue With Special Plea to Whole Declaration.

And the said C. D. (the general issue according to the form of the action [see forms supra], omitting the signature).

And for a further plea in this behalf, the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that, etc. (here follows the special plea in form [see post]. If there be other pleas, preface each with the same commencement: "And for a further plea, etc.," as supra). Burr. App. 341, §623.

L. Plea of General Issue With Special Plea to Part.

And the said C. D., defendant in this suit, by G. H., his attorney, comes

and defends the wrong (or "force") and injury when, etc., and as to the said several supposed promises and undertakings in the said first (or other) count of the said declaration (or, if in covenant, "as to the said supposed breach of covenant first above assigned"; or, if in trespass, "as to the breaking and entering, etc.," specifying the particular trespasses charged); he the said defendant says that he did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against him (giving the general issue according to the nature of the action [see forms supra]); and of this he puts himself upon the country. (And the said plaintiff doth the like, etc.).

And as to the said several supposed promises and undertakings (or otherwise, according to the action) in the said second and third (or other) counts of the said declaration mentioned, the said defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that, etc. (here follows the special plea). Burr. App. 341, §624.

M. Notice of Set-Off With Plea of General Issue.

(At the foot of the general issue, immediately following the attorney's signature, subjoin the notice in the following form): Sir: Please to take notice that the said defendant, at the trial of the above cause, will insist upon and give in evidence, under the general issue above pleaded *, that (here give the substance of the notice, according to the facts; thus, in case of a notice of set-off, proceed as follows): The said plaintiff at the time of the commencement of the action aforesaid against the said defendant was, and still is, indebted unto him in the sum of (one thousand) dollars, lawful money of the United States of America, for divers goods, wares and merchandise, before that time sold and delivered by the said defendant to the said plaintiff, and at the special instance and request of the said plaintiff. And in the further sum of (one thousand) dollars of like lawful money, for the work and labor, care and diligence of the said defendant, by the said defendant, and his servants before that time done, performed and bestowed in and about the business of the said plaintiff, and for the said plaintiff, and

at his like request. And in the further sum of (one thousand) dollars, of like lawful money, for money before that time lent and advanced by the said defendant, to the said plaintiff, and at the like request of the said plaintiff; and for other money by the said defendant, before that time paid, laid out and expended for the said plaintiff, and at the like request of the said plaintiff. And for other money by the said plaintiff, before that time had and received to and for the use of the said defendant. And also that the said plaintiff, before the commencement of this action, accounted, together with the said defendant, of and concerning the said demand of the said plaintiff against the said defendant, and also of and concerning divers other sums of money and accounts between the said plaintiff and the said defendant, and upon such accounting the said plaintiff was found to be in arrear and indebted to the said defendant, in the further sum of (one thousand) dollars, of like lawful money, which the said plaintiff undertook and then and there faithfully promised the said defendant, well and truly to pay unto the said defendant, when the said plaintiff should be thereunto afterwards requested. Which said several sums of money, or so much thereof as will be sufficient for that purpose, the said defendant will set-off against the demand of the said plaintiff, to be proved at the trial, and have the balance certified in his favor. Dated the day of _____, 1846.

Yours, etc.,

G. H., attorney for defendant.

To E. F., Esq., attorney for plaintiff.

Burr. App. 342, §625.

II. Answers, General Denial.

A. General Denial of All Allegations.

The defendant answering the complaint herein denies each and every allegation thereof. 2 Abb. Forms 17.

General Denial of All Allegations. (Another form.)

The defendant answers (or the defendants answer, or if only part of the defendants join, the defendants W. X. and Y. Z. answer) to the complaint: That no allegation thereof is true. 2 Abb. Forms 17.

B. General Denial of One of Several Causes of Action.

The defendant answering the first cause of action contained in the com

plaint herein denies each and every allegation of the complaint respecting the same. 2 Abb. Forms 17.

C. General Denial as to Part of the Pleading.

Denies all those allegations which are contained within folios ——— to ———, inclusive (or contained in the paragraphs numbered ——— and ———). 2 Abb. Forms 17.

General Denial as to Part of the Pleading. (Another form.)

Denies each and every allegation in said complaint contained not hereinbefore (or hereinafter) specifically admitted (or specifically controverted). 2 Abb. Forms 18.

D. General Denial of Knowledge or Information Sufficient To Form a Belief.

Says that he has no knowledge or information sufficient to form a belief as to the truth of any of the allegations of the complaint (respecting the same). 2 Abb. Forms 18.

General Denial of Knowledge or Information Sufficient To Form a Belief. (Another form.)

Says that he has no knowledge or information other than is afforded by said (pleading), that (reciting allegation), and cannot therefore admit, but on the contrary he denies, etc. 2 Abb. Forms 19.

E. General Denial of Knowledge or Information, etc., by Several Defendants Answering Together.

Severally say, each for himself, that he has no knowledge or information sufficient to form a belief as to the truth of any of the allegations of the complaint (respecting the same). 2 Abb. Forms 19.

F. Denial of Knowledge, etc., Explaining Ignorance.

Says that he has never been within the state of ——— (the place where the transactions were alleged by the complaint to have taken place), and has never personally transacted any business therein, and has no personal knowledge of what therein occurred; and he has no knowledge or information sufficient to form a belief as to the truth of any of the allegations of the complaint respecting the same (or as to whether, reciting specific allegation). 2 Abb. Forms 19.

GRAND JURY.

I. Plea in Abatement, Full Jury Not Present, 536

II. Special Plea, Jurors Not Properly Selected, 537

III. Replication to Plea That Jurors Were Not Properly Selected, 537

IV. Plea in Abatement, Grand Juror Disqualified, 537

I. Plea in Abatement, Full Jury Not Present.

Charles Gavan Duffy, at the prosecution of the Queen. And now on this day, to-wit, on the 19th day of January, in the year of our Lord, 1846, comes the said Charles Gavan Duffy, by John Mitchell, his attorney, into the court here of our Lady the Queen, and protesting that he is not guilty of the supposed offenses in the said supposed indictment specified, or any of them, or any part thereof; for plea in abatement nevertheless saith, that he ought not to be compelled to answer the said supposed indictment, and that the same ought to be quashed, because he says, that the said supposed indictment was not publicly and in open court, by the jurors aforesaid, or in their presence, or in the presence of twelve of them, or of a number of them, sufficient according to law in that behalf, presented to the said court of our said Lady the Queen, as a true bill; but on the contrary thereof the same was heretofore, to-wit, on the 14th day of January, in the year of our Lord last aforesaid, presented in open court to the said court, as a true bill, by one of the jurors aforesaid only, to-wit, by John Croker, in the presence of a less number than eleven of the jurors aforesaid, to-wit, in the presence of five only of the jurors aforesaid, to-wit, at Dublin, in the county of the city of Dublin. And the said Charles Gavan Duffy further says, that the jurors aforesaid were not, nor were any of them severally or at all called over by his or their name or names in open court in the said court of our said Lady the Queen, by the proper officer in that behalf, or by any other person whatever, or at all, at or immediately before the time when the said supposed indictment was so presented as aforesaid to the said Court by the jurors aforesaid, to-wit, at Dublin, in the county of the city of Dublin aforesaid, to-wit, on the day and year aforesaid; and this he

(the said Charles Gavan Duffy) is ready to verify. Wherefore he prays judgment of the said indictment, and that the same may be quashed, and so forth. *The Queen v. Duffy*, 1 Cox C. C. 283.

Note.—Quashed for want of proper affidavit annexed.

II. Special Plea, Jurors Not Properly Selected.

“And the said Dominick Moran, in his own proper person, comes into court here, and, having heard the said indictment read, saith that this court ought not to take cognizance of the said supposed offense in said indictment set forth, because, protesting that he is not guilty of the same, nevertheless the said Dominick Moran saith that said indictment was found and returned at the present term of said court by persons acting as a grand jury, which said persons did not constitute a legal grand jury; that said persons were not legally drawn, selected, qualified, summoned, notified and returned into said court, and did not constitute a legal grand jury. And especially he saith that Daniel J. Goss, a person who acted and served as one of the grand jurors finding said indictment, was not duly and legally drawn, selected, summoned and notified to appear and serve as one of said grand jurors; that George A. Reynolds also acted and served as one of said grand jurors finding said indictment, but that he was not duly and legally drawn, summoned, notified and returned; that the venire on which he was supposed to have been drawn and selected, summoned, notified and returned, was not directed to any or either of the constables of any town or city in said county; and no authority was given therein or thereby to any person to draw, select, summon, notify or return said George A. Reynolds as one of said grand jurors; that the service of said George A. Reynolds and said Daniel J. Goss on said grand jury rendered said indictment, found as aforesaid, null and void, and the finding of said indictment illegal. And this the said Dominick Moran is ready to verify. Wherefore he prays judgment if this court now here will or ought to take cognizance of said indictment.” *Com. v. Moran*, 130 Mass. 281.

III. Replication to Plea That Jurors Were Not Properly Selected.

“And hereupon Asa French, the District Attorney for the Southeastern District, who prosecutes for the Commonwealth in this behalf, says, that notwithstanding anything by the said Dominick Moran in pleading alleged, this court ought not to be precluded from taking cognizance of the indictment aforesaid, because he says that the grand jurors from the towns of Randolph and Hyde Park, viz: George A. Reynolds and Daniel J. Goss, as to whom specific objection is taken in said defendant’s plea, were duly and legally drawn, summoned, notified and returned as grand jurors, and presented themselves on the first day of the term of this court at the April term thereof in the present year, and were then duly sworn and empanelled, and that said grand jury was in all respects a legal grand jury. And this the said Asa French is ready to verify. Wherefore he prays judgment, and that the said Dominick Moran may answer to this said indictment.” *Com. v. Moran*, 130 Mass. 281.

IV. Plea in Abatement, Grand Juror Disqualified (a).

“That the territory of New Mexico ought not further to prosecute the said indictment against him, because he saith that Anastacio Sandoval, one of the grand jurors who found the said indictment, was not at the time of finding said indictment a citizen of the United States, but was at the time of finding said indictment a citizen of the republic of Mexico, etc. He prayed ‘judgment’ that he be discharged and dismissed from the premises in said indictment specified.” *Carter v. Territory*, 1 N. M. 317.

Plea in Abatement, Grand Juror Disqualified (b).

“And now on this day, that is to say, Monday, the 18th day of December, in the year of our Lord 1848, the said Charles Gavan Duffy, being led to the bar of the court here by the High Sheriff of the county of the city of Dublin, and having heard the said supposed indictment read, protesting that he is not guilty of the offences in the said supposed indictment specified, or any of them; for plea in abatement nevertheless saith that he ought not to be compelled to answer the said supposed indictment, and that the same

ought to be quashed, because he saith that Walter Sweetman, one of the jurors aforesaid, by whom the said supposed indictment was found a true bill as aforesaid, was not, at the time of his being sworn on the grand inquest aforesaid, nor at the time of his finding the said supposed indictment a true bill, as aforesaid, an inhabitant of the county of the city of Dublin, or resident within the same, or a freeman of the city of Dublin, or seised of any estate of freehold in the said county of the city of Dublin, and this he the said Charles Gavan Duffy is ready to verify; wherefore he prays judgment of the said indictment, and that the same may be quashed, and so forth.

"And for a further plea in this behalf, the said Charles Gavan Duffy, protesting as he hath above testified, saith that he ought not to be compelled to answer the said supposed indictment, and that the same ought to be quashed; because he saith that Patrick Boylan, another of the jurors aforesaid by whom the said supposed bill of indictment was found a true bill, as aforesaid, was not, at the time of his being sworn on the grand inquest aforesaid, nor at the time of his finding the said supposed indictment a true bill, as aforesaid, an inhabitant of the county of the city of Dublin, or resident within the same, or a freeman of the city of Dublin, or a burgess of the said city, or seised, or possessed of, or entitled to any lands, tenements or hereditaments within the said county of the city, for any estate of freehold, or any less estate, or entitled to any property within the said county of the city, in respect of which he, the said Patrick Boylan, was liable to be rated to the relief of the poor, or for county, parish or municipal taxes, and this he the said Charles Gavan Duffy is ready to verify; whereupon he prays judgment of the said indictment, and that the same may be quashed, and so forth." *Reg. v. Duffy*, 4 Cox C. C. 172.

Note.—"But it is said that a juror cannot legally act as such, unless he be of the body of the county, and that Mr. Boylan cannot, consistently with this plea, be considered as of the body of the county. But I take it he may consistently, with anything in this plea be a merchant in this city; he may have a partner there, and though he

may have a residence outside the city, he may spend his time in it." Demurrer sustained because of statute above suggested.

GUARANTY.

- I. Declaration, Goods Sold to Third Person, 538
- II. Plea of Statute of Frauds, 539
- III. Complaints, 539
 - A. On Contract for Work and Labor, 539
 - B. For Payment of Rent, 539
 - C. Goods Sold to Third Person, 540
 - D. Precedent Debt, 540
 - E. Of Mortgage To Recover Deficiency, 540
- IV. Answers, 541
 - A. Denial of Performance, 541
 - B. Departure From Guaranty, 541
 - C. Denial of Notice, 541
 - D. Answer on Guaranty, Want of Privity, 541

I. Declaration on Promise To Be Accountable for Goods Sold to Third Person.

For that whereas, heretofore, to-wit, on, etc. (day of guarantee or about it) at, etc. (venue) in consideration that the said plaintiff, at the special instance and request of the said defendant, would (here set out the terms of the guarantee as relates to the consideration for it. In the case upon which this form was framed it was thus) (sell and deliver to one E. F. on credit, all such goods as he the said E. F. should have occasion for and require of the said plaintiff in * the way of his trade and business of a hemp merchant) he the said defendant undertook, and then and there faithfully promised the said plaintiff (here set out the defendant's promise, which in the case upon which this form was drawn, was thus (to be accountable to the said plaintiff for whatsoever goods he the said plaintiff should sell and deliver to the said E. F. as aforesaid). And the said plaintiff avers, that he, confiding in the said promise and undertaking of the said defendant, did afterwards, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid (here aver plaintiff's performance of the consideration, and which may be thus, *mutatis mutandis*) sell and deliver to the said E. F. on certain credit, then and there agreed upon between the said plaintiff and E. F. certain goods of great value, which he the said

E. F. then and there had occasion for and required of the said plaintiff, in the way of his trade and business, and at and for certain reasonable prices then and there agreed upon by and between the said plaintiff and the said E. F. (or, if no stipulated price, say "at and for certain reasonable sums of money, amounting, etc.") amounting in the whole to a large sum of money, to-wit, the sum of _____l., of lawful money of Great Britain, and that although the said credit and the time for payment of the price of the said goods, by the said E. F. to the said plaintiff, hath long since elapsed, yet the said E. F. hath not (although he was afterwards, to-wit, on the day and year last aforesaid, at, etc. (venue) aforesaid, requested by the said plaintiff so to do) as yet paid to him the said sum of _____l., or any part thereof, but hath hitherto wholly neglected and refused so to do, to-wit, at, etc. (venue) aforesaid, of all which said premises the said defendant afterwards, to-wit, on the day and year last aforesaid, there had notice; yet the said defendant not regarding his said promise and undertaking, but contriving and intending to deceive and defraud the said plaintiff in this behalf, hath not as yet accounted to the said plaintiff, or paid the said sum of money, or any part thereof, for the said goods, or any part thereof (although he the said defendant afterwards, to-wit, on the day and year last aforesaid, at, etc. (venue) aforesaid, was requested by the said plaintiff so to do), and hath hitherto wholly neglected and refused, and still wholly neglects and refuses so to do, and the said sum of _____l., still remains wholly due and unpaid to the said plaintiff, to-wit, at, etc. (venue) aforesaid. (Add such special counts as may be necessary.) 2 Chit. Pl. 314a.

II. Plea of Statute of Frauds to Declaration on Guaranty.

Because he saith, that the several supposed promises and undertakings in the said (first and second) counts respectively mentioned, were special promises, and each of them was a special promise for the debt of another person, to-wit, the said A. P. and that no agreement in respect of, or relating to, the supposed causes of action in the (first and second) counts of the said declaration, or either of them, nor any memorandum, or note thereof, wherein

the consideration or considerations for the said special promises, or either of them, was or were stated or shown, was or is in writing, or was or is signed by the said defendant, or by any other person by him thereunto lawfully authorized, according to the form of the statute in such case made and provided; and this, etc. 3 Chit. Pl. 909.

III. Complaints.

A. Complaint Against Principal and Guarantors in Contract for Work and Labor.

I. That heretofore certain articles of agreement were made and entered into between the plaintiff, of the first part, and the said defendant W. of the second part, under their respective hands and seals, and bearing date the _____ day of _____, 18____, of which a copy is hereto annexed as a part of this complaint, and marked Exhibit A.

II. That on the _____ day of _____, 18____, simultaneously with said agreement, and in consideration thereof, the said defendants X., Y., and Z. executed an agreement in writing, under their respective hands and seals, written at the foot of said agreement, of which a copy is hereto annexed as a part of this complaint and marked Exhibit B.

III. That the plaintiff afterwards duly performed all the conditions of the said contracts on his part, and that the same were fully completed on the _____ day of _____, 18____, and that on that day he was entitled to have and receive from the said defendant W., and the said defendants X., Y., and Z., upon the said contract, for the said work, a large sum of money, viz., the sum of _____ dollars.

IV. That the said defendants have wholly failed to perform the said contracts on their parts, and have wholly neglected and refused to pay the said sum of _____ dollars, and are now indebted to the plaintiff, upon the said contract, in the sum aforesaid, with interest from, etc. 1 Abb. Forms 293.

B. Complaint Against Guarantors for Payment of Rent.

I. That on or about the _____ day of _____, 18____, one M. N., by agreement in writing with this plaintiff, hired of the plaintiff (very briefly designate the premises, e. g., thus, the building No. _____, in the city of _____, at the yearly rent of

_____ dollars, payable (quarterly) on the _____ days of, etc.

II. That the defendant, in consideration of the premises and of one dollar to him paid, and as security for the punctual payment of said rent, then and there subscribed and delivered to the plaintiff an agreement in writing, of which the following is a copy: (copy of guaranty; or say, an agreement in writing, and thereby agreed that if any default should be made therein, he would pay to the plaintiff such sum or sums of money as should be sufficient to make up such deficiency and fully satisfy the conditions of said agreement, without requiring any notice of non-payment, or proof of demand made).

III. That said M. N. has made default in the payment of the sum of _____ dollars, which was due for said rent on, etc.

IV. That before the commencement of this action (and on the _____ day of _____, 18____), the plaintiff (duly demanded of said M. N. payment thereof, and gave to the defendant due notice and proof of said demand and non-payment, and then and there) duly demanded payment from the defendant of said sum; but no part thereof has been paid. 1 Abb. Forms 291.

C. Complaint on Agreement To Be Answerable for Goods Sold to Third Persons.

I. That on the _____ day of _____, 18____, at _____, in consideration that the plaintiff, at the request of the defendant, would sell to one M. N., on a credit of _____ months, such goods as said M. N. should desire to buy of this plaintiff (or other consideration), the defendant promised to be answerable to the plaintiff for the payment by said M. N. of the price of goods so sold on credit (if the amount of the guaranty was limited, add, to an amount not exceeding a total credit of _____ dollars at any one time, or otherwise as the limit may have been).

II. That this plaintiff afterwards, and on the faith of said guaranty, sold and delivered to said M. N. (designate briefly the goods sold), for the sum of _____ dollars, upon a credit of _____ months, which sum became due therefor from said M. N. to this plaintiff, on, etc.

III. That payment of the same was

thereafter duly demanded from said M. N., but the same was not paid; of all which due notice was given to the defendant.

IV. That on the _____ day of _____, 18____, at _____, payment of the same was duly demanded by the plaintiff from the defendant, but no part thereof has been paid (except the sum of, etc.) 1 Abb. Forms 294.

D. Complaint on Guaranty of Precedent Debt.

I. That on the _____ day of _____, 18____, at _____, one M. N., being then indebted to this plaintiff in the sum of _____ dollars, which sum was then (or, on the _____ day of _____, 18____, became) due and payable to the plaintiff, the defendant made and subscribed a memorandum in writing, of which the following is a copy: (copy of the guaranty), and delivered the same to the plaintiff (or, made and subscribed a memorandum in writing, expressing the consideration thereof; or, under seal, and thereby promised to the plaintiff to answer to him for said debt).

II. That the plaintiff duly performed all the conditions thereof on his part, and there is now due to him thereon from the defendant the sum of _____ dollars, with interest from, etc. 1 Abb. Forms 295.

E. Complaint Against Guarantor of Mortgage To Recover Deficiency.

I. That on or about the _____ day of _____, 18____, the defendants entered into an agreement in writing with the plaintiff, under their hands and seals, of that date, in the words and figures following: (copy of agreement).

II. That the principal sum secured by the bond and mortgage referred to in the said agreement, became due and payable on, etc., and that on or about, etc., the plaintiff commenced an action in the supreme court for the county of _____ for the foreclosure of said mortgage, the principal sum thereof, with interest, not having been paid; and such proceedings were thereupon had, that on the _____ day of _____, 18____, a decree or judgment order in said action was made by the said court, for the foreclosure of the said mortgage and sale of the premises; and that if the proceeds of such sale should be insufficient to pay the amount reported due to the plaintiff, with in-

terest and costs, the amount of such deficiency should be specified in the report of sale therein, and W., one of the defendants therein, should pay the same to the plaintiff.

III. That pursuant to said decree or judgment-order, the premises were duly sold on, etc., by the sheriff of, etc., for the price or sum of, etc. (and that the plaintiff became the purchaser thereof).

IV. That, upon said sale, there occurred a deficiency of, etc., as appears by the sheriff's report of said sale, duly filed in the office of the clerk of, etc., and that thereupon, to-wit, on the _____ day of _____, 18____, a judgment was rendered in said court against W. in favor of the plaintiff, for the said sum of, etc., with interest from _____, 18____, of which no part has ever been paid.

V. That before the commencement of this action, he demanded of the defendants payment of the amount of such deficiency, and at the same time tendered to them an assignment of said judgment against W., duly executed by the plaintiff, but that the defendants refused to pay the same, and have ever since neglected and refused to pay the same, although the plaintiff has always been, and still is, ready and willing to deliver to said defendants an assignment of said judgment upon being paid the amount due thereon. 1 Abb. Forms 295.

IV. Answers.

A. *Answer, Denial of Plaintiff's Performance.*

That the plaintiff did not supply the goods (or render the services) to the said M. N. alleged in the complaint. 2 Abb. Forms 90.

B. *Denial of Plaintiff's Performance, Departure from Guaranty.*

That the defendant did not promise to be answerable generally to the plaintiff for the price of goods sold to the defendant, but only for goods to an amount not exceeding _____ dollars (or, to be sold on a credit not exceeding _____ months), which limit the plaintiff exceeded in his alleged sale. 2 Abb. Forms 90.

C. *Answer, Denial of Notice.*

That no notice of the furnishing said goods (or, rendering said services) to said M. N. was given to the defendant. 2 Abb. Forms 90.

D. *Answer on Guaranty, Want of Privity.*

"Fourth—The defendant, further answering, denies that the plaintiff sold and furnished said Lichtenberger goods and materials as alleged in said petition, and denies that said alleged sales were made to said Lichtenberger with the knowledge and consent of the plaintiff and at his request, and denies that the defendant requested the plaintiff to sell any goods whatever to said Lichtenberger, or ever in any manner whatever agreed to become liable for the same, and denies that there is due the plaintiff the sum of \$881 from said Lichtenberger, or any part thereof.

"And the said defendant, further answering, denies that he is indebted to the plaintiff in any sum whatever." *Crane Co. v. Specht*, 39 Neb. 123, 57 N. W. 1015.

Note.—Defendant admitted guaranty to predecessor in business. Plaintiff was a re-organized corporation. Guaranty under former name.

GUARDIAN AD LITEM.

- I. *Petition by Infant Plaintiff*, 542
- II. *Order Appointing Guardian Ad Litem*, 542
- III. *Petition by General Guardian, Etc., for Infant Plaintiff Under Fourteen*, 543
- IV. *Notice of Application by Relative or Friend*, 543
- V. *Petition by Infant Defendant*, 543
- VI. *Order Appointing Guardian for Infant Defendant*, 543
- VII. *Petition by Relative or Friend of Infant Defendant*, 544
- VIII. *Notice to Defendant or Guardian That Plaintiff Will Apply*, 544
- IX. *Order Appointing on Defendant's Failure To Procure*, 544
- X. *Petition in Case of Publication*, 544
- XI. *Order Appointing Guardian in Case of Publication*, 544
- XII. *In Equity*, 545
 - A. *Petition by Infant Defendant*, 545
 - B. *Affidavit for Guardian Ad Litem to Infant Defendant*, 545
 - C. *Petition for Guardian of Infant Defendant by Plaintiff*, 545
 - D. *Guardian Assigned on Application of Infant*, 545
 - E. *Guardian Assigned on Motion of Plaintiff*, 546

CROSS-REFERENCES:

INFANTS:

- Petition for Appointment of Guardian for Infant Defendant;
- Petition for Appointment of Prochein Ami for Infant Plaintiff;
- Order Appointing Guardian for Infant Defendant;
- Order Appointing Prochein Ami;
- Order That Defendant Procure Appointment of Guardian;
- Order Appointing Guardian for Infant Defendant on Failure To Procure Appointment by Infant;
- Bond by Prochein Ami to Infant for Moneys Which May Be Recovered.

PARTITION:

- Petition for Appointment of Guardian in Partition;
- Bond of Guardian in Partition;
- Order for Appointment of Guardian in Partition.

SERVICE OF PROCESS AND PAPERS:

- Petition for Appointment of Guardian Ad Litem for an Infant After Publication of an Order To Appear.

I. Petition for Guardian Ad Litem of Infant Plaintiff Over Fourteen.

To the _____ court (or to Hon. _____, judge of the _____ court).

The petition of A. B., an infant, shows,

I. That your petitioner was of the age of _____ years on the _____ day of _____ last; and is the only minor child of C. B., deceased, and resides with his mother at _____, and that he has no general guardian appointed pursuant to law (or, otherwise show what guardianship the petitioner has).

II. State the cause of action briefly, for instance as follows: That said C. B. died on the _____ day of _____, seized in fee simple of certain premises (describing them briefly) which were leased by the said C. B. at the time of his death to one Y. Z. That said C. B. by his last will, devised said premises to your petitioner and his brother, D. B., in equal undivided moities. That said Y. Z. is now indebted to your petitioner and the said D. B. in the sum of one hundred dollars, rent of said premises accrued since the death of C. B. aforesaid. That your petitioner is desirous of commencing with said D. B. an action against Y. Z. for the recovery of said rent, and your pe-

titioner is, as he is advised, a necessary party plaintiff to such action.

That M. N., the uncle of your petitioner, of _____, is worth, as your petitioner is informed and believes, at least the sum of five hundred dollars, over and above all just debts and liabilities, and is a competent and responsible person to become the guardian of your petitioner in such action.

Wherefore your petitioner asks that M. N., or some other competent person, may be appointed guardian ad litem of your petitioner to commence and carry on such action for your petitioner. 1 Abb. Forms 53.

Verification.

A. B., being duly sworn, says, that he has read (or, heard read) the foregoing petition, subscribed by him, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. 1 Abb. Forms 54.

Consent of Proposed Guardian.

I hereby consent to become the guardian of A. B., to bring the action above referred to. 1 Abb. Forms 54.

Note.—The preceding and following forms must be varied to conform to the statutes of the particular states.

II. Order Appointing Guardian Ad Litem for Infant Plaintiff.

(Name of the court.) In the matter of the petition of A. B., an infant, for the appointment of a guardian ad litem. At a special term, etc.

On reading and filing the annexed petition of A. B., for the appointment of _____ as his guardian ad litem, and the consent of said _____ (and it being made satisfactorily to appear to the court that said _____ is a competent and responsible person):*

Ordered, that _____ be and hereby is appointed guardian ad litem of A. B., infant above named, and authorized to prosecute for him as such guardian, the action mentioned in the annexed petition (in partition cases, add, on his executing to the people of this state, and duly acknowledging and filing, a bond in the penalty of _____ dollars [to be fixed by the court], and with _____ sureties [one or more, as the court may direct], to be approved by a justice of this court, conditioned for the faithful discharge of the trust committed to such guardian,

and to render a just and true account of his guardianship, in all courts and places when thereunto required). 1 Abb. Forms 56.

III. Petition by General Guardian, or Relative, or Friend, for Appointment of Guardian Ad Litem for Infant Plaintiff Under Fourteen.

To the _____ court.

The petition of G. H., respectfully shows:

I. That your petitioner is the testamentary guardian of A. B., an infant under fourteen years of age, duly appointed by the will of C. B., his father (or, is the general guardian of A. B., an infant under the age of fourteen years, duly appointed such on the _____ day of _____, 18____, by the order of M. N., surrogate of the county of _____, or, is the father, or, other relative of A. B., an infant under the age of fourteen years).

II. That said A. B. was _____ years old on the _____ day of _____ last, and resides at _____, with the petitioner.

III. Set forth concisely the cause of action.

IV. That your petitioner is desirous of bringing an action to recover the amount due on the foregoing facts (or, to foreclose the said mortgage, or, stating other relief sought), on behalf of said A. B.

(If the petitioner seeks appointment of himself, add, that your petitioner is willing to become the guardian ad litem of said A. B., and that he is worth _____ dollars over and above all his debts and liabilities, and property exempt by law from execution; that he is the general guardian of the petitioner [or, of the infant above named, or, that he is an attorney and counsellor of this court]. That he is, fully competent to understand and protect the rights of the infant, and has no interest adverse to that of the infant, and is not connected in business with the attorney or counsel of the adverse party or any of them.)

Wherefore your petitioner asks that he may be appointed (or, that F. G., who resides at _____, in this state, and who is a competent and responsible person, and worth _____ dollars over all his debts and liabilities, and property exempt by law from execution, may be appointed) guardian ad litem

of said A. B., to prosecute said action for him. 1 Abb. Forms 58.

IV. Notice of Application for Guardian Ad Litem by Relative or Friend.

(Name of court.) In the matter of the petition of C. D. for the appointment of a guardian ad litem for A. B., an infant.

To _____. Take notice that on the annexed petition (consent and affidavits) an application will be made to this court, at a special term thereof, to be held at _____, on the _____ day of _____, 18____, at _____ o'clock in the forenoon, for an order appointing E. F. guardian ad litem of A. B., infant above named, and authorizing him to prosecute the action referred to in said petition. 1 Abb. Forms 59.

V. Petition by Infant Defendant for the Appointment of a Guardian Ad Litem.

To honorable _____, one of the justices of the _____ court.

The petitioner Y. Z., one of the defendants above named, respectfully shows,

I. That an action has been commenced against your petitioner in this court by A. B. (here state object of the action).

II. That your petitioner is an infant of the age of _____ years on the _____ day of _____ last, and resides with his father at _____, and that _____ is his general guardian.

III. That twenty days have not elapsed since the service of the summons upon the petitioner (or, that no application for appointment of guardian ad litem to appear on behalf of your petitioner, in said action, has been made, to the best of your petitioner's knowledge and belief).

Wherefore your petitioner asks that G. H. may be appointed his guardian ad litem, to appear and defend said action on his behalf. 1 Abb. Forms 60.

VI. Order Appointing Guardian for Infant Defendant.

(As in II to the *.)

Ordered, that _____ be and hereby is appointed guardian ad litem for the petitioner, and authorized and directed to appear and defend on his behalf the action mentioned therein. 1 Abb. Forms 60.

VII. Petition for Guardian Ad Litem by Relative or Friend of Infant Defendant.

To the honorable ———. (Or, to the ——— court.)

The petition of C. D. shows:

I. That the above-entitled action has been commenced by service of summons upon Y. Z. (or, upon ———, one of the defendants above named). That the object of the action is (here state it concisely).

II. That the defendant Y. Z. is an infant, ——— years old on the ——— day of ——— last (and if he is over fourteen years, add, and has neglected to apply for the appointment of a guardian ad litem in this action). That he resides with the petitioner, who is his father, and that he has no general guardian (or, otherwise state what guardianship he has).

Wherefore your petition asks that a guardian ad litem be appointed to appear and defend said action, on behalf of the infant. 1 Abb. Forms 62.

VIII. Notice to Defendant or His Guardian, That Plaintiff Will Apply for Guardian Ad Litem.

To Y. Z., one of the defendants.

Take notice, that unless you procure the appointment of a guardian ad litem, to appear and defend this action on your behalf, within twenty days from the service of the summons herein upon you (or, unless the defendant Y. Z. procures the appointment of a guardian ad litem to appear and defend this action on his behalf within twenty days from the ——— day of ———, 18——, the date of the service of the summons herein upon him), an application will be made to this court at a special term thereof, to be held (or, to Hon. ———), on the ——— day of ———, 18——, at ——— o'clock in the forenoon for an order appointing some suitable and competent person guardian ad litem for you (or, for said defendant Y. Z.), and authorizing and directing him to appear and defend the above entitled action in your behalf (or, in behalf of said defendant Y. Z.), and for such other and further relief as may be just. 1 Abb. Forms 64.

IX. Order of Appointment on Defendant's Failure To Procure the Appointment After Notice.

On reading and filing the annexed notice, proof of service, and of no ap-

plication on the part of the defendant for the appointment for guardian ad litem, and on motion of Q. R., counsel for the plaintiff,

*Ordered, that ——— be and hereby is appointed guardian ad litem of the infant defendant Y. Z. in this action, and is authorized and directed to appear and defend the same on his behalf as such guardian. 1 Abb. Forms 67.

X. Petition for Guardian Ad Litem in Case of Publication.

A. B., of ———, plaintiff (or, attorney for the plaintiff) in this action, being duly sworn, says, that this action is now pending in this court, being brought for (the partition of real estate, situated in the county of ———), that the defendant Y. Z. is a necessary or proper party thereto, but is an infant under the age of twenty-one years, and resides without the state, to-wit, at ——— (as the deponent is informed and verily believes, by W. Z., the brother of said infant, who resides at ———), (and that there is no regular communication by mail with such place) (or, resides without this state, but the place of his residence is not known to the defendant, and his residence cannot on due inquiry be ascertained by the petitioner, although he has diligently made such inquiry, stating how).

That this action was commenced by service of the summons upon ——— (or, by order for the service of summons upon said infant by publication, made by this court on the ——— day of ———, and the first publication of the same was made on the ——— day of ———).

That no appearance by or on behalf of said infant, and no application for an appointment of a guardian ad litem by him, or on his behalf, has been made, to the best of this deponent's knowledge and belief.

Wherefore, etc. 1 Abb. Forms 72.

Note.—In case of service by publication on an infant defendant the publication must be complete before the appointment of the guardian ad litem.

XI. Order Appointing Guardian Ad Litem in Case of Publication.

On reading and filing the affidavit of A. B., the plaintiff in the above-entitled cause, setting forth, among other things, that Y. Z., one of the above-named defendants, is a non-resident in-

fant, and that no guardian has been appointed for him in this action; on motion of B. H., plaintiff's attorney, it is ordered that J. L. F. of ———, counsellor-at-law, be appointed guardian ad litem of said infant defendant for the purposes of this action, unless the said defendant, or some one in his behalf, within twenty days after service of a copy of this order in the manner herein directed, procure a guardian ad litem to be appointed, and give notice thereof to the plaintiff's attorney.

It is further ordered, that this order be served on said infant, either by personal service on W. Z., the mother of said infant, with whom he resides, or by depositing a copy thereof in the post-office at ———, properly enclosed in an envelope, with postage prepaid and directed to said W. Z., at her place of residence; to-wit, the town of ———, etc. (or, specifying such other mode of service as the court shall direct); and that such guardian execute to the people of this state, and duly acknowledge and file a bond, etc. 1 Abb. Forms 73.

XII. In Equity.

A. *Petition To Assign a Guardian Ad Litem by Infant Defendant.*

(Title, etc.)

Showeth, That the plaintiff has filed his bill against your petitioner, who has appeared thereto (and is preparing to answer the same); that your petitioner is an infant under the age of twenty-one years.

That your petitioner is advised that ——— of ———, who is your petitioner's (state relationship), is a proper person to be appointed his guardian to defend this suit.

Your petitioner therefore humbly prays, that the said ——— may be assigned his guardian, by whom he may (answer the plaintiff's bill and) defend this suit.

And, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2158.

B. *Affidavit for Guardian Ad Litem to Infant Defendant.*

(Title, etc.)

I, ———, of ———, solicitor for the above-named (infant) defendant, ———, make oath and say, that the said ——— is an infant under the age of twenty-one years, and A. B. of ———, is the (state relationship) of the said infant, and has no interest

in the matters in question in this cause adverse to the said ———; and the said A. B. is a proper person to be appointed a guardian of the said ———, by whom to defend this suit. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2178.

C. *Petition for Appointment of a Guardian Ad Litem for Infant Defendant by Plaintiff.*

(Title, etc.)

Showeth,

That the bill in this suit was filed against the defendant to foreclose a mortgage executed by the father of said defendant, who is now deceased, in his lifetime, to your petitioner, and praying for a sale of the mortgaged premises; and that the said defendant claims an interest in the said premises as heir at law of her father; and the said defendant C. D. resides in the town of ———, and is, as the petitioner is informed and believes, an infant under the age of twenty-one years, viz., of the age of fifteen years and upwards. And that on the ——— day of ——— process in this cause was duly served on the said C. D. requiring her to appear and answer the said bill, returnable on the ——— day of ———. And your petitioner further shows, that, although more than ——— days have elapsed since the day of appearance named in said process, no guardian ad litem has as yet been appointed for such infant, or applied for by her or by any person on her behalf, to the knowledge or belief of your petitioner.

Your petitioner, therefore, prays that A. H., the clerk of this court, may be appointed guardian ad litem of such infant defendant, to appear and defend this suit in her behalf. And, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2159.

D. *Order, Guardian Assigned on Application of Infant or Non Compos.*

Upon motion, etc., who alleged that the said defendant C. is an infant (or a person of unsound mind not so found by inquisition), and that (name and description of proposed guardian) is a fit and proper person to be appointed his guardian, and has no interest in this suit adverse to the said infant (or lunatic), as by an affidavit, etc., appears; and upon reading the said affidavit, this court doth order, that the

said ——— be assigned the guardian of the said infant (or lunatic) C., by whom he may defend this suit. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2359; 2 Seton Dec. (Eng. ed. 1862) 1250.

E. Guardian Assigned to Infant or Nec. Compos Defendant on Motion of Plaintiff.

On motion of the plaintiff's solicitor it is ordered that Mr. A. C. C., a counsellor of this court, be appointed guardian ad litem of Anna Thorndike alias Bayerl, an infant under the age of twenty-one years, one of the defendants to this suit. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2360.

GUARDIAN AND WARD.

I. Proceedings in Equity, 546

- A. *Petition for Appointment*, 546
- B. *Master's Report*, 547
- C. *Order Appointing*, 547
- D. *Bond*, 548

II. Proceedings Under Statutes, 548

- A. *Order Appointing Guardian Nominated by Infant*, 548
- B. *Inventory of Property*, 549
- C. *Decree on Interlocutory Account*, 549
- D. *Decree on Final Account*, 549

III. Foreign Guardian, 550

- A. *Petition for Leave To Transfer Fund to Non-Resident Guardian*, 550
- B. *Order Directing Transfer of Fund to Non-Resident Guardian*, 550

IV. Actions Against Guardian, 551

- A. *Complaint To Compel Guardian To Pay Money on Final Account*, 551
- B. *Complaint Against Guardian for Ward's Board and Lodging*, 551

V. Sale of Lands of Minors, 552

- A. *Petition for Leave To Sell*, 552
- B. *Petition for Leave To Mortgage*, 552
- C. *Notice of Application To Sell*, 553
- D. *Order To Publish Notice of Application To Sell*, 553
- E. *Order Granting License To Sell*, 553
- F. *Petition To Set Aside Sale*, 554
- G. *Order Setting Aside Sale*, 554
- H. *Oath of Guardian*, 554
- I. *Bond of Guardian on Sale*, 555
- J. *Notice of Sale*, 555
- K. *Report of Sale*, 555
- L. *Receipt for Purchase Money by Guardian*, 556

M. Confirmation of Sale of Lands by Guardian, 556

CROSS-REFERENCES:

GUARDIAN AD LITEM:

- Petition by General Guardian, or Relative, or Friend, for Appointment of Guardian Ad Litem for Infant Under Fourteen;*
- Notice to Defendant or His Guardian That Plaintiff Will Apply for Guardian Ad Litem.*

INFANTS:

- Order Appointing Guardian of Person and Maintenance;*
- Order for Increase of Maintenance of Infant.*

INSANE PERSONS:

- Petition for Guardian for Insane;*
- Petition for Guardian for Insane Person Where Appointee Has Failed To Qualify;*
- Citation to Insane Person, Guardianship;*
- Order Appointing Guardian for Insane.*

PARTITION:

- Bond of Guardian in Partition.*

I. Proceedings in Equity.

- A. *Petition for Appointment of a General Guardian.*

In Chancery. Before the Chancellor. To the chancellor of the state of ———.

The petition of A. B., of, etc., an infant over the age of fourteen years, respectfully sheweth: That your petitioner is the daughter of C. B., late of, etc., deceased, and is of the age of about fifteen years. That as one of the devisees of her said father, now deceased, your petition is seized of and entitled to an estate in fee in and to a certain house and lot situate in the ——— ward of the city of ———, and known as lot No. ———, ——— street, the gross income of which is about \$——— annually; also to a certain farm or lot of land situate in the town of ———, in the county of ———, consisting of about ——— acres, the gross annual income of which is about \$———. That she is also entitled to the following personal estate, viz: a horse of the value of about \$———, two cows of the value of about \$——— each, a promissory note given by J. T. to her said father previous to his death, for the sum of \$———, and interest from the ——— day of ———, which note became due and payable on the

— day of — last, and that no part thereof has been paid.

And your petitioner further sheweth, that she has not, to her knowledge or belief, any other property, real or personal, nor any right or interest in any other property than that above specified. That on account of her tender age, and of her own inability to protect her rights and interests, she is desirous of having some suitable and proper person appointed by this court to take charge thereof.

Your petitioner therefore prays that P. M., of, etc., physician, who is her uncle, may be appointed the general guardian of her person and estate, upon his giving security for the faithful performance of his trust as such guardian, according to the statute, and in conformity with the rules and practice of this court.

And your petitioner, etc.

Dated, etc. A. B.

(Usual jurat.)

Consent of Guardian.

I hereby consent to be appointed the general guardian of the above petitioner; and I offer as my sureties W. N. and R. S., both of, etc.

Dated, etc. P. M.

2 Barb. Ch. Pr. 645.

Note.—Except so far as provided otherwise by statute, the appointment of guardians devolves on courts exercising equity jurisdiction in the United States, and where the power has been conferred on probate courts the equity courts have concurrent jurisdiction unless excluded by the statute.

B. Master's Report, on Petition for General Guardian.

In Chancery. Before the Chancellor.

In the matter of the petition of A. B., an infant. To the chancellor of the state of —.

In pursuance of the provisions of the — and — rules of this court, I, the subscriber, the master residing nearest to the residence of the said infant, do certify and report that the petition of the said infant in the above matter having been presented to me, to the end that the inquiries and examinations directed by the said — rule might be made, and having been attended by the said A. B. and her solicitor, I have proceeded to make such inquiries and examinations, having previously directed notice to be given to the mother of the said in-

fant, with whom she resides, and to G. B., her uncle, to appear before me if they desired to be heard in relation to the said application; and having required the attendance of such witnesses before me as appeared to me to be necessary, to give testimony on the subject of such application.

And I further report, that from an inspection of the said infant, as well as from the affidavit of F. B., her mother, taken before me, I am satisfied the age of the said infant is about fifteen years; that I have examined her as to her nomination of a guardian, and that she voluntarily nominated P. M., of, etc., to be her general guardian; and that I am of opinion the said P. M. is a suitable and proper person to be appointed such guardian.

I further report, that the amount, nature, and value of the real and personal property of the said infant is correctly stated in the said petition; that the gross amount or value of the rents and profits of the said real estate is about \$— annually, and that the aggregate amount of such rents and profits during her minority will be the sum of \$—.

And I further report that such guardian has offered W. N. and R. S., both of, etc., as his sureties; and having taken from each of them an affidavit as to his sufficiency, and made inquiries relative thereto, I am satisfied that the sureties so offered are sufficient; and I certify that each of such sureties is worth the sum of \$— over and above all his debts.

And I further report that the said guardian should be required to give security in the sum of \$—.

All which, etc.

Dated, etc.

P. G. E., Master in Chan'y.

2 Barb. Ch. Pr. 646.

C. Order Appointing General Guardian.

At a court of chancery held for the state of —, at —, on the — day of —, 1843.

(Title.)

On reading and filing petition of A. B., an infant over the age of fourteen years, praying for the appointment of P. M. as the general guardian of her person and estate, upon his giving the requisite security, together with the consent of the said P. M. to be appointed such guardian, and

the proposal by him of W. N. and R. S., of, etc., as his sureties, and on reading and filing the report of P. G. E., master in chancery, made in pursuance of the _____ and _____ rules of this court; and on motion of W. C. N., of counsel for said infant, ordered that the said P. M. be, and he is hereby appointed the general guardian of the person and estate of the said infant, upon his executing a bond to the said infant, with the said W. N. and R. S. as his sureties, in the penal sum of \$_____ conditioned that the said P. M. shall faithfully perform his trust as such guardian, and file an inventory of the estate of said infant within six months after his appointment, and render the annual inventory or account of his guardianship required to be rendered and filed by the _____ rule of the said court of chancery, and shall observe and obey all the general rules of this court respecting general guardians, and such orders as shall be made by this court from time to time in relation to such trust; and that he shall render a just and true account of all moneys and property of the said infant, which shall come to his hands as such special guardian, and of the application thereof, and of his guardianship generally, before any court having jurisdiction, whenever he shall be thereunto lawfully required. And it is further ordered that the execution of said bond be acknowledged or proven, as required by statute, and approved of as to its form and manner of execution, by the said master, to be signified by his approval endorsed thereon, and filed in the office of the register (or clerk) of this court. 2 Barb. Ch. Pr. 647.

D. Bond of General Guardian.

Know all men by these present that we, P. M., of, etc., and W. N. and R. S., of, etc., are held and firmly bound unto A. B. in the sum of \$_____, to be paid to the said A. B., her heirs, executors, administrators or assigns; for which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these present. Sealed with our seals, and dated the _____ day of _____, one thousand eight hundred and _____.

Whereas, by an order of the court of chancery of the state of _____, made on the _____ day of _____,

the above bounden P. M. was appointed the general guardian of the person and estate of the above named A. B., an infant under the age of twenty-one years, upon his executing a bond to the said A. B., with the said W. N. and R. S., as his sureties, in the penalty and upon the condition therein mentioned. Now therefore the condition of this obligation is such that if the above bounden P. M. shall faithfully perform his trust as such guardian, and shall file an inventory of the estate of the said infant within six months after his appointment, and render the annual inventory or account of his guardianship required to be rendered and filed by the _____ rule of the said court of chancery, and shall observe and obey all the general rules of said court respecting general guardians, and such orders as shall be made from time to time by the said court in relation to such trust; and if he shall render a just and true account of all moneys and property of the said infant which shall come to his hands as such special guardian, and of the application thereof, and of his guardianship generally, before any court having jurisdiction, whenever he shall be thereunto lawfully required—then this obligation to be void; otherwise to be and remain in full force and virtue.

Acknowledgment of Bond.

State of _____, _____ county, ss.:

On this _____ day of _____, before me, a justice of the peace in and for said county, came the above named P. M., W. N. and R. S., to me well known to be the persons described in, and who executed the above instrument, and severally acknowledged that they executed the same.

_____, justice of the peace.

Approval of Bond by Master.

I approve of the within bond, as to its form and manner of execution.

Dated, etc.

_____, mastery in chy.

2 Barb. Ch. Pr. 648.

II. Proceedings Under Statutes.

A. Order Appointing Guardian Nominated by Infant.

(Caption.) "In the matter of the estate of Edson Davis, of St. Lawrence county, New York:

"On reading and filing the petition of James H. Hodgman, praying that the said James H. Hodgman, of the city of Red Wing, in said county of Goodhue, may be appointed guardian

of Edson Leroy Davis, of St. Lawrence county, New York, a minor, and the bond of said James Hodgman having been duly filed and approved by said court: It is hereby ordered that the said James H. Hodgman be, and he thereby is, appointed the general guardian of said Edson Leroy Davis, and that letters of guardianship be duly issued unto him in pursuance of this order.

"Dated and signed this ninth day of November, A. D. 1866.

"Robert Deakin,
Judge of Probate."

Davis v. Hudson, 29 Minn. 27, 11 N. W. 136.

B. Inventory of Property of Infant.

"We, L. G. Coffin, sheriff of Gage county, in the state of Nebraska, Josiah Hawkins and Alfred Hazlett, two disinterested freeholders, residents of said county of Gage, the said Josiah Hawkins and Alfred Hazlett having been first duly sworn by said sheriff, do truly and impartially inventory and appraise the following property at its real value in money, to be sold as the property of Henry Larimer, by Ellen E. Larimer, his guardian, by virtue of a license granted by the district court of the first judicial district of the state of Nebraska, in and for the county of Gage, at the November term of said court, in the year 1874, to-wit: S. E. 14 of sec. 34, T. 5 N., R. 6 east, in said Gage county, 160 acres, at \$1 per acre, \$640.

"Given under our hands this 23d day of September, A. D. 1875.

L. G. Coffin,

"Sheriff of Gage County, Nebraska,

"By O. H. Phillips, Deputy,

"Alfred Hazlett,

"Josiah Hawkins,

"Appraisers."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

C. Order on Interlocutory Account of Guardian.

"In the matter of Mary Hanifin, an heir at law of John Hanifin, deceased. Guardian's Report.

"Now, at this day, comes Charles R. Bennett, guardian of said Mary Hanifin, and makes report of his actions and doings in the premises; and it appears that said guardian was indebted to said ward, at the time of making his last report (December 18, 1866), in the sum of \$723.88; and said guardian has paid since his last report,

in taxes and cash, for said ward, up to April 1, 1876, the sum of \$510; also, has paid out for said ward, in cash, from April 1, 1867, up to date, the sum of \$85, making total paid out since last report the sum of \$595, leaving a balance in the hands of said guardian, and due said ward, the sum of \$128.88; and said Mary Hanifin, the aforesaid ward, being present in court, examines said report, and said guardian having been duly sworn that said report is true and correct, it is ordered by the court that said report be approved." Bennett v. Hanifin, 87 Ill. 31.

Note.—Held not final adjudication.

D. Decree on Final Account of Guardian.

"Peyton T. Graves, guardian, v. Anna Whitten, formerly Turner, and Charles H. Whitten, her husband.

"This 22d day of January, 1866, came the said Peyton T. Graves, guardian as aforesaid, and also came Philip H. Cook, esq., the guardian ad litem of the said Anna, appointed by this court; and it appearing to the satisfaction of the court that the said Peyton T. Graves heretofore, to-wit, on the 23d day of December, 1865, filed his account, vouchers, and evidences, for a final settlement of his said guardianship; and the said account, vouchers, and evidences, having been examined by the said guardian ad litem, and he making no objection to the same; and it appearing that due notice of the time and place of this settlement was given, by putting up notice of the same more than three weeks before the 22d day of January, 1866, the time set for said settlement by former order of this court, on the court-house door, and at three other public places in this county, there being no newspaper published in this county; the court proceeds to hear the matters pertaining to this account, and to consider the evidences submitted relating thereto. Whereupon it is shown by sufficient proof, that the said guardian has received as assets of said ward's estate sixteen bales of cotton, valued at thirty-two hundred dollars, and other personal property to the value of twenty-five hundred and eighty dollars; which cotton and other personal property, it is shown by proof, has been turned over by said guardian to Charles H. Whitten, the husband of said Anna. It further appears, by sufficient proof, that the said guardian

has received no money assets belonging to said ward. It further appears from an inspection of said account, and from the proof relating thereto, that the said guardian has expended for the necessary support and maintenance of his said ward, the sum of four thousand seven hundred and ninety-five 93-100 dollars in Confederate money; for which amount the court now allows him, from proof submitted, a credit of four hundred and seventy-nine 59-100 dollars. It also appears, that the said guardian expended the following amounts in the proper execution of his guardianship—to wit, to James Harrison, eighteen dollars; to Clements & Williamson, fifty dollars; court cost, twenty-four 90-100 dollars, and also six hundred dollars, which it is shown the said guardian has paid to his said ward, through the said Charles H. Whitten, her husband; all of which amounts are allowed by the court. The court allows the said guardian the amount of one hundred and thirty-five 34-100 dollars, as commissions for expenditures as above stated, and the further sum of one hundred and fifty-two dollars as commissions on the value of the personal property turned over to the husband of his ward. It appears from the above that the whole amount expended by the guardian for his ward, including commissions allowed, is fourteen hundred and sixty 33-100 dollars; which amount it is ordered and decreed, that the said guardian retain out of any assets in his hands, belonging to his said ward. And said account appearing to be full and correct, it is considered and decreed by the court, that said accounts be, and the same are hereby in all things, passed and allowed as above stated. It is further ordered, that said account be recorded, and that all vouchers, evidences, and settlements relating thereto, be filed in this court. It is further ordered, that said P. T. Graves be discharged from any further duty as guardian as aforesaid, it appearing that his said ward intermarried in the spring of 1865 with Charles H. Whitten, who is over the age of twenty-one years." *Whitten v. Graves*, 40 Ala. 578.

III. Foreign Guardian.

A. *Petition for Leave To Transfer Fund to Non-Resident Guardian.*

"To the Hon. James Keith, Judge of

the circuit court of Fauquier county, Virginia:

"Your petitioner, John D. Conrad, a citizen of Jefferson county, West Virginia, shows to your Honor that he was appointed by the County Court of the said county guardian of Mary E., Laura E., Ada L., and Daniel P. Conrad, infant children of B. F. Conrad, who was your petitioner's brother.

"The said B. F. Conrad died in Fauquier county very poor, and your petitioner has been compelled to take charge and care of the children, as they were motherless also.

"Your petitioner further shows that the said children are entitled, under your Honor's decree, pronounced in the cause of *Clendenning v. Hall*, to the sum of \$2,000—the homestead allotted to their father (subject to costs, etc.). Your petitioner also shows that he has qualified as guardian, and executed bond, with good security more than sufficient to cover the entire estate of the said infants. All of which facts will appear by duly authenticated records herewith filed.

"Notice has been given of the intention to apply to your Honor to transfer the said fund to your petitioner as guardian, at the April term, 1883, of your Honor's court, a copy of which, from the Warrenton Index, is herewith filed. The rights of no parties will be affected by the proposed transfer, as the children are without any kindred in Virginia able to assist them, and the fund will be necessary for their clothing, etc.

"All the requirements of the law having been conformed to, your petitioner asks leave to file his petition in the said cause, and prays your Honor to order the transfer of the fund to your petitioner forthwith, as he is here at expense.

"Respectfully submitted,

"John D. Conrad."

Clendenning v. Conrad, 91 Va. 410, 21 S. E. 818.

B. *Order Directing Transfer of Fund to Non-Resident Guardian.*

"In the matter of the petition of John D. Conrad, guardian of Mary E., Laura E., Ada L., and Daniel P. Conrad, infant children of B. F. Conrad, deceased.

"The said John D. Conrad, guardian as aforesaid, this day filed his petition, and this cause came on to be heard on

said petition and the accompanying papers. And it appearing to the satisfaction of the court (by authentic documentary evidence, that the said John D. Conrad has qualified, in Jefferson county, in the State of West Virginia, as guardian of the said infants, and has given, in the court where he qualified, bond with surety sufficient to insure his accountability for the whole of the estate of his said wards, which now is or probably will come into his hands as guardian; and it further appearing to the court that neither the rights of said infants, nor of any other person, will be prejudiced by the transfer of the estate of said wards to the guardian; and it also appearing that notice of the application of the transfer of the said estate has been published as required by law for four weeks in the Warrenton Index, a newspaper published in the town of Warrenton, the court doth adjudge, order and decree that W. H. Payne, the attorney into whose hands the said fund was paid by order made in the cause of Clendenning v. Conrad, now pending in this court, do pay to the said John D. Conrad the said sum of \$2,000 (subject to a credit of \$28.27) allowed G. B. Gibson, and paid him by said Payne, and such costs and reasonable fees as may have been incurred. And the sum herein ordered to be paid to said Conrad shall be held and accounted for by him as guardian aforesaid." Clendenning v. Conrad, 91 Va. 410, 21 S. E. 818.

Note.—Petition to open up this matter because of interest of creditors in fund after youngest child came of age was sustained.

IV. Actions Against Guardian.

A. Complaint, Action To Compel Guardian To Pay Over Money Due on Final Account.

"The said plaintiff, Mary A. Lindsay, who is now of full age, complains of the said defendant, Francis Lindsay, for that the said defendant was duly appointed and qualified as the guardian of said plaintiff, by the Probate Court of said county, on or about the 31st day of October, A. D. 1854, and that, as such guardian, a large amount of money belonging to said plaintiff came into his possession, to-wit, the sum of \$798.39. That on or about the 6th day of April, 1867, said

defendant filed in the Probate Court of said Harrison county, Ohio, a paper purporting to be a final settlement of his accounts as guardian of said plaintiff as aforesaid; that at the date of filing said pretended account there was justly due from said defendant as such guardian to said plaintiff the sum of \$741.14; that since the filing of said pretended account the said defendant has paid the said plaintiff at different times small sums of money, amounting in the aggregate to not more than \$60.00, leaving a balance still due, after deducting said credits, from said defendant to said plaintiff, the sum of \$681.14, no part of which has ever been paid, either before or since the filing of said pretended account, and the same now remains due and unpaid. Said defendant has at different times, at and since filing said pretended account, promised to pay said plaintiff said sum of money so remaining due to said plaintiff, but now wholly refuses to pay the same, or any part thereof. Wherefore said plaintiff prays a judgment against said defendant for said sum of \$681.14, with interest thereon from the 6th day of April, 1867." Lindsay v. Lindsay, 28 Ohio St. 157.

B. Complaint Against Guardian for Ward's Board and Lodging.

"State of Indiana, Lawrence County, ss.: Lawrence Circuit Court, December term, 1890.

"Hamilton Clipp v. Sarah A. McNabb, guardian of H. Dale Browning, minor heir of Joseph W. Browning, deceased, and Hugh McNabb, her husband."

Plaintiff complains of said defendant, Sarah A. McNabb, and says that on the 12th day of February, 1879, said defendant became the guardian of the person and estate of H. Dale Browning, minor heir of Joseph W. Browning, deceased, and has continued in such capacity ever since; that as such guardian she has in her possession money of the estate of said ward amounting in all to the sum of three hundred dollars; that the said minor has no father, and that said defendant, and guardian, is his mother; that on the ——— day of October, 1888, said defendant, Sarah A. McNabb, as such guardian, agreed and contracted with the plaintiff to pay plaintiff for the board and lodging of said H. Dale Browning, the said ward of said guard-

man, and contracted with the plaintiff for the plaintiff to board and lodge said H. Dale Browning, he being also her son; that in pursuance and by virtue of the terms, agreements and premises of said contract, this plaintiff did furnish board and lodging to said ward and minor, which were and are of the value of two hundred and twenty dollars, which is more fully set forth in the account hereto attached and made part of this complaint, and for identification is marked 'A;' that said amount is due and wholly unpaid. Plaintiff avers that said defendant, Sarah A. McNabb, is now the wife of Hugh McNabb, who is made a defendant herein. Wherefore plaintiff demands judgment against said defendant, Sarah A. McNabb, individually, and for all other proper relief." *McNabb v. Clipp*, 5 Ind. App. 204, 31 N. E. 858.

Note.—Held to state a cause of action against the guardian personally.

V. Sale of Lands of Minors.

A. *Petition for Leave To Sell Real Estate for Support and Education of Infant.*

"In the district court of the first judicial district of Nebraska, held in and for Gage county. To the Honorable the said District Court:

"The petition of Ellen E. Larimer, of the county of Scott, in the state of Iowa, shows:

"1. That she is the mother and duly appointed guardian of Henry Larimer, a minor child, born September 19, 1865, as shown by the papers hereto attached, marked exhibit 'A,' and that said child lives with your petitioner in the said county of Scott.

"2. That said Henry Larimer has no estate whatever, real or personal, except the following, to-wit: The S. E. $\frac{1}{4}$ of sec. 34 in T. 5, R. 6, in Gage county, Nebraska, which said lands he owns in fee.

"3. That said lands are uncultivated and wholly unproductive and are now liable for a large amount of unpaid taxes for a long time due thereon.

"4. That the value of said lands does not exceed \$1,000.

"5. That said Henry Larimer is wholly dependent upon your petitioner for his support and education.

"6. That your petitioner is unable by reason of her poverty to support and educate said Henry Larimer in a

proper manner, and that it would be to the great benefit of said Henry Larimer if said lands should be sold and the proceeds of the sale thereof be applied towards his education and support. And your petitioner asks that a license to sell said lands may be granted to her in the manner provided by law.

Ellen E. Larimer.

"State of Iowa, County of Scott.

"Ellen E. Larimer, having been first duly sworn, says that she is the named petitioner; that she has read the said petition above written and knows that the contents thereof are true.

"Ellen E. Larimer."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

Note.—The foregoing and the following forms on the sale of lands of infants from adjudicated cases will be suggestive only in the preparation of similar forms under other statutes.

B. *Petition for Leave To Mortgage Infant's Real Estate.*

"Now comes Richard Hogeboom, guardian of the above named persons, and represents unto said court that said Richard H. Robertson is a minor under the age of twenty-one years, that said Elizabeth Robertson is also a minor under the age of eighteen and unmarried; that John Robertson is a minor under the age of twenty-one years, and that said Bertha Robertson is also a minor under the age of eighteen and unmarried; that the father and mother of said minor persons are dead; that on or about the 16th day of September, A. D. 1879, your petitioner was duly appointed guardian of the persons and property of said minors, and is still such guardian; that the only estate, real or personal, belonging to said minors consists of forty acres of land, or thereabouts, situated in Douglas county, and state of Nebraska, described as follows, to-wit: The northeast quarter of the northeast quarter of section 5, in township 15 north, of range 13 east of the 6th principal meridian; that there are no improvements or buildings on said land, but nearly the entire land is under cultivation and yields an annual income of about \$100; that said minors have no other means of support, except as furnished by your petitioner, who is the grandfather of said minors; that there is a large sum against said land for

taxes assessed thereon for several years, for which said land has been sold by the county treasurer of said Douglas county and which is subject to redemption; that the annual taxes of levy against said land is about the sum of \$50; that the value of said land is about the sum of \$1,600; that said minors have no other means with which to redeem said land from sale for said delinquent taxes, nor pay such annual taxes; that the whole amount required to satisfy said delinquent and other taxes is about the sum of \$850. Your petitioner therefore asks the court to grant your petitioner a license to sell such land, or such portion thereof as may be sold separately without injury, to pay said delinquent and other taxes, and for the support and education of said children, or that said court make an order authorizing your petitioner to raise said money by a mortgage on said land, as shall to said court appear for the best interest of all persons interested in said land.

"Richard Hogeboom."

"I, Richard Hogeboom, depose and say I am the guardian named in the foregoing petition, and know all the facts set forth therein personally, and that the same are true.

Richard Hogeboom.

"Signed in my presence and sworn to before me this 30th day of June, A. D. 1883.

Wm. H. Ijams, Clerk."

Hogeboom v. Robertson, 41 Neb. 795, 60 N. W. 2.

C. Notice of Application To Sell Real Estate of Minor.

(Order below was published as notice.)

D. Order To Publish Notice of Application To Sell Minor's Property.

"In the district court of the first judicial district, held in and for Gage county, Nebraska. In the matter of the application of Ellen E. Larimer, guardian of Henry Larimer, a minor child, to sell the S. E. $\frac{1}{4}$ of sec. 34, in T. 5 north, of R. 6 east, of the 6th principal meridian, in said Gage county, Nebraska, for the maintenance and education of said minor.

"It is now ordered that all persons next of kin of said ward, and all persons interested in the estate above described, appear before me at the court house in the city of Nebraska City, in

the county of Otoe, Nebraska, on Friday, the 18th day of December, 1874, at the hour of 10 o'clock A. M. of that day, to show cause why a license should not be granted to said guardian to sell said real estate for the purpose aforesaid. Ordered, that a copy of this order be published four consecutive weeks in the Beatrice Express, prior to the time fixed for said hearing.

"Dated November 5, A. D. 1874.

D. Gantt, Judge."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

E. Order Granting License To Sell Land of Minor.

"In the district court of the first judicial district in and for Gage county. In the matter of the application of Ellen E. Larimer, guardian of Henry Larimer, to sell real estate of said minor.

"And now this 18th day of December, 1875, this cause came on to be heard, at chambers, at the court house in Nebraska City, Otoe county, in pursuance of the order heretofore made in this cause on all persons interested in the said estate, to show cause, if any they had, why a license should not be granted to said guardian to sell said real estate for the maintenance and education of said minor; and it appearing to the Hon. D. Gantt, judge, presiding in said first judicial district, that publication of said order and notice to the next of kin of said minor, and all persons interested in said estate, was duly made in the manner and for the time prescribed by law, in the Beatrice Express, a newspaper printed and having a general circulation in the said county of Gage, and the said judge having heard and examined the proofs of the said guardian (no one appearing to resist said application), and being fully advised in the premises, doth find that the income of said minor is not sufficient to maintain and educate the said minor. It is therefore ordered that the said Ellen E. Larimer, as guardian aforesaid, be and is hereby licensed to sell the real estate of the said minor, in her said petition described, to-wit, the S. E. $\frac{1}{4}$ of sec. 34, in T. 5 N., R. 6 east, in said county of Gage, for the maintenance and education of said minor. And it is further ordered that said guardian shall, before making such

sale, take and file the oath required by law, and shall make due publication and give notice of said sale in the manner and for the time prescribed by law. The terms of said sale shall be cash; and the said guardian is required to make full return of all her proceedings herein to the next term of the district court of said county of Gage.

D. Gantt, Judge."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

F. Petition, Action To Set Aside Sale of Real Estate, Insufficient Price, No Confirmation.

1. That since the filing of the report of the sale of the land herein-after described and set out, the said W. E. Salter has been regularly removed as the general guardian of the infant Iola Dickerson, and that your petitioner has been duly appointed her next friend in this proceeding.

2. That since the filing of the report in said proceeding, to-wit, on the 31st day of March, 1883, no confirmation of said report has been made by this court, no confirmation thereof asked by said guardian W. E. Salter, or the purchaser at such sale as named in the said report, to-wit, S. S. Willis.

3. That since the sale and filing of the report aforesaid, and without any confirmation thereof, the said W. E. Salter has executed a deed of conveyance, to-wit, on the day of said sale, March 31, 1883, to said purchaser S. S. Willis, who, on the 1st day of January, 1885, conveyed the same to one R. W. Bell, who has since died, leaving a last will and testament, to which said will W. R. and J. N. Bell were duly appointed executors, and having qualified as such and entered duly on the discharge of the duties thereof, and by virtue of the provisions of said will, the real estate of said R. W. Bell has become vested in the said executors.

4. That the guardian, W. E. Salter as aforesaid, put the purchaser, S. S. Willis, in the possession of said land, who, and those claiming under him, have held possession thereof by virtue of the deed aforementioned, and are now in the possession thereof.

5. That the land aforesaid is chiefly and almost mainly valuable for the timber growing and standing there-

on, and that W. N. and J. R. Bell, their agents and employes, are cutting and removing the said timber rapidly from said land, and continue to threaten so to do, and your petitioner is advised and believes that the said Bells have been advised by their counsel, and propose, in pursuance to said advice, to cut and remove said timber in as short time as possible, for that the infant Iola Dickerson might give them trouble concerning their title and possession of the said land.

6. That at the time of the sale and report of said guardian, the value of said land was in excess of that reported by said guardian, and that, to the knowledge of this petitioner, and upon reliable information and belief, this petitioner avers that the value thereof was at such time at least the sum of three hundred dollars, and that the value thereof at this time, and the sum offered therefor for the timber standing thereon, is five hundred dollars.

Wherefore, he prays that the sale aforesaid be set aside, that the infant Iola Dickerson be restored to the possession of said land, and that a commissioner be appointed to sell said land and report his action to this court, and for such other and further relief as she may be entitled to. *In re Dickerson*, 111 N. C. 108, 15 S. E. 1025.

G. Order Setting Aside Sale of Land of Ward.

"It is ordered and adjudged by the court that the order of W. M. Watson, C. S. C., made February 10, 1892, be and the same is hereby set aside and a resale ordered of the said interest of Iola Dickerson, minor, in the lands described in the petition filed in this proceeding." *In re Dickerson*, 111 N. C. 108, 15 S. E. 1025.

H. Oath of Guardian on Sale of Lands of Minors.

"I, Ellen E. Larimer, being first duly sworn, make oath and say that I am the guardian above mentioned of the said minor, Henry Larimer; that in disposing of the following real estate, to-wit, the S. E. $\frac{1}{4}$ of sec. 34, T. 5 N., of R. 6 east, of the principal meridian in Gage county, Nebraska, which said lands I am licensed to sell by the said district court, I will use my best endeavors to dispose of the same in such manner as will be most convenient for the advantage of the

said Henry Larimer and all other persons interested therein.

"Ellen E. Larimer."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

I. Bond of Guardian on Sale of Land of Minor.

"Know all men by these presents, that we, Ellen E. Larimer, of the county of Scott, in the state of Iowa, James Gamble, of the same place, and Joseph Suiter, of the county of Gage, in the state of Nebraska, are held and firmly bound unto the Hon. Daniel Gantt, judge of the district court of the first judicial district of Nebraska, and to his successors in office in the penal sum of \$1,000, current money of the United States; the payment of which sum to be well and truly made we and each of us bind ourselves, our executors and administrators, jointly and severally, firmly by these presents.

"The condition of the above obligation is such, that if the said Ellen E. Larimer, guardian of Henry Larimer, shall as such guardian sell under a license from the said district court the following lands, to-wit, the S. E. $\frac{1}{4}$ of sec. 34, T. 5 N., of R. 6 east, in said Gage county, in the manner prescribed by law for the sale of real estate by executors and administrators, and if the said Ellen E. Larimer shall account for and dispose of the proceeds of said sale in the manner provided by law, then this obligation to be void, otherwise to be and remain in full force.

"Witness our hands and seals this 10th day of December, 1874.

"Ellen E. Larimer. (Seal.)

"James Gamble. (Seal.)

"Joseph Suiter. (Seal.)

"Subscribed and sworn to by Ellen E. Larimer and James Gamble before me, a notary public in and for Scott county, Iowa, this 10th day of December, A. D. 1874.

"John W. Buckman,

"Notary Public, Scott County, Iowa.

"The above bond and sureties therein approved.

D. Gantt, Judge."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

J. Notice of Sale of Minors' Lands by Guardian.

"By virtue of a license of the district court of the first judicial district of Nebraska, held in and for Gage

county, to me granted, I, Ellen E. Larimer, guardian of Henry Larimer, a minor, will sell for cash at public auction on Saturday, the 25th day of September, A. D. 1875, at 2 o'clock P. M., at the south front door of the court house, in Beatrice, Gage county, Nebraska, the following real estate, situated in said Gage county, the land of said minor, to-wit, the southeast quarter of section 34, in T. 5 N., of R. 6 east.

Ellen E. Larimer,

"Guardian of Henry Larimer."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

K. Report of Sale of Lands by Guardian.

"Received the license hereto annexed, marked Exhibit 'A,' and, according to the command thereof, I did, on the 24th day of August, 1875, cause a notice (a copy of which is hereto annexed, marked Exhibit 'B'), to be published in the Beatrice Courier, a newspaper published in the county of Gage, Nebraska, and of general circulation therein, and continued the publication of the same for thirty-two days, and did post up copies of the said notice in five of the most public places in said Gage county, giving notice that I would, on the 25th day of September, 1875, at the south front door of the court house in said county, at 2 o'clock P. M. of said day, sell the said lands in said license mentioned, at public auction; and I did at said time and place sell said lands at public auction to Orren Stevens for the sum of \$430, he being the highest and best bidder therefor. That before the sale of said lands I did cause the same to be appraised in the manner required by law, which said appraisement is hereto annexed, marked Exhibit 'C,' and that the said sum of \$430 is more than two-thirds of the appraised value of said lands, to-wit, the S. E. $\frac{1}{4}$ of sec. 34, in T. 5 N., of R. 6 east, Gage county. That I did also before making said sale make and file with the clerk of the district court of said county the oath required by law. All done in Gage county, Nebraska.

"Witness my hand this 27th day of September, A. D. 1875.

Ellen E. Larimer."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

L. Receipt for Purchase Money by Guardian.

"I, Ellen E. Larimer, above named, do hereby certify that I have received from Orren Stevens the sum of \$430, in full for purchase money of lands above mentioned, being the S. E. $\frac{1}{4}$ of sec. 34, T. 5 N., of R. 6 east, in said Gage county.

Ellen E. Larimer.

"In presence of

"James Gamble."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

M. Confirmation of Sale of Lands by Guardian.

"In the district court of the first judicial district of Nebraska, held in and for Gage county. In the matter of the application of Ellen E. Larimer, guardian of Henry Larimer, to sell the lands of said minor. Confirmation of sale of lands.

"And now, on this third day of November, 1875, comes the said Ellen E. Larimer, by S. C. B. Dean, her attorney, and the court having fully examined the papers in this cause, and being fully advised in the premises, order that the sale of the lands by said Ellen E. Larimer, under the license for that purpose heretofore granted by said court, be confirmed, and is hereby ordered that a deed of said lands be made by said Ellen E. Larimer to Orren Stevens, the purchaser of said lands.

D. Gantt, judge."

Larimer v. Wallace, 36 Neb. 444, 54 N. W. 835.

HABEAS CORPUS.

I. Petitions, 556

A. *For Habeas Corpus*, 556

B. *Where Prisoner Is Unable To Furnish Copy of Proceedings*, 556

C. *Where Prisoner Is Ignorant of Cause*, 557

D. *To Obtain Custody of Infant*, 557

E. *On Behalf of Prisoner*, 557

F. *Person May Be Carried Away or Injured*, 558

G. *Petition of One Committed by Legislative Body*, 558

II. Writs of Habeas Corpus, 558

III. Indorsement, 559

IV. Notice to Party Interested, 559

V. Return, 559

VI. Traverse of Return, 560

VII. Discharge, 561

VIII. Order Remanding, 562

IX. Order That Prisoner Be Bailed, 562

X. Bond to Sheriff for Transportation, 562

XI. Attachment for Not Returning, 562

XII. Commitment for Disobedience, 563

XIII. Further Precept To Bring Up Person, 563

CROSS-REFERENCES:

CERTIORARI:

Affidavit To Move for Certiorari.

WITNESSES:

Habeas Corpus Ad Testificandum;

Affidavit To Procure Habeas Corpus Ad Testificandum.

I. Petitions.

A. *Petition for Habeas Corpus.*

To the honorable (the court or officer allowing the writ):

The petition of C. D. respectfully sheweth that he is now a prisoner confined in the custody of (state the officer's name), in (stating the place of confinement), for a supposed criminal offense, to-wit (here state the offense), and that such confinement is by virtue of a warrant, a copy of which is hereto annexed: And your petitioner further shows that to his best knowledge and belief he is not committed or detained by virtue of any process issued by any court of the United States, or any judge thereof, or by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued upon such judgment or decree.

And your petitioner further states and shows that he is advised by his counsel, and verily believes, that his imprisonment is illegal in this, to-wit (here state in what the alleged illegality consists).

Wherefore your petitioner prays a writ of habeas corpus, to discharge him from custody (or to bring him up, in order to be bailed). Dated, etc. C. D. G. H., attorney.

(City and) county (of ———), ss.: C. D., the above named petitioner, being duly sworn, says that the said petition is true in substance and matter of fact. C. D.

Sworn, etc. Burr. App. 547, §1080.

B. *Petition for Habeas Corpus, Prisoner Unable To Furnish Copy of Proceedings.*

To the honorable (the court or officer allowing the writ):

The petition of C. D. respectfully

showeth that he is now a prisoner confined in the custody of (state the officer's name), in (stating the place of confinement), for a supposed criminal offense, to-wit (state the offense). And your petitioner avers that, by reason of his being removed or concealed, before this application, a demand of a copy of the warrant or process by virtue of which he is informed he is confined, could not be made (or thus: And your petitioner avers that a demand of a copy of the warrant or process by virtue of which he is informed he is confined, has been made of the said [the officer], and the legal fees therefor tendered to him; and that such copy has been refused).

And your petitioner further shows that, to his best knowledge and belief, he is not committed, etc. (as in last form to the end). Burr. App. 548, §1080a.

C. Petition for Habeas Corpus Where Prisoner Is Ignorant of Cause.
To the honorable, etc. (as in last form).

The petition of C. D. respectfully sheweth that he is now restrained in his liberty by (naming the person restraining him), in (state the place where he is restrained), under pretense of (state what, or say: And your petitioner avers that he is utterly ignorant of the pretense under which he is so restrained, but has heard or understood that such pretense is as follows: stating it):

And your petitioner further shows, etc. (as in I, A, to the end). Burr. App. 548, §1080b.

D. Petition for Habeas Corpus To Obtain Custody of Infant (a).
To the supreme court of the state of New York:

The petition of A. B., of ———, respectfully shows:

I. That she is the wife of C. B., they having been married in the year ———, but that since ——— they have been living in a state of separation without being divorced.

II. That they have a minor child, a boy, named ———, aged ——— years (proceed and state the circumstances of the case, and particularly the ability of the petitioner to provide for her child, and the pecuniary condition of the father).

Wherefore your petitioner prays that a writ of habeas corpus to deliver said ——— from the custody of said C.

B., and for such other relief as may be just.

(Signature and verification.)

2 Abb. Forms 725.

Petition for Habeas Corpus To Obtain Custody of Infant (b).

“Wesley Hofer complains and shows to the court that he is the legally appointed guardian of the person and estate of William Thomas Walker, a minor; that the said William Thomas is the son and only heir at law of John K. Walker and Dorcas Walker, both of whom are now dead; that said John K. and Dorcas died in La Rue county, Kentucky, the place of their residence, and that afterwards, by the proper Court of said county, letters of guardianship over the person and estate of said infant, were issued to plaintiff.

“The plaintiff further shows that soon after the death of the mother, who survived the father of said William Thomas, one Zachariah L. Warren, without the consent of the friends of William Thomas, caused him to be removed to the county of Lawrence, state of Indiana, where he now detains him under the pretext of a guardianship conferred by a Court in Indiana, and refuses to permit him to return to Kentucky with the plaintiff.

“Plaintiff further shows that he is the uncle as well as the legal guardian of said William Thomas.

“Plaintiff further shows that there is no estate belonging to said William Thomas in Indiana, while there is a respectable estate, which he inherits from his parents, in La Rue county, Kentucky; and that there, also, dwell the larger portion of his friends. In consideration of the premises, plaintiff prays that said Warren may be required to produce the body of said William Thomas before this court, and that the Court will direct that he be delivered to this plaintiff, to be taken to his home in Kentucky.

(Signed) “Wesley Hofer.”

The complaint is sworn to.

Warren v. Hofer, 13 Ind. 167.

Note.—Reversed for failure of proof of guardianship; no copy of letters filed.

E. Petition for Habeas Corpus by Third Person on Behalf of Prisoner.

To the supreme court of the state of New York (or to Hon. J. J., justice of the supreme court; or to the

county judge of _____ county, or other magistrate mentioned in the statute):

The petition of C. D. respectfully shows that A. B. (or, if his name is unknown, describe him, and proceed as in preceding form, substituting the name or designation of the person confined in the place of the words, "your petitioner," whenever necessary). 2 Abb. Forms 725.

F. Petition Where It Is Feared That Person May Be Carried Out of the State, or Suffer Some Injury Before Writ Can Issue.

(Add to petition a statement of facts showing grounds of the apprehension, e. g., thus):

And your petitioner further shows that the said M. N., in whose custody the said A. B. is, has threatened to carry the said A. B. out of this state, and has told several persons, publicly, that such was his intention. That your petitioner had a conversation with said M. N. this morning, in which he informed your petitioner that he should leave immediately with said A. B. for the state of _____, and that neither your petitioner nor any other person had power to prevent him from doing so, and your petitioner fears that he (or said, naming prisoner) will be carried out of the state by said M. N. or will suffer some irreparable injury) before he can be relieved by proceeding by habeas corpus or certiorari.

Wherefore your petitioner prays that a warrant be issued to take your petitioner (or said prisoner), and to arrest said M. N., and forthwith to bring him (or them) before this court (or before you), to be dealt with according to law.

(Signature.)

(Verification.) 2 Abb. Forms 728.

G. Petition for Habeas Corpus by One Committed by Legislative Body.

"To the honorable judges of the supreme court of the state of Kansas:

Your petitioner, L. C. Gunn, complains and respectfully represents that he is unlawfully restrained of his liberty by C. C. Clevenger; that the pretended cause of his arrest and restraint from liberty is as follows, to-wit: On or about the 13th day of February, 1893, certain members of the Kansas house of representatives assembled together, and pretended then and there to act as the regularly-constituted and

organized house of representatives under and by virtue of the laws of the state of Kansas, and passed a resolution declaring your petitioner to be in contempt of said body, for not obeying a certain pretended subpoena to appear before the said body. Your petitioner further alleges, that under and by virtue of said resolution, one George L. Douglass, who then and there pretended to be acting as the speaker of the house of representatives of the state of Kansas, did issue and cause to be issued, over his signature, a warrant directed to the said C. C. Clevenger, who was then and there acting as sergeant-at-arms of the said pretended organized or pretended house of representatives; that the said warrant was then and there duly certified by one Frank L. Brown, who was acting as clerk of the said pretended house of representatives. Your petitioner further says, that on or about the 15th day of February, 1893, the said C. C. Clevenger, under and by virtue of said pretended warrant issued by the said George L. Douglass as aforesaid, forcibly, and against the protest of your petitioner, apprehended your petitioner and took him into custody, in the city of Parsons, county of Labette, state of Kansas. Your petitioner further alleges, that the said C. C. Clevenger, acting under and by virtue of said pretended warrant, still holds your petitioner in custody, and in restraint of his liberty, a copy of which said warrant is hereto attached and marked 'Exhibit A,' and made a part of this petition. Your petitioner states that the said arrest is illegal in this, that the said George L. Douglass had no authority or power in law to issue said warrant; that the said George L. Douglass is not the speaker of the regularly-organized house of representatives of the state of Kansas, and that the said C. C. Clevenger has no right or authority to restrain your petitioner by reason of such pretended warrant issued as aforesaid. Wherefore, your petitioner asks that a writ of habeas corpus may be granted, and that he may be discharged from such unlawful imprisonment." *In re Gunn*, 50 Kan. 155, 32 Pac. 470, 948.

Note.—Prisoner remanded on facts of case.

II. Writ of Habeas Corpus (a).

The people of the state of New York,

to the sheriff of the county of _____ (or to M. N.):

We command you that you have the body of A. B., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said A. B. shall be called or charged, before our justices of our supreme court (or before Hon. J. J., one of the justices of our supreme court; or otherwise, as the case may be), at the city hall in _____, on the _____ day of _____, 18— (or immediately after the receipt of this writ), to do and to receive, what shall then and there be considered, concerning the said A. B. And have you then and there this writ.

Witness, J. J., esq., one of the justices of our supreme court, this _____ day of _____, 18—.

By order of the court.
(Signature of clerk.)

(Signature of attorney.)

2 Abb. Forms 726.

Writ of Habeas Corpus (b).

The people of the state of New York, to the sheriff of the (city and) county of _____ (or to A. B.), greeting:

We command you that you have the body of C. D., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged, before our justices of our supreme court, etc. (or before J. W. E., circuit judge, etc., as the case may be), at, etc. (the place of appearance), on the _____ day of _____ next (or instant, or immediately after the receipt of this writ); to do and receive what shall then and there be considered concerning the said C. D. And have you then there this writ.

Witness, etc. (teste in the usual form).

_____, _____, clerks.

E. F., attorney.

(Endorsed.)

Allowed the _____ day of _____, 1846.

(J. W. E., circuit judge.)

Burr. App. 521, §1043.

III. Indorsement on Writ of Habeas Corpus.

Allowed this _____ day of _____, 18—, on application of C. D. (or of the attorney-general, or district attorney).

(And the charges for bringing up such prisoner, amounting to _____, are hereby required to be paid by the petitioner on whose application this writ is issued.)

(Signature of judge, or of presiding judge of the court by whom issued.) 2 Abb. Forms 726.

IV. Notice To Party Interested of the Time and Place the Writ is Returnable.

Court of _____. County of _____.

Or, if the proceeding is before a magistrate out of court, omit name of court, and say: Before Hon. J. J., county judge, etc., as the case may be.

The people of the state of New York, on the relation of A. B. against Y. Z.

Take notice that a writ of habeas corpus (or certiorari) has been issued by (designating the court or officer) to inquire into the cause of the imprisonment or restraint of A. B., now confined (in the jail of _____ county, under process), in which you have, or claim (or the said G. H. has, or claims) some interest; and that the said writ is made returnable before the said court (or officer), at the courthouse (or at his office) in _____, on the _____ o'clock in the _____-noon (and that the application will be heard upon the writ and return thereto before said court, or officer, at the courthouse, or at his office, in _____, on the _____ day of _____, 18—, at _____ o'clock in the _____-noon).

(Date.)

(Signature.)

(Address to the party in interest, or to his attorney if he have one.) 2 Abb. Forms 730.

V. Return To Habeas Corpus (a).

In obedience to the writ of habeas corpus hereto annexed, I do hereby certify and return to (the court or officer allowing the writ),* that before the coming of the said writ to me, to-wit, on, etc., at, etc. (state the commitment [annexing a copy of it], and all the facts). All which I certify, and have here the body of the said C. D., as by the said writ I am commanded.

The answer of (signature of the officer or person).

(If the person named in the writ be not in custody, the return varies after the *, thus): "that neither at the time of the allowance of the said writ, nor at any time since, was the said C. D. in my custody, nor restrained by me of

his liberty, wherefore I cannot have his body before (the court or officer) as by the said writ I am commanded."

The answer of (the officer, etc.). Burr. App. 578, §1132.

Return to Habeas Corpus (b).

"C. C. Clevenger, sergeant-at-arms of the house of representatives of the state of Kansas, to whom the within writ is directed, returns the same and has now here before the court the body of L. C. Gunn, therein named, as thereby commanded. And I certify that the cause of the restraint and detention of the said L. C. Gunn is by virtue of a certain warrant issued by George L. Douglass, as speaker of the house of representatives, a true copy of which is attached to the petition herein in this case as 'Exhibit A,' and issued in the manner and under the circumstances set forth in the petition. But the respondent alleges that said detention is lawful, and in support hereof alleges that said warrant of arrest was issued and placed in the hands of respondent as sergeant-at-arms of the house of representatives of the state of Kansas, because of certain proceedings had by the committee on elections of said house of representatives, which had been regularly appointed by the speaker subsequent to the organization of said house; that said committee on elections was regularly investigating and considering certain contest cases then pending before it, wherein one D. M. Bender was contestant and John L. Humphrey was contestee, and claiming to be a member of said house of representatives; that in furtherance of the investigation of said committee in said case, and for the purpose of securing testimony therein, said house of representatives caused a subpoena to be issued commanding said L. C. Gunn to appear before it as a witness to testify in said contest case, which said subpoena was duly served on said L. C. Gunn on the 21st day of January, 1893, by delivering to him a copy thereof at the place of his residence, in Labette county, Kansas; that said witness refused and failed to obey the command of said subpoena, and did not appear as a witness, but refused so to do; that thereafter, on the 13th day of February, 1893, said committee on elections reported said facts with reference to the serving of the subpoena upon said wit-

ness, and his refusal to appear; that thereupon said proceedings were had in said house of representatives with reference thereto; that a resolution was duly adopted by said house of the 13th day of February, 1893, and it is set out in said warrant, and pursuant to said resolution said warrant was issued, and said L. C. Gunn placed under arrest, and is now held; that said respondent has not had time previous to the issuance of the writ in this case, subsequent to the arrest of said L. C. Gunn, to present him at the bar of the house of representatives, as in said warrant commanded. Said respondent further says, that at the time of the issuance of said warrant, and that at the time of the proceedings had previous thereto, concerning the matters out of which the issuance of said warrant grew, said George L. Douglass, who issued said warrant, was the legally-elected and qualified speaker of the house of representatives, and that Frank L. Brown was the legally-elected and qualified chief clerk of the house of representatives of the state of Kansas, it theretofore having been duly organized as the house of representatives, and that at the time of the doing of all of the matters herein referred to there being a majority of all the members of said house of representatives present and participating in the proceedings of said house." *In re Gunn*, 50 Kan. 155, 32 Pac. 470, 948.

VI. Traverse of Return of Habeas Corpus (a).

(Title as in IV.) A. B., by this his answer to the return of M. N., sheriff of the county of ———, denies (or alleges), etc. (here set forth matter in answer to the return).

(Signature.)

(Unless the moving party is the attorney-general or district attorney, add verification.) 2 Abb. Forms 731.

Traverse to Return of Habeas Corpus (b).

"And now comes said L. C. Gunn, petitioner herein, and controverts the return made by said C. C. Clevenger to the writ of habeas corpus herein, in these particulars, to-wit: Said petitioner denies, first, that said George L. Douglass is or has been speaker of the house of representatives of the state of Kansas; second, that said Frank L. Brown is or has been chief clerk of the house of representa-

tives of the state of Kansas; third, that said C. C. Clevenger is or has been sergeant-at-arms of the house of representatives of the state of Kansas; fourth, that there is or has been at any time pending before the committee on elections of the house of representatives of the state of Kansas any contest proceeding or case between said D. M. Bender and said John L. Humphrey; fifth, that the house of representatives of the state of Kansas ever caused any subpoena to be issued commanding your petitioner to appear before said house or said committee to testify in any case or proceeding whatsoever; that any such subpoena was ever served upon your petitioner by any person or in any manner; or that your petitioner ever failed or refused to obey any subpoena issued by or under the direction of the house of representatives of the state of Kansas; sixth, that the committee on elections of the house of representatives of the state of Kansas, on the 13th day of February, 1893, or at any other time, made any report to said house that your petitioner had been served with a subpoena and had refused to appear, nor any other fact or statement whatever concerning the issuing or service upon the petitioner of any subpoena, nor concerning any refusal of his to obey any subpoena or to appear; seventh, that the house of representatives of the state of Kansas, on the 13th day of February, 1893, or at any other time, ever adopted any resolution adjudging said petitioner to be in contempt of said house for any cause or matter whatsoever, or authorizing or requiring the speaker of said house to issue his warrant to the sergeant-at-arms of said house, or to any other person, commanding the arrest of your petitioner to answer as for a contempt of said house in refusing to comply with any order of the committee on elections of said house, or in any other respect, or commanding his arrest for any cause or for any purpose whatsoever; eighth, said petitioner further denies generally each and every statement in said return save that he is restrained of his liberty by the said C. C. Clevenger; ninth, said petitioner further avers, that he is by said C. C. Clevenger restrained of his liberty in violation of the fourteenth amendment to the constitution of the United States, and is by said C. C.

Clevenger deprived of his liberty without due process of law." *In re Gunn*, 50 Kan. 155, 32 Pac. 470, 948.

VII. Discharge on Habeas Corpus (a).

By (the judge or officer who allowed the writ).

It appearing, on the return of the writ of habeas corpus allowed by me, that C. D. is illegally imprisoned (confined or restrained) by you, I therefore command you forthwith to discharge him from your custody.

Given under my hand and seal, at, etc., on the _____ day of _____, etc.

(Signature and seal of judge.)

G. H., attorney.

To (the officer or person having custody of the prisoner). Burr. App. 517, §1037.

Discharge on Habeas Corpus (b).

"In the Matter of the Application of William Conant for Release on Habeas Corpus.

"In this matter, the answer of the officer having been filed, from which it appears that he holds the said Conant by virtue of a commitment issued by W. E. Leonard, a justice of the peace for the city of Port Huron, dated the fourth day of February, 1884, whereby said Conant was committed to the State House of Correction and Reformatory at Ionia for six months from and including date, and from which it further appears that said Conant, after being received into said institution, escaped therefrom before the expiration of his said sentence, and is held by said officer for the purpose of being returned to said State House of Correction and Reformatory; and witnesses being now here sworn, and evidence heard, and that the docket and proceedings had by and before said justice of the peace, and the arguments of counsel having been heard, to-wit, A. R. Avery on behalf of petitioner, and P. H. Phillips, prosecuting attorney, on the part of the officer, and due consideration thereof had, it is found and determined that at the time of the issue of the said commitment the said William Conant was under the age of sixteen years, and could not be committed to said State House of Corrections and Reformatory. It is also found that the said justice, at the time of the trial of said Conant, did not determine or enter of record the age of said Conant. Therefore it is

considered that the commitment of said Conant to said State House of Correction and Reformatory is invalid, and that his imprisonment therein is unlawful, and it is ordered and adjudged that said petitioner, William Conant, be, and is hereby, discharged from the custody of said Clark, and all others claiming on account of said commitment.

Herman W. Stevens, Circuit Judge."

People v. Conant, 59 Mich. 565, 26 N. W. 768.

Note.—Held that no writ of error in behalf of state lies to review habeas corpus proceedings.

VIII. Order Remanding Prisoner.

(Title as in IV.)

(Address to the sheriff or other officer having custody of the prisoner.)

It appearing on the return of the writ of habeas corpus (or certiorari) allowed by me (or by this court), that A. B. is legally detained in custody, by virtue of an execution issued upon a final judgment rendered in the supreme court (or other court) in favor of A. G., as plaintiff, against the said A. B., as defendant (or by virtue of a commitment for a contempt issued by the _____ court, in which commitment the said contempt is specially and plainly charged, the said court having authority to commit for the contempt, so charged, or otherwise, according to the statute).

Ordered that the said A. B. be, and he is hereby, remanded to his former imprisonment under the execution (or commitment aforesaid).

By order of the court, given under my hand and seal this _____ day of _____, 18—.

(Signature of clerk, or, if the proceeding be before a judge out of court, signature of judge.)

2 Abb. Forms 732.

IX. Order That the Prisoner Be Bailed.

(Title as in IV.)

(Address to sheriff or other officer having custody of the prisoner.)

It appearing on the return of the writ of habeas corpus (or certiorari) allowed by me (or by this court), that A. B. is detained in the custody of the sheriff of the county of _____, under a commitment in which the said A. B. is charged with the offense of (grand

larceny); and that the said A. B. is entitled to bail:

It is therefore ordered that the said A. B. be held to bail for his appearance at the next court of _____, to be held in and for the county of _____, in the sum of _____ dollars.

And it is further ordered that upon such bail being entered into, in conformity to this order and the provisions of law, that the said A. B. be discharged.

By order of the court, given under my hand and seal this _____ day of _____, 18—.

(Signature of clerk, or if the proceeding be before a judge out of court, signature of judge.)

2 Abb. Forms 732.

X. Bond on Habeas Corpus, to Sheriff for Transportation of Prisoner.

Know all men by these presents, that we (names and residences of obligors) are held and firmly bound unto S. R., sheriff of the county of (or other officer), in the sum of (double the amount of the sum for which the prisoner is detained, if he is detained for any specific sum of money; if not, then one thousand dollars), lawful money, etc., to be paid, etc. (penal part in the usual form).

The condition of this obligation is such that if the said (obligors) shall pay to the said S. T., sheriff as aforesaid (or otherwise), the charges of carrying back C. D., if he shall be remanded on a habeas corpus allowed by (the judge or officer, etc.), and if the said C. D. shall not escape by the way, either in going to or returning from (state the place to which he is to be taken), then, etc., otherwise, etc.

(Signatures and seals of obligors.)

Sealed and delivered in presence of (witnesses). Burr. App. 511, §1029.

XI. Attachment for Not Returning Habeas Corpus.

By (the judge or officer who allowed the writ).

It appearing to me on oath that C. D., to whom a writ of habeas corpus was directed and delivered, commanding him to bring before me A. B., in the said writ named, has neglected (or refused) to obey the same according to the command thereof, by not producing the said A. B. before me, nor by making a return to such writ, within

the time limited by law, and no sufficient excuse having been shown for such neglect (or refusal): Therefore the sheriff (or coroner, etc.) of the county of _____ is hereby commanded, in the name of the people of the state of New York, forthwith to apprehend the said C. D. and bring him immediately before me at, etc.

Given under my hand and seal at, etc., on the _____ day of _____, in the year, etc.

(Signature and seal of judge.)

E. F., attorney.

Burr. App. 507, §1022.

XII. Commitment for Disobedience to Writ.

To the sheriff (or coroner) of the county of _____:

Whereas M. N. has been brought before me (or this court) on a warrant issued by me (or the court), stating that the said M. N. (etc., reciting its substance).

And whereas the said M. N. still refuses to obey the said writ of habeas corpus, by producing the body (or by certifying the day and cause of the imprisonment) of the said A. B., as therein required, and by not making a return (or a full and explicit return) to such writ of habeas corpus (or certiorari).

Now, therefore, you are authorized and commanded forthwith to convey the said M. N. to the jail of said county, and there commit him to close custody in such jail, without being allowed the liberties thereof, there to remain until he shall make return to the writ in such warrant mentioned (and also comply with the order this day made, if any, designating it).

By order of the court, given under my hand and seal this _____ day of _____, 18—.

(Signature of clerk, or, if the proceeding be before a judge out of court, signature of judge.)

2 Abb. Forms 734.

XIII. Further Precept To Bring Up Person Confined.

The people of the state of New York, to the sheriff (or coroner) of the county of _____:

Whereas a writ of habeas corpus has heretofore been issued by this court (or by me), directed to M. N., in which he was commanded to have the body of A. B., by him imprisoned and de-

tained as it was said, together with the time and cause of such imprisonment, and which writ has been duly served upon the said M. N., and whereas the said M. N. has neglected (or refused) to produce the body of the said A. B., according to the command of said writ; and for which neglect (or refusal) an attachment has been issued against the said M. N.,

Now, therefore, you are commanded forthwith to bring the said A. B. before me, at my office, in the village of _____, in said county (or before this court, at the courthouse, in _____).

By order of the court, given under my hand and seal this _____ day of _____, 18—.

(Signature of clerk, or, if the proceeding be before a judge out of court, signature of judge.)

2 Abb. Forms 734.

HABITUAL DRUNKARDS.—See HUSBAND AND WIFE.

HAWKERS AND PEDDLERS.

- I. Indictment for Peddling Without State License, 563**
- II. Indictment for Peddling Without City License, 563**
- III. Indictment for Peddling Without License, 564**
- IV. Information for Peddling Without License, 564**
- V. Indictment for Selling Drugs and Appliances Without License, 564**
- VI. Complaint in Action To Recover Penalty, 564**

I. Indictment for Peddling Without State License.

“First day of October, A. D. 1895, and thence continually until the finding of this indictment, did engage in, carry on and conduct the business of hawker and peddler, and did during the times and on the days aforesaid, hawk and peddle at divers and sundry places in said county, sugar, rice, meat, butter, flour and lard, without first having obtained a State license so to do, contrary,” etc. Hall v. State, 39 Fla. 637, 23 So. 119.

II. Indictment for Peddling Without City License.

“That the defendant, on the 12th day of September, 1894, at the city . . . aforesaid, violated sections Nos. 24 and 25 of the ordinance No. 938

of said city, passed by the common council thereof on the 11th day of December, 1893, and amended August, 1894, by carrying on the business of hawking and peddling within the corporate limits of the city of South Bend, by carrying, exposing, offering and crying for sale articles of merchandise, to-wit: rattan rocking chairs, in the public streets and avenues of said city, without having a license for that purpose. That while so engaged, the defendant sold and delivered to one Emma Wright one rattan rocking chair for the sum of six dollars. That said articles of merchandise so sold were not newspapers, nor produce, nor provisions, and that said sales were not for future delivery of said chairs. That defendant is not a wholesale traveling merchant." City of South Bend v. Martin, 142 Ind. 31, 41 N. E. 315.

III. Indictment for Peddling, Without License.

"That W. C. Montgomery commorant at Farmington, within the county of Franklin at Farmington, on the fifteenth day of January, A. D. 1898, then and there without any authority, license or permission therefor, did go about from place to place in said town of Farmington, then and there carrying for sale and exposing for sale, goods, wares and merchandise other than such as he is by the statutes allowed to carry for sale and expose for sale without a license, to-wit: pictures and picture frames; the said W. C. Montgomery not being then and there exempt from obtaining a license to carry for sale and expose for sale, said goods, wares and merchandise, to-wit: pictures and picture frames; against the peace of the State, etc." State v. Montgomery, 92 Me. 433, 43 Atl. 13.

Note.—Specify which if both state and city license are required.

IV. Information, Peddling Without License.

"W. W. Wood, prosecuting within and for the county of Johnson, in the state of Missouri, informs the court that Thomas Downing, on the twenty-seventh day of August, 1885, at the said county of Johnson, did, then and there, unlawfully deal in the selling of goods, wares and merchandise, not being books, charts, maps, or stationery, by going from place to place, in

a cart or carriage, with two horses, to sell the same, and did, then and there, while going from place to place to sell said goods, wares and merchandise, as aforesaid, unlawfully sell one harrow and seeder, without then and there having a license as a peddler, or any other legal authority, to sell the same, against the peace and dignity of the state.

W. E. Borthick makes oath and says that the facts stated in the foregoing information are true.

W. E. Borthick.

Sworn to and subscribed before me, this fifth day of August, 1885.

W. K. Morrow, clerk."

State v. Downing, 22 Mo. App. 504.

V. Indictment Selling Drugs and Medical Appliances, Without License.

"The grand jury of the county of Monroe, in the name and by the authority of the state of Iowa, accuse W. M. Bair of the crime of violating the pharmacy law, committed as follows: The said defendant, W. M. Bair, on the first day of December, in the year of our Lord, one thousand, eight hundred and ninety-two, in Monroe county, being then and there an itinerant vendor of drugs, nostrums, ointments, appliances intended for the treatment of diseases and injuries, did unlawfully and wilfully, by printing, writing, and other methods, publicly profess to treat and cure diseases, injuries, and deformities, by drugs, nostrums, manipulations, and other expedients; the said defendant not having a license as such itinerant vendor, nor having paid therefor, as required by law, contrary to the statute in such case made and provided, and against the peace and dignity of the state of Iowa." State v. Bair, 92 Iowa 28, 60 N. W. 486.

VI. Complaint in Action To Recover Penalty.

The city of Huntington complains of the said defendant Wilson Cneesbro, late of said city, and says, that the said defendant, on the 9th day of October, 1875, at the city and county aforesaid, did then and there violate section 4 of chapter 6 of an ordinance of said city, passed by the common council thereof on the 17th day of December, 1873, by unlawfully following the occupation of a peddler, with a wagon, in the city limits, without a license so to do, as provided in

section 2 of said chapter 6; wherefore the plaintiff demands judgment (for) one hundred dollars as provided in section 4 of said chapter.

This complaint was duly signed by the city attorney and properly verified. *City of Huntington v. Cheesbro*, 57 Ind. 74.

Note.—Whether the ordinance may be set out as above, or whether it must be set out in full depends upon the state statutes.

HEALTH.

I. Indictment for Nuisance Affecting Health, 565

II. Information for Violating Quarantine, 565

I. Indictment for Nuisance Affecting Health.

"The jurors of the grand jury of the State of Iowa, within, etc., upon their oath do aver, find and present that M. T. Close, at and within said county, on the 1st day of April, A. D. 1869, being possessed of a certain mill-dam and mill, with their appurtenances, situate near and adjacent to a common highway and public road, and the dwelling houses of divers persons and citizens of Johnson county, did, at the time aforesaid, and on divers other days and times between that day and the finding of this indictment, unlawfully and injuriously cause and permit the waters of said mill-dam to overflow the adjacent lands as well of others as his own, by means whereof the water of said mill-dam or pond was rendered impure, corrupted and unwholesome, and the land overflowed as aforesaid by the means aforesaid, was rendered and kept marshy and filled with noxious weeds and putrid vegetation, and corrupted, impure and unwholesome water, whereby the air became corrupted and infected, to the injury and prejudice of others, contrary to the form of the statute," etc. *State v. Close*, 35 Iowa 570.

II. Information for Violating Quarantine.

"That in July, 1782, an order was made by the king in council, whereby it was ordered that, if any pilot or other person, should go on board any ship or vessel obliged to perform quarantine, such pilot or other person should perform quarantine in like manner as any person coming in such ship or

vessel should be obliged to perform the same; that the order was published in the Gazette in the same month, and has ever since been in force; that the defendant, well knowing the premises, but having no regard to the laws and statutes of this realm, afterwards, on the 8th of June, 1788, etc., with force of arms went on board a certain ship called the 'Stephen,' which was obliged to perform quarantine, in order to conduct the same into the port of Bristol, and did not perform quarantine, in like manner as any person coming in the said ship or vessel was obliged to perform the same; but that the defendant on the 14th June, 1788, with force and arms, unlawfully quitted the said ship by going on board a certain other ship or vessel in a certain place within His Majesty's dominions, before the ship ('Stephen') had fully performed and been discharged from such quarantine; he the said defendant not being in any manner, or in any case, or by any license, directed or permitted by any order made by His Majesty in council so to do; in contempt, etc., to the evil example, etc., against the peace, etc., and also against the form of the statute, etc." *King v. Harris*, 4 T. R. 202, 100 Eng. Reprint 973.

Note.—For an illustration of cases where language of the statutes is insufficient, see *Schmidt v. State*, 78 Ind. 42.

HEARING.

I. Notice of Hearing, 566

II. Note of Issue, 566

III. Case and Abbreviation of Pleadings, 566

IV. Order of Reference Preparatory to Hearing, 567

V. Points on Hearing, 567

VI. Notice of Motion To Suppress Deposition, 567

VII. Submission of Cause, 567

VIII. Order for Cause To Stand Over, To Add Parties, 567

IX. Order for Cause To Stand Over, To Add Proofs, 567

X. Order on Hearing Demurrer or Plea, 567

XI. Order on Hearing of Exceptions for Insufficiency, 568

XII. Order for General Adjournment to Chambers, 568

XIII. Order That Master Settle Conveyances, 568

XIV. Order Reserving Further Directions, 568

XV. Order, Reservation of Interest, 569

XVI. Order, Further Consideration Adjourned, 569

XVII. Order, Further Consideration Adjourned, With Liberty to Appear at Chambers, 569

XVIII. Order, Further Consideration of Cause and Costs Adjourned, 569

XIX. Order Reserving Case for Full Court, 569

XX. Order Reserving Demurrer for Full Court, 569

XXI. Decretal Order Retaining Bill, With Liberty To Bring Action at Law, 569

CROSS-REFERENCES:

CROSS-BILL:

Order That Original and Cross-Bill Be Heard Together.

DISMISSAL DISCONTINUANCE AND NON-SUIT:

Order for Dismissal of Bill at the Hearing;

Order for Dismissal as to Part of Bill.

EQUITY JURISDICTION AND PROCEDURE:

Order for Decree Pro Confesso Where Defendant Does Not Appear at Hearing.

RECEIVERS:

Order, Receiver Continued at the Hearing;

Order for Separate Accounts by Receiver, of Rents and Personalty; Investment.

REFERENCES:

Notice of Hearing or Trial;

Appointment of Hearing on Reference;

Notice of Hearing Before Referee.

I. Notice of Hearing.

Take notice that this cause will be brought to a hearing on bill and answer (or on pleadings and proofs; or on the demurrer filed therein, or on bill, answer and replication) before _____, on the _____ day of _____, at _____ o'clock, or as soon after as counsel can be heard. Dated, etc. 2 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2154.

II. Note of Issue.

This cause belongs to the first class, and is to be heard on bill taken as confessed by all the defendants (or, belongs to the second class, and is to be heard on the plea [or demurrer] of the defendant, etc.) and is entitled

to priority from the _____ day of _____, 1843.

Dated _____, 18____.

To _____, esq., register,
(or clerk.)

Yours, etc.,

_____, sol. for compt.

2 Barb. Ch. Pr. 447.

III. Case and Abbreviation of Pleadings.

The bill in this cause was filed on the _____ of _____, 18____, before the chancellor. The answer was filed on the _____ of _____, 18____, and the replication on the _____ day of _____, 18____. The following witnesses were examined on the _____ day of _____, 18____, before T. G. Y., an examiner of this court, in pursuance of an order to produce proofs, entered on the _____ day of _____, 18____, to-wit, E. F. and G. H., on the part of the complainant, and M. N. and O. P., on the part of the defendant.

The defendant appeared by H. R. S., esq., his solicitor, who has died since the commencement of the suit, and J. B., esq., has been substituted in his place as solicitor for said defendant.

The object of the bill is to procure a conveyance from the defendant of the legal estate in the premises particularly described in the bill, and being lot No. _____ in the _____ tract.

Bill.

States that before complainant purchased lot No. _____, A. owned the improvements, etc.

Lot No. _____ was leased to A. on the _____ day of _____, but by an understanding, etc.

On the _____ of _____, 18____, etc.

Complainant paid his share of the money, etc.

Usual charge of confederacy, etc.

Answer on oath prayed for.

Prayer for injunction; that defendant may be decreed to execute conveyance; and for general relief.

General replication.

Answer.

Admitted. But defendant, on the _____ day of _____, purchased of A. all of the improvements, etc.

Denies that by any understanding, the _____ acres, etc.

Substantially admitted.

Denied.

General traverse and usual conclusion.

J. E., Sol'r for Compt.

W. H., of Counsel.

2 Barb. Ch. 448.

IV. Order of Reference Preparatory to a Hearing.

A. B. v. C. D. and others. At, etc.

On filing due proof that the bill in this cause has been taken as confessed against C. D., one of the defendants therein, as an absentee, and on motion of P. S., solicitor for the complainant, it is ordered that it be referred to one of the masters of this court to take proof of the facts and circumstances stated in such bill, as against the said absentee, and to report such proofs to the court with all convenient speed. (If the bill is to obtain satisfaction of a debt, add): And it is further ordered, that the said master do examine the complainant on oath as to any payments which may have been made to him, or to any other person for his use, on account of the demand mentioned in the bill, and which ought to be credited on such demand. 2 Barb. Ch. Pr. 449.

V. Points on Hearing.

Defendant's Points.

I. The complainants have a perfect remedy at law whereby they avail themselves of every ground of complaint set forth in the bill.

II. The court of chancery will not assume jurisdiction of this case upon the ground of its being a bill of peace, Because

1. The bill is filed only against a single party, which party has neither commenced nor threatened to commence a multiplicity of suits, etc.

2. The apprehensions of the complainants that they have incurred, etc.

III. The defendants are vested with full authority, by the _____ section of the charter of 17— to pass the ordinance in question.

IV. The ordinance is a reasonable regulation of trade.

_____, of counsel for defts.

2 Barb. Ch. Pr. 449.

VI. Notice of Motion To Suppress Depositions.

Sir:

Take notice, that I intend to move this honorable court on the _____ day of _____ next at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the capitol in the city of Albany, for an order

that the deposition of J. M., a witness examined in this cause on the part of the defendant before T. G. Y., examiner, on the _____ day of _____ last, be suppressed. And for such further, or for such other order or relief as the court may think proper to grant; which motion will be founded on the bill and answer in this cause.

Dated _____, 18—.

To W. N., esq., sol. for deft.

Yours, etc.,

J. E., sol. for compt.

2 Barb. Ch. Pr. 450.

VII. Submission of Cause on Written Arguments.

It is stipulated and agreed that this cause be submitted to the chancellor (or vice chancellor) on written arguments. The complainant's counsel to serve his argument within thirty days, and the defendant's counsel to answer the same, and submit the cause within thirty days thereafter.

Dated, etc.

A. G., solr. for compt.

L. H. S., solr. for deft.

2 Barb. Ch. Pr. 450.

VIII. Order for Cause To Stand Over, To Add Parties.

This cause coming on to be heard this day, and counsel for both parties having been in part heard; and it appearing to the court that * C. J. and Lucy his wife are necessary parties to this cause; it is ordered that this cause do stand over, to the end that the complainant may make the said C. J. and Lucy his wife parties thereto, either by amendment or supplemental bill, as he may be advised. 2 Barb. Ch. Pr. 450.

IX. Order for Cause To Stand Over, To Add Proofs.

(As in VIII to the *, then) the complainant has omitted to introduce proof of the death of D. B., his intestate, it is ordered that this cause do stand over, to the end that the complainant may examine witnesses to prove the death of such intestate. 2 Barb. Ch. Pr. 451.

X. Order on Hearing Demurrer or Plea (a).

The demurrer (or plea) put in by the defendant to the whole (or part) of the plaintiff's bill coming on, etc., to be argued before this court, in the presence of counsel for the plaintiff and for the defendant (if so, add,

and the said defendant by his counsel demurring orally to the said bill for want of parties: upon opening and debate of the matter, etc. This court (it standing for judgment, add, did order, that the said demurrer [or plea] should stand for judgment, and the same standing, etc.); if allowed, This court held the said demurrer (or plea) to be good and sufficient, and doth therefore order, that the same do stand and be allowed (if plaintiff undertakes to reply to plea, And the plaintiff by his counsel undertaking to reply to the said plea, it is ordered, that the costs occasioned by the said plea be costs in the cause); and that the plaintiff A. do pay to the said defendant B. his costs of the said demurrer (or plea); (if to the whole bill and no liberty to amend given, add, and also his further costs of this suit), to be taxed by, etc.—Liberty to amend (if any, and if so, add, but in default of the plaintiff amending his bill within [three weeks] from this date, it is ordered, that the plaintiff A. do pay to the defendant B. his further costs of this suit, to be taxed by, etc.) If overruled, This court held the said demurrer (or plea) to be insufficient, and doth therefore order that the same be overruled. Direction as to costs; time to answer, if any. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2362; 2 Seton Dec. (Eng. ed. 1862) 1258.

Order on Hearing Demurrer or Plea (b).

The plea of the defendant C. D. to the bill of complaint in this cause having heretofore come on to be argued, and counsel on both sides having been heard thereupon, it is ordered that the said plea do stand for an answer, with liberty to the complainant to except thereto. 2 Barb. Ch. Pr. 410.

XI. Order on Hearing of Exceptions for Insufficiency.

The exceptions taken by the plaintiff to the sufficiency of the defendant to the interrogations filed by the plaintiff for the examination of the said defendant, in answer to the plaintiff's bill, coming on, etc., to be argued before this court, in the presence of counsel for the plaintiff and for the said defendant; and the said exceptions being opened, upon debate of the matter and hearing the defendant's answer, and the said exceptions taken thereto, read, and what was alleged

by the counsel for the plaintiff and for the defendant;

Allowed.—This court held the answer of the defendant to be insufficient in the points excepted to; and doth order that the said exceptions (do stand and) be allowed.—Direction for payment of costs by defendant, and time to answer, if any:

Overruled.—This court held the answer of the said defendant to be sufficient in the points excepted to; and doth order that the said exceptions be overruled.—Direction for payment of costs by plaintiff, and liberty to amend, if any:

Some allowed, others overruled.—This court held the answer of the said defendant to be insufficient in the points excepted to by the 1st, 2d, 3d, 4th, and 5th of the said exceptions; and doth order that the said exceptions 1st, 2d, 3d, 4th, and 5th (do stand and) be allowed; and this court held the answer of the said defendant to be sufficient in the points excepted to by the 6th and 7th of such exceptions; and doth order that the said 6th and 7th of such exceptions be overruled; and it is ordered that the costs of the plaintiff and the defendant of all the said exceptions be taxed by, etc., who is to certify the amount of five seventh parts of such costs of the plaintiff, and two seventh parts of the said costs of the said defendant, and deduct the said two seventh parts of the said defendant's costs from the amount of the said five seventh parts of the costs of the plaintiff, and certify the balance; and it is ordered that the said defendant A. do pay to the plaintiff B. the balance so certified.—Time to answer, if any. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2361; 2 Seton Dec. (Eng. ed. 1862) 1256.

XII. Order for General Adjournment to Chambers.

Let this cause (or matter, or petition, or application) be adjourned for consideration in chambers. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2197.

XIII. Order That Master Settle Conveyances.

And the said master is to settle the said conveyances, in case the parties differ about the same. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

XIV. Order Reserving Further Directions.

And this court doth reserve the cos-

sideration of all further directions, until after the said master shall have made his report. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

XV. Order, Reservation of Interest.

And the court doth reserve the consideration of, etc., and of interest, until after the said master shall have made his report. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

XVI. Order, Further Consideration Adjourned.

And let the further consideration of this (matter and) cause be adjourned; and any of the parties are to be at liberty to apply (to this court) as they shall be advised. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

XVII. Order, Further Consideration Adjourned With Liberty To Apply at Chambers.

And let any of the parties be at liberty to apply in chambers for the appointment of a receiver (or for, or as to, etc., as the case may be), and otherwise (generally) to apply as they may be advised. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198.

XVIII. Order for Further Consideration of Cause and of Costs Adjourned.

And let the further consideration of this cause, and of the costs of this cause not hereinbefore otherwise provided for (or disposed of) be adjourned. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2198; 1 Seton Dec. (Eng. ed. 1862) 56.

XIX. Order Reserving Case for Full Court.

Heard on bill, answer, evidence, and exhibits, and reserved thereon for the consideration (and determination) of the full court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2205.

XX. Order Reserving Demurrer for Full Court.

Heard on demurrer (to the bill), and reserved for the consideration of the full court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2205.

XXI. Decretal Order Retaining Bill, With Liberty To Bring Action at Law.

This cause having been brought to hearing upon the pleadings and proofs therein, and having been argued by Mr. W. C. N. of counsel for the complainant, and by Mr. J. E. of counsel for the defendant, it is ordered, ad-

judged and decreed, and this court, by virtue of the power and authority thereof doth order, adjudge, and decree, that the bill in this cause be retained for twelve months, with liberty to the complainant, in the meantime, to proceed at law touching the matters in question in this cause, as he shall be advised. And it is further ordered, adjudged and decreed, that if the complainant shall commence an action at law and proceed to trial within the time specified, the court reserves the consideration of the costs of this suit, and of all further directions until after such trial shall be had. But in case the complainant shall not proceed at law and go to trial within the time aforesaid, his bill is from thenceforth to stand dismissed out of this court, with costs to be taxed. And in either case any of the parties are to be at liberty to apply to the court, as they shall be advised. 2 Barb. Ch. Pr. 451.

HEIRS.—See INHERITANCE.

HIGHWAYS, STREETS AND BRIDGES.

- I. Indictment for Erecting Fence on Highway, 570
- II. Indictment for Obstructing Highway With Gate, 570
- III. Indictment for Obstructing Street With Bay Window, 570
- IV. Information for Obstructing Street With Lumber, 570
- V. Indictment for Enclosing Part of Highway, 570
- VI. Indictment for Refusing To Turn Out of Traveled Way, 570
- VII. Indictment for Neglecting To Repair Street, 571
- VIII. Indictment for Failing To Repair Pursuant to Agreement, 571
- IX. Information for Interfering With Highway by Unlawful Working, 571

CROSS-REFERENCES:

INJUNCTIONS:

- Injunction Against Authorizing Laying of Railroad in City;
- Injunction Against Laying of Railroad in City Street.

MALICIOUS MISCHIEF:

- Indictment for Injury to Bridge (a, b).

NUISANCE:

- Indictment, Obstructing Highway by Maintaining Fence.

OFFICERS:

Indictment for Neglecting To Keep Road in Repair.

I. Indictment for Erecting Fence on Highway.

"With force and arms, in and upon a certain town way there legally laid out, accepted, and established as a town way of the said town of Shapleigh (which way leads and extends from the dwelling house of G. Ham, to the dwelling house of A. Bragdon, in said S.), did unlawfully and injuriously put, place, and erect a certain fence, in, upon, and across the highway aforesaid; and the same fence did then and there unlawfully and injuriously continue, and suffer to be and remain from, etc., to the day of the finding of this bill; whereby the way aforesaid, for and during the whole time aforesaid, was wholly obstructed, so that the citizens of the Commonwealth were prevented from passing and repassing, etc., as they have a right, and have been wont to do; to the great injury and common nuisance of all the citizens of said commonwealth having occasion to pass, repass, and use the way aforesaid, against the peace and dignity of the commonwealth, and contrary to the form of the statute in such case made and provided." *Com. v. Gowen*, 7 Mass. 378.

II. Indictment for Nuisance in Obstructing Highway With Gate.

"That he, on the first day of October, 1854, in a certain road, leading, etc., etc., being a common highway, etc., etc., unlawfully and injuriously did build and erect gates, and unlawfully and injuriously did cause to be built and erected gates and other obstructions, and did, then and there, and on divers other days and times, between that day and the time of taking this inquisition, unlawfully and injuriously continue and allow to remain, the said gates and divers other obstructions, so as aforesaid unlawfully built and erected, and caused to be built and erected, by reason whereof, the citizens of this State, during the time aforesaid, could not go, return, ride, pass and repass," etc. *Wroe v. State*, 8 Md. 416.

III. Indictment for Obstructing Street With Bay Window.

"At Boston aforesaid, and within the judicial district of said court, with

force and arms, in a certain building there situate, and bordering on West Brookline Street, the same being a public street of said city, did cause to be constructed a certain window, which said window did then and there project into said street, against the peace of said Commonwealth, the form of the statute of said Commonwealth and by-laws of said city, in such case made and provided." *Com. v. Goodnow*, 117 Mass. 114.

IV. Information for Obstructing Street With Lumber.

"State of Indiana *v. John D. Mathis* and Samuel Hege—In the Bartholomew common pleas: Jephtha D. New, prosecuting attorney, etc., informs the court that the defendants, on or about the 1st of September, 1862, owned a saw-mill on Jackson street, in the town of Columbus, Bartholomew county, Indiana, which obstructed and hindered, and ever since hath continued to obstruct and hinder, the free passage of a public street of known notoriety, to-wit: Jackson street aforesaid, in the town, county and State aforesaid, in front of said saw-mill, by piling lumber from said mill on said street in front of said mill, to the great annoyance and injury of the citizens of the town, county and state aforesaid," etc. *State v. Mathis*, 21 Ind. 277.

V. Indictment for Enclosing Part of Highway.

"Did unlawfully and injuriously put, place, lay and continue a large quantity of stones, in and upon a part of said highway, to-wit, upon a space thereof ten rods long and one rod wide, and the said stones, so placed as aforesaid, he the said Wm. King, from the said first day of August, until the finding of this bill, unlawfully and injuriously did keep, continue and maintain, in and upon said highway, whereby the same has been, during all the time aforesaid, and still is, greatly narrowed, obstructed and stopped up," etc., "against the peace," etc. *Com. v. King*, 13 Mete. (Mass.) 115.

Note.—Held sufficient under common law and insufficient under statute.

VI. Indictment for Refusing To Turn Out of Traveled Highway.

"Robert Allen of Mendon in the county of Worcester, and Hannah Arnold, wife of James Arnold of Wrentham in the county of Norfolk, met each other in the road in said Mendon,

traveling with their respective wagons, and the said Robert Allen, while so meeting the said Hannah with said wagon on said road, did not drive his said wagon to the right of the middle of the traveled part of said road, so that the said wagon of the said Allen interfered with said James' wagon, in passing it, and by such interference broke said James' wagon in pieces, and other wrongs did, against the peace, and contrary to the form of the statute in such case made and provided." *Com. v. Allen*, 11 Mete. (Mass.) 403.

Note.—Description of highway held sufficient for this particular offense.

VII. Indictment for Neglecting To Repair Street.

"That the road leading from Bellville, in Crockett county, to Alamo, in Crockett county, Tennessee, is a public road, and that the Mayor and Aldermen of said town of Bellville, comprised of Tac Wainwright and six others, late of said county, on the 1st of January, 1873, were overseers of that part of said road from the depot building of the Louisville and Memphis railroad, in said town of Bellville, through the street known as Front street, in said town, in the direction of Alamo and Gadsden road, to the end of the corporate limits of said town of Bellville, etc., and having hands assigned to keep the same in repair, but the said before named Mayor and Aldermen, not regarding their duty," etc. *State v. Mayor*, 7 Baxt. (Tenn.) 548.

VIII. Indictment for Failing To Repair Pursuant to Agreement.

"The grand jury of said county charge, that, before the finding of this indictment, Elza Blann erected a bridge across Bougehitto creek in said county, known as 'Ramer's bridge,' on the lower Linden road, by contract with the county commissioners, and obligated himself to keep the same in good repair for the term of five years, and knowingly suffered the same to remain out of repair, and unsafe for the passage of travelers and other persons, for more than ten days at a time, during the period stipulated for its safety by the terms of the contract, against the peace and dignity," etc. *Blann v. State*, 39 Ala. 353.

IX. Information for Interfering With Highway by Unlawful Working.

"Edward Mainey, did then and there unlawfully interfere with, obstruct and cause to be obstructed and interfered with, a certain highway; known as George street, between Broadway and Franklin streets, in the town of Cochran, in the county and State aforesaid, by then and there unlawfully entering upon, and being and remaining in and upon said George street, with horses, plows, picks and shovels, and by then and there unlawfully plowing, digging and removing the soil of said George street, between said Broadway and Franklin streets." *State v. Mainey*, 65 Ind. 404.

HOMESTEAD AND EXEMPTION.

- I. Affidavit for Exemption of Wages, 571
- II. Notice to Sheriff That Debtor Will Choose Exempt Property, 572
- III. Answer to Affidavit Setting Up Exemption, 572
- IV. Report of Appraisers of Exempt Property, 573

CROSS-REFERENCES:

BANKRUPTCY:

Trustee's Report of Exempted Property.

GARNISHMENT:

Affidavit Claiming Exemption on Garnishment;

Answer by Garnishee Claiming Exemption on Behalf of Defendant.

I. Affidavit for Exemption of Wages.

"State of Indiana, Cass county, ss.:

Blazius Meyer, being by me first duly sworn, according to law, upon his oath saith that he is a married man, the head of a family, and he resides with his family; that his said family are entirely dependent on his services for support; that he is a laborer, in the employment of the Chicago, St. Louis and Pittsburgh Railroad Company; that his earnings, in said employment, are less than \$50 per month and are necessary for the support of his family; that he has no other income, and his family consists of himself, wife and two children; and that said sum is exempt from execution, attachment and all other writs against him, and he claims it as such.

(Signed) Blazius Meyer."

Chicago, etc. *R. Co. v. Meyer*, 117 Ind. 563, 19 N. E. 320.

Note.—The statutes on exemption vary greatly in their provisions. The following forms from adjudicated cases will be suggestive in preparing forms under similar statutes. Under the provisions of some statutes no action by the claimant is necessary as to specifically exempt property, the levying officer being simply treated as a trespasser.

II. Notice to Sheriff That Debtor Will Chose Exempt Property.

"To James A. Grady, Sheriff of Pasco county, State of Florida: I desire you to make an inventory of all of my personal property and am now ready to point out the whole of my personal property to you, so that you make an inventory, and to make oath that said inventory when taken contains a true and perfect list of all of my personal property, so that appraisers may be appointed to appraise the same at its cash value in order that I may select from such an inventory an amount of such property, according to such appraisal, not exceeding one thousand dollars, which I claim and desire to be exempt from forced sale under the laws of this state and especially from sale under executions in favor of Eckman and Vetsburg et al. against myself as advertised by you to take place on 6th day of January, A. D. 1890. John T. McMichael." *McMichael v. Grady*, 34 Fla. 219, 15 So. 765.

III. Answer to Affidavit Setting Up Exemption.

"Answer to Defendant O. N. Callender's Inventory and Affidavit of Exemption Filed Herein.

First—Comes now the plaintiff and for answer to defendant O. N. Callender's inventory and affidavit filed herein, claiming the property attached in this cause, denies that the \$480 mentioned in said affidavit and inventory is exempt from execution.

Second—Plaintiff states that for a long time after the levy of attachment in this case, the defendant has possessed in fee-simple of five lots, in the town of Gandy, Logan county, Nebraska, and that upon said lots there was and still is standing three good buildings, one being a hotel building of the value of not less than \$1,500, another being a brick business building of the value of not less than \$600,

and that the last being a frame barn or livery stable of the value of not less than \$400. Plaintiff furthermore says, that for a long time after the levy of the attachment defendant O. N. Callender was possessed in fee simple of other real estate in Logan county, state of Nebraska, consisting of town lots in the town of Gandy, in said county and state, the exact description of which plaintiff is unable to give; that said last mentioned real estate is of the reasonable value of \$500.

Third—That since the levy of said attachment said defendant O. N. Callender has been possessed of a large amount of personal property, consisting of horses, cattle, wagons, and harness, the exact number and description of which plaintiff is unable to give.

Fourth—That all of said personal property was of the reasonable value of \$300, and has all been sold by the said defendant O. N. Callender since the issuance and levy of the attachment herein and the proceeds thereof applied to his own use.

Fifth—Plaintiff further says that since the issuance and levy of said attachment herein the defendant M. Callender, who is the wife of her co-defendant, O. N. Callender, has been possessed of a large amount of goods and chattels, consisting of such articles as are usually kept for sale in a country store, and that the value of said goods and chattels was not less than \$600.

Sixth—That all of said goods and chattels have been sold and converted into money by the defendants herein, and said money appropriated to their own use, since the issuance and levy of the attachment herein.

Seventh—That the defendants, nor either of them, have applied the proceeds of any of said property so sold and disposed of to the payment of any part of their indebtedness to this plaintiff.

Eighth—That all of said property was sold and disposed of by said defendants for the purpose of placing themselves in a position so they could file an affidavit of exemption herein and thereby avoid and defeat the application of the money attached herein toward the payment of their indebtedness to this plaintiff." *Kilpatrick-Koch Co. v. Callender*, 34 Neb. 727, 52 N. W. 403.

IV. Report of Appraisers of Exempt Property.

"We, George Kreag and Jacob Stack, the appraisers selected to appraise the property in the foregoing schedule, have been duly sworn, and, having examined said property, have appraised the several items at the sum set opposite thereto, and we swear that the same is a full fair cash value of the same, to the best of our judgment.

(Signed) George Kreag,
Jacob Stack.

Sworn to before me this 6th day of July, 1876.

"Wm. Maal, Notary Public."

Over *v. Shannon*, 91 Ind. 99.

HOMICIDE.**I. Indictment, General Form, 573****II. Shooting, 573**

- A. *Immediate Death*, 573
- B. *Principal in Second Degree*, 574
- C. *Death Not Immediate*, 574

III. Beating, 575

- A. *Beating and Kicking*, 575
- B. *Beating and Stamping*, 575

IV. Beating With Instrument, 576

- A. *With Crowbar*, 576
- B. *With Clevis*, 576

V. Drowning, 577**VI. Which Gave Blow Unknown, 577****VII. Stabbing, 578****VIII. Strangling, 578****IX. Riding Over With Horse, 579****X. Forcing Sick Person Into Street, 579****XI. Poisoning, 579**

- A. *Administering*, 579
- B. *Substituting for Medicine*, 580
- C. *Sending Poison*, 581

XII. Indictment, Murder by Wrecking Train While Perpetrating Robbery, 582**XIII. Information for Murder by Arson, 582****XIV. Indictment, Criminal Negligence in Erecting Building, 582****XV. Indictment for Murder, Means Unknown, 584****XVI. Indictment, Death Occurring in Another State, 584****XVII. Assault With Intent To Murder, 585**

- A. *With Sword*, 585
- B. *With Pistol*, 585
- C. *With Dangerous Weapon, Injuries Inflicted*, 585
- D. *With Additional Count for Attempt To Maim*, 585

E. By Exposure of Helpless Person, 586**XVIII. Verdicts, 586****A. Verdict, Guilty on One Count, Acquittal on the Other, 586****B. Verdict Recommending Mercy, 587****CROSS-REFERENCES:****CORONER'S INQUEST:**

Inquisition of Murder Against Principal, etc.

JUDGMENT RECORDS:

Record of Indictment and Conviction of Murder.

I. Indictment for Murder, General Form.

Essex, to-wit. The jurors for our lord the king upon their oath present, that A. B., late of _____, in the parish of _____, in the county of _____, laborer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the _____ day of _____, in the _____ year of the reign of our sovereign lord George the Third, by the grace of God of the united kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, at the parish of _____ aforesaid, in the county of _____, aforesaid, in and upon one E. F., in the peace of God and our said lord the king then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault,* and that, etc. (here state the means and manner of the killing, and the consequent death, according to the facts, and then conclude thus): And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. him the said E. F. in the manner and by the means (or in the manner and form) aforesaid (or in the conclusion of a second or subsequent count, last aforesaid), feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of our said lord the king, his crown and dignity. 3 Chit. Cr. L. 750.

II. Shooting.**A. Indictment for Murder, Shooting, Immediate Death.**

And that the said C. D. a certain pistol of the value of five shillings then and there charged with gunpowder and one leaden bullet, which said pistol he the said C. D. in his right hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot

off, to, against, and upon the said A. B.; and that the said C. D. with the leaden bullet aforesaid, out of the pistol aforesaid, then and there by the force of the gunpowder aforesaid, by the said C. D. discharged and shot off as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound the said A. B. in and upon the right side of the belly of him the said A. B. near the right hip of him the said A. B., giving to him the said A. B. then and there with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by force of the gunpowder aforesaid, by the said C. D., in and upon the right side of the belly of him the said A. B. near the said right hip of him the said A. B. one mortal wound of the depth of four inches, and of the breadth of half an inch, of which said mortal wound he the said A. B. then and there instantly died; and so, etc. 3 Chit. Cr. L. 752.

B. Indictment for Shooting, With Principal in Second Degree and Accessory.

Middlesex, to-wit. (The assault was stated jointly by the principal in the first and second degree, as in I.) And the aforesaid R. C. with a certain gun called a pistol, of the value of five shillings, then and there charged with gunpowder and one leaden bullet, which gun the said R. C. in his right hand then and there had and held in and upon the aforesaid J. T. then and there feloniously, voluntarily, and of his malice aforethought, did shoot off and discharge, and the aforesaid R. C. with the leaden bullet aforesaid, from the gun aforesaid, then and there sent out, the aforesaid J. T. in and upon the left part of the breast of him the said J. T. then and there feloniously struck, giving to the said J. T. then and there with the leaden bullet as aforesaid, near the left pap of him the said J. T. one mortal wound of the breadth of half an inch and depth of five inches, of which mortal wound the aforesaid J. T. at, etc., aforesaid, instantly died; and that J. I. feloniously, and of his aforethought malice, then and there was present, aiding, assisting, abetting, comforting, and maintaining the aforesaid R. C. to do and commit the felony and murder aforesaid, in form aforesaid; and so the aforesaid R. C. and J. C. I. the

aforesaid J. T. at, etc., aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of their forethought malice, killed and murdered, against the peace, etc. And that one R. C. late of, etc., esquire, not having the fear of God before his eyes, but being seduced by the instigation of the devil, before the felony and murder aforesaid, by the aforesaid R. C. and J. T. in manner and form aforesaid done and committed, that is to say, on, etc., aforesaid, the aforesaid R. C. at the aforesaid parish of St. Margaret, in Westminster aforesaid, in the county of Middlesex aforesaid, to do and commit the felony and murder aforesaid, in manner and form aforesaid, maliciously, feloniously, voluntarily, and of his aforethought malice, did stir up, move, abet, counsel, and procure, against the peace of our said lord the king, his crown and dignity. 3 Chit. Cr. L. 755.

C. Indictment for Murder, Shooting, Death Not Immediate.

And that he the said C. D. a certain pistol of the value of two shillings, then and there being charged with gunpowder and a leaden bullet, which pistol he the said C. D. in his right hand then and there had and held, at, against, and upon him the said A. B. then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off; and that he the said C. D. with the leaden bullet aforesaid, by force of the gunpowder aforesaid, out of the said pistol by him the said C. D. so as aforesaid discharged and shot off, him the said A. B. in and upon the left side of the said A. B. a little under the lowest rib of the said A. B. then and there feloniously, wilfully, and of his malice aforethought did strike and wound, giving to the said A. B. then and there with the leaden bullet aforesaid, out of the said pistol so as aforesaid discharged and shot off, in and upon the said left side, a little under the lowest rib of the said A. B. one mortal wound of the breadth of one inch and depth of four inches, of which said mortal wound the said A. B. on and from the said, etc., until, etc., at, etc., aforesaid, did languish, and languishing did live, on which said, etc., about the hour of nine o'clock in the morning, he the said A. B., at, etc., aforesaid, of the mortal wound aforesaid, died. And so, etc. (as in I). 3 Chit. Cr. L. 753.

III. Beating.

A. *Indictment for Murder, Beating With Fists and Kicking on Ground.*

And that the said W. W. then and there feloniously, wilfully, and of his malice aforethought, did strike, beat, and kick the said E. D. with his hands and feet, in and upon the head, breast, back, belly, sides, and other parts of the body of him the said E. D., and did then and there feloniously, wilfully, and of his malice aforethought, cast and throw the said E. D. down, unto, and upon the ground, with great force and violence there, giving unto the said E. D. then and there, as well by the beating, striking, and kicking of him the said E. D. in manner and form aforesaid, as by the casting and throwing of him the said E. D. down as aforesaid, several mortal strokes, wounds, and bruises, in and upon the head, breast, back, belly, sides, and other parts of the body of him the said E. D., to-wit, one mortal wound on the left side of the belly of him the said E. D. of the length of five inches, and of the depth of six inches (state the other wounds in the same way), of which said mortal strokes, wounds, and bruises, he the said E. D. from the said, etc., until, etc., as well at the parish aforesaid, in the county aforesaid, as also at the parish of Saint C., in the town of Shrewsbury, in the said county of S., did languish, and languishing did live, on which said, etc., the said E. D., at, etc., aforesaid, in the town of Shrewsbury aforesaid, in the county aforesaid, of the several mortal strikes, wounds, and bruises aforesaid, died. And so, etc. 3 Chit. Cr. L. 761.

B. *Indictment, Beating and Stamp-ing on the Ground.*

The jurors of the people of the state of New York, in and for the body of the county of Otsego, being then and there sworn and charged upon their oaths, present that James W. Cyphers, late of the town of Maryland, county of Otsego, and state of New York, laborer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the 27th day of January, in the year one thousand eight hundred and sixty-four, with force of arms, at the town of Maryland, in the county of Otsego aforesaid, in and upon one Pat-

rick Callahan, in the peace of God, and of the said people of the state of New York, then and there being, then and there feloniously, wilfully, and of malice aforethought, did make an assault; and that he the said James W. Cyphers then and there, with both his hands, the said Patrick Callahan, in and upon the head, neck and breast of him the said Patrick Callahan, feloniously and wilfully, and of his malice aforethought, did strike and beat; and that the said James W. Cyphers then and there, with both his hands and feet, the said Patrick Callahan so, and upon the floor, feloniously, wilfully, and of his malice aforethought, did knock, cast and throw; and the said Patrick Callahan so on the floor lying and being, he the said James W. Cyphers, with both his hands, knees and feet in and upon the head, neck, breast, stomach, back and sides of him the said Patrick Callahan, did then and there feloniously, wilfully, and of his malice aforethought, knock, cast and throw; and the said Patrick Callahan so on the floor lying and being, he the said James W. Cyphers, with both his hands, knees and feet, in and upon the head, neck, breast and stomach, back and sides of him the said Patrick Callahan, did then and there feloniously, wilfully, and of his malice aforethought, strike, beat, stamp, kick, press, and by the said striking, beating, stamping, kicking, pressing, giving to the said Patrick Callahan several mortal wounds and bruises in and upon the breast and stomach of the said Patrick Callahan, of which said several mortal wounds and bruises, he the said Patrick Callahan, from about 9 o'clock in the evening of the 27th day of January, 1864, until about nine o'clock in the morning of the 28th day of January, 1864, did languish, and languishing did live. On which said 28th day of January, 1864, the said Patrick Callahan, at the town of Maryland, in the county aforesaid, of the several mortal wounds and bruises aforesaid, died.

And so the jurors aforesaid, upon their oaths aforesaid, do say that the said James W. Cyphers, on the day and year aforesaid, in manner and form aforesaid, the said Patrick Callahan feloniously, wilfully, and of his malice aforethought did kill and murder, contrary to the form of the statute in such case made and provided, and against the

peace of the people of the state of New York and their dignity.

(There were three other counts in the indictment.)

J. A. Lynes, district attorney.

People v. Cyphers, 5 Park. Crim. (N. Y.) 666, 668.

IV. Beating With Instrument.

A. *Indictment, Killing With Crowbar.*

"The state of Maryland,

Carroll county, to-wit:

The grand jurors of the state of Maryland, for the body of Carroll county, do on their oaths present, that Joseph Davis, late of Carroll county aforesaid, yeoman, on the fifth day of April, in the year of our Lord one thousand eight hundred and seventy-two, with force and arms, at the county aforesaid, in and upon one Abraham L. Lynn, in the peace of God, and of the said state, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said Joseph Davis, with a certain crowbar, in and about three feet in length and one inch in diameter, which he the said Joseph Davis then and there had and held in both of his hands, the said Abraham L. Lynn, in and upon the back part of the head of him the said Abraham L. Lynn, then and there feloniously, wilfully, and of his malice aforethought, did strike, giving unto him the said Abraham L. Lynn, then and there, with the said iron crowbar, by the stroke aforesaid, in manner aforesaid, in and upon the back part of the head of him the said Abraham L. Lynn, one mortal wound, of the length of one and a half inches, and of the width of one and a quarter inches, and of the depth of one-eighth of an inch, of which said mortal wound he the said Abraham L. Lynn, on the said fifth day of April, in the year of our Lord one thousand eight hundred and seventy-two, at the county aforesaid, did languish, and languishing did live. On which same fifth day of April, in the year of our Lord one thousand eight hundred and seventy-two aforesaid, at the county aforesaid, he the said Abraham L. Lynn, of the said mortal wound died.

And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Joseph Davis, him the said Abraham L. Lynn, in manner and form aforesaid, and by the means aforesaid,

feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary to the act of assembly in such case made and provided, and against the peace, government and dignity of the state." Davis v. State, 39 Md. 355.

B. *Indictment, Killing With Clevis.*

The grand jury of the county of Jackson aforesaid, in the name and by the authority of the state of Iowa, accuse Samuel P. Watkins, Calvin Nelson and John B. Bucklin, of the crime of murder, perpetrated and committed as follows:

1. The said Samuel P. Watkins, John B. Bucklin and Calvin Nelson, on the 23d day of January, in the year of our Lord one thousand eight hundred and sixty-seven, in the county aforesaid, in and upon one Samuel S. Cronk, in the peace then and there being, feloniously, wilfully, premeditatedly, and of their malice aforethought, did make an assault; and the said Samuel P. Watkins, Calvin Nelson and John B. Bucklin, with a certain piece of iron called a part of a clevis, of about the length of twelve inches, and the width of one inch, and with one oak stick of wood of the length of eighteen inches and of the thickness of two inches, which they then and there in their hands had, and him the said Samuel S. Cronk, then and there feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, divers times did strike and beat, giving to him the said Samuel S. Cronk, by striking and beating him, as last aforesaid, with said piece of iron and said stick of wood, several mortal strokes, wounds and bruises in and upon the head of him the said Samuel S. Cronk, to-wit: One mortal wound on the forehead of him the said S. S. Cronk; one mortal wound on the back and side of the head of him the said Cronk; and one mortal wound extending from the side of the head to the back of the head of him the said Cronk, of which said mortal strokes, wounds and bruises he the said Cronk, afterward, to-wit, on the day and year aforesaid, at and in the county of Jackson, died.

2. And the grand jury aforesaid, in the name and by the authority of the state of Iowa, do further find and present, that the said Samuel P. Watkins, Calvin Nelson and John B. Bucklin, on the 23d day of January, A. D. 1867, in the county of Jackson, in the state

of Iowa, in and upon one Samuel S. Cronk, in the peace then and there being, feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, did make an assault; and with a part of an iron clevis, and with a stick of wood, and with a knife, did then and there strike, beat, bruise, cut and wound him the said Cronk, in and upon his head and other parts of his body, and by means aforesaid, the said Samuel P. Watkins, Calvin Nelson and John B. Bucklin, did then and there, him the said Samuel S. Cronk, kill and murder. And so the grand jury aforesaid do say that the said Samuel P. Watkins, Calvin Nelson and John B. Bucklin, him the said Samuel S. Cronk, in the manner and by the means aforesaid, feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, did kill and murder, contrary to the laws of Iowa, in such case made and provided, and against the peace and dignity of the state of Iowa. *State v. Watkins*, 27 Iowa 415.

V. Indictment for Murder, Striking, Drowning.

Admiralty of England, to-wit: The jurors, etc., that George Hindmarsh, late of, etc., mariner, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, etc., with force and arms upon the high sea, within the jurisdiction of the admiralty of England, to-wit, about the distance of one league from Annamaboe, on the coast of Africa, in and upon one S. B. C., then and there being on board of a certain sloop, called Eolus, and in the peace of God, and our said lord the king, feloniously, wilfully, and of his malice aforethought, did make an assault. And that the said G. H. then and there, with force and arms, and with a certain large piece of wood of the value of one penny, which he the said G. H. then and there had and held, in the right hand of him the said G. H., him the said S. B. C. in and upon the head of him the said S. B. C. feloniously, wilfully, and of his malice aforethought, did strike and beat, giving him the said S. B. C. by such striking and beating, etc., divers mortal bruises and contusions, in and upon the head, etc., of which said mortal bruises and contusions, he the said S. B. C. did instantly die. And so, etc. (as in

I, to the *). And that the said G. H. then and there, etc., with force and arms, feloniously, wilfully, and of his malice aforethought, did cast and throw the said S. B. C. from and out of the said sloop called the Eolus, into the high seas there, by means of which said casting and throwing of him of the said S. B. C. from and out of the said sloop called the Eolus, into the high seas, there, by means of which said casting and throwing of him the said S. B. C. from and out of the said sloop into the high seas aforesaid, he the said S. B. C. in and with the waters thereof, upon the high seas aforesaid, within the jurisdiction of the admiralty of England aforesaid, then and there was suffocated and drowned, of which said suffocation and drowning, he the said S. B. C. did then and there instantly die. And so the jurors aforesaid, upon their oath aforesaid, do say, that the aforesaid G. H., him the said S. B. C., upon the high sea aforesaid, in the ship aforesaid, and within the jurisdiction of the admiralty of England aforesaid, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace, etc. 3 Chit. Cr. L. 759.

VI. Indictment for Murder Against Two, Which Gave Blow Unknown.

Middlesex (to-wit). The jurors for our sovereign lord the king, upon their oath, present that E. Q., late of, etc., in, etc., laborer, otherwise called E. Q., late of the same place, laborer, together with a certain other person to the jurors aforesaid as yet unknown, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on, etc., in the ninth year, etc., with force and arms, at, etc., in, etc., in and upon one G. H., in the peace of God, and our said lord the now king, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said person, to the jurors aforesaid yet unknown, with a certain stick, of the value of one penny, which the said person, so to the jurors aforesaid as yet unknown, in his right hand, then and there had and held, the said G. H. in and upon the head of him the said G. H., on the right side thereof, near to the temple muscle, then and there feloniously, wilfully, and of

his malice aforethought, did strike, giving to the said G. H. then and there with the stick aforesaid, by the stroke aforesaid, in manner aforesaid, in and upon the head of him the said G. H., in the right side thereof, near to the temple muscle, one mortal wound of the length of two inches, and of the depth of half an inch, of which said mortal wound the said G. H. on and from the said, etc., until and upon the day, etc., as well at, etc., aforesaid, as at the parish of, etc., in, etc., did languish, and languishing did live, and then and there, that is to say, on, etc., at, etc. (the place last named), he the said G. H. of the mortal wound aforesaid, died, and that the said E. Q. feloniously, wilfully, and of his malice aforethought, was present, aiding, helping, abetting, comforting, assisting and maintaining the said person so to the jurors aforesaid yet unknown, in the felony and murder aforesaid, in manner and form aforesaid, to do and commit: And so the jurors, etc., do say that the said persons so to the jurors aforesaid as yet unknown, and the said E. Q., in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the peace, etc. 3 Chit. Cr. L. 762, 763.

VII. Indictment for Murder, Stabbing (a).

(Commencement as in I, to the *.)

And that the said P. H., with a certain drawn sword made of iron and steel, of the value of five shillings, which he the said P. H., in his right hand then and there had and held, him the said S. C. in and upon the left side of the belly of him the said S. C., then and there feloniously, wilfully, and of his malice aforethought, did strike, thrust, stab, and penetrate, giving unto the said S. C. then and there, with the sword drawn as aforesaid, in and upon the left side of the belly of him the said S. C., one mortal wound of the breadth of one inch, and the depth of nine inches; of which said mortal wound he the said S. C., at, etc., aforesaid, from the said, etc., until, etc., did languish, and languishing did live, on which said, etc., the said S. C., at, etc., aforesaid, of the said mortal wound did die; and so, etc. (conclusion as in I). 3 Chit. Cr. L. 756.

Indictment for Murder, Stabbing (b).

That Moses Lowenberg, late of the

first ward of the city of New York, in the county of New York, aforesaid, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty-one, at the ward, city and county aforesaid, with force and arms, in and upon one Samuel Hoffman, in the peace of the people of the state then and there being, wilfully and feloniously, deliberately and premeditatedly, and of his malice aforethought, did make an assault; and that the said Moses Lowenberg, with a certain knife, which he the said Moses Lowenberg, in his right hand then and there had, and held him the said Samuel Hoffman, in and upon the chest of him the said Samuel Hoffman, then and there wilfully, deliberately, premeditatedly, feloniously, and of his malice aforethought, did beat, strike, stab, cut and wound, giving unto the said Samuel Hoffman, then and there, with the knife aforesaid, in and upon the chest of him the said Samuel Hoffman, one mortal wound of the breadth of two inches, and of the depth of six inches, of which said mortal wound he the said Samuel Hoffman, on the day and year aforesaid, at the ward, city and county aforesaid, did die.

And so the jurors aforesaid, upon their oath aforesaid, do say that he the said Moses Lowenberg, him the said Samuel Hoffman, in the manner and form, and by the means aforesaid, at the ward, city and county aforesaid, on the day and the year aforesaid, wilfully, deliberately, premeditatedly, feloniously, and of his malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace of the people of the state of New York, and their dignity. *Lowenberg v. People*, 5 Park. Crim. (N. Y.) 414, 417.

VIII. Indictment for Murder, Strangling, With Help of Person Unknown.

(Commencement as in I, to the *.)

Being in a certain coach with one E. F., and a certain man yet unknown, in and upon the said E. F., violently, feloniously, and of his malice aforethought, did make an assault, and that the said A. B., with the help and assistance of the said man unknown, with a pocket handkerchief with a coal in the same being put, of the value of two pence, about the neck of him the said E. F., then and there feloniously,

voluntarily, and of his malice aforethought, did put, fasten and bind, and that the said A. B., with the help and assistance of the said man unknown, with the said handkerchief with the coal aforesaid in it, about the neck of the aforesaid E. F., then as aforesaid, put, fastened, and bound him the said E. F. then and there, with force and arms, feloniously, and of his malice aforethought, did choke and strangle, of which choking and strangling of the said E. F., he the said E. F. then and there instantly died. 3 Chit. Cr. L. 766.

IX. Indictment for Murder, Riding Over With Horse.

(Commencement as in I, to the *.) And that the said C. D., then and there riding upon a certain horse of the price of twenty pounds, the said horse in and upon the said A. B. then and there feloniously, wilfully, and of his malice aforethought, did ride and force, and him the said A. B., with the horse aforesaid, then and there by such riding and forcing did throw to the ground; by means whereof the said horse with his hinder feet him the said A. B. so thrown to and upon the ground as aforesaid, in and upon the hinder part of the head of him the said A. B., did then and there strike and kick, thereby then and there giving to him the said A. B. in and upon the said hinder part of the head of him the said A. B., one mortal fracture and contusion; of which said mortal fracture and contusion he the said A. B. then and there instantly died. And so, etc., as in I. 3 Chit. Cr. L. 765.

X. Indictment, Murder by Forcing Sick Person Into Street.

That W. J., late of, etc., not having, etc., but moved and seduced, etc., on, etc., at an unreasonable hour in the night, to-wit, about the hour of eleven in the night of the same day, with force and arms, at, etc., aforesaid, in and upon the said E. B., then and there being in the peace of God and of our said lord the king, and also then and there being in extreme sickness and weakness of body, occasioned by a fever, and then and there confined to her bed in the dwelling house of him the said W. J., there situate, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said W. J., her the said E. B. from and out of the said bed, and also out of the said dwelling house, into the public and

open street, there, did then and there violently, feloniously, wilfully, and of his malice aforethought, remove, force and drive, and there leave: he the said W. J. then and there well knowing the said E. B. to be then in extreme sickness and weakness of body, occasioned by the fever aforesaid, by means whereof she the said E. B., through cold and the inclemency of the weather, and for want of due care and other necessities requisite for a person in such sickness and weakness as aforesaid, then and there died; and so, etc., as in I. 3 Chit. Cr. L. 771.

XI. Poisoning.

A. Indictment for Murder by Poisoning (a).

That M. B., late of, etc., spinster, daughter of F. B., late of the same place, gentleman, deceased, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, and of her malice aforethought, contriving and intending him the said F. B., her late father in his lifetime to deprive of his life, and him feloniously to kill and murder, on, etc., and on divers other days and times between the said, etc., and, etc., with force and arms, at, etc., aforesaid, did knowingly, wilfully, feloniously, and of her malice aforethought, mix and mingle certain deadly poison, to-wit, white arsenic, in certain tea which had been at divers days and times during the time aforesaid prepared for the use of the said F. B. to be drank by him the said F. B., she the said M. B., then and there well knowing that the said tea with which she the said M. B. did so mix and mingle the said deadly poison as aforesaid, was then and there prepared for the use of the said F. B., with intent to be then and there administered to him for his drinking the same, and the said tea with which the said poison was so mixed as aforesaid, afterwards, to-wit, on the said, etc., and on the said other days and times, at, etc., aforesaid, was delivered to the said F. B. to be then and there drank by him, and the said F. B. (not knowing the said poison to have been mixed with his said tea) did afterwards, to-wit, on the said, etc., and on the said divers other days and times there drink and swallow down into his body several quantities of the said poison so mixed as aforesaid with the said tea. And that the said M. B. might more

speedily kill and murder the said F. B., she the said M. B., on the said, etc., and on divers other days and times between the said, etc., and, etc., with force and arms, at, etc., aforesaid, did knowingly, wilfully, feloniously, and of her malice aforethought, mix and mingle certain deadly poison, to-wit, white arsenic, with certain water gruel which had been made and prepared for the use of the said F. B. to be drank by him the said F. B., she the said M. B. then and there well knowing that the said water gruel with which the said poison was so mixed as aforesaid was then and there prepared for the use of the said F. B., with intent to be then and there administered to him for his drinking of the same, and the said water gruel with which the said poison was so mixed as aforesaid, afterwards, to-wit, on the said, etc., and on the said other days and times last aforesaid, at, etc., was delivered to the said F. B. to be then and there drank by him, and the said F. B. (not knowing the said poison to have been mixed with the said water gruel) did afterwards, to-wit, on the said, etc., and on the day then next following, and on divers other days and times, afterwards, and before the said, etc., there take, drink and swallow down into his body several quantities of the said poison so mixed as aforesaid, with the said water gruel, and the said F. B., of the poison aforesaid, and by the operation thereof, became sick and greatly distempered in his body, of which said sickness and distemper of body occasioned by the said drinking, taking and swallowing down into the body of the said F. B. of the poison aforesaid so mixed and mingled in the said tea and water gruel as aforesaid, he the said F. B., from the said several days and times on which he had so taken, drank and swallowed down the same as aforesaid, until the said, etc., at, etc., aforesaid, did languish, and languishing did live, on which said, etc., at, etc., aforesaid, he the said F. B., of the poison aforesaid so taken, drank and swallowed down as aforesaid, and of the said sickness and distemper thereby occasioned did die. And so, etc., as in I. 3 Chit. Cr. L. 772.

Indictment for Murder by Poisoning
(b).

That George C. Hersey, "on the third day of May, in the year of our Lord

eighteen hundred and sixty, at Weymouth, in the county of Norfolk, in and upon one Betsy Frances Tirrell, in the peace of the said commonwealth then and there being, wilfully, feloniously, and of his malice aforethought, did make an assault, and to her the said Betsey Frances Tirrell did feloniously, wilfully, and of his malice aforethought then and there give and administer a certain large quantity, to-wit, ten grains in weight, of a certain deadly poison called strychnine, he the said George C. Hersey, then and there well knowing the same to be a deadly poison, with intent that the said Betsey Frances Tirrell should then and there take and swallow down the same into her body, and that the said Betsey Frances Tirrell, the said strychnine, so given and administered as aforesaid, did then and there take and swallow into her body, and by reason thereof became then and there mortally sick and distempered in her body, and of said mortal sickness and distemper did then and there languish, and languishing for the space of one-half hour did there live, and afterwards, on the day and year aforesaid, did there die of the mortal sickness and distemper then and there caused by the poison aforesaid, so as aforesaid by the said George C. Hersey, then and there feloniously, wilfully, and of his malice aforethought given and administered to her the said Betsey Frances Tirrell; and so the jurors aforesaid, on their oath aforesaid, do say and present that the said George C. Hersey, her the said Betsey Frances Tirrell, in manner and form aforesaid, and by the means aforesaid, at Weymouth, in the county aforesaid, feloniously, wilfully, and of his malice aforethought, did kill, poison and murder, against the peace," etc. *Com. v. Hersey*, 2 Allen (Mass.) 173.

B. Indictment for Murder by Poisoning, Substituting for Medicine.

That J. D., late of, etc., not having, etc., but being moved and seduced, etc., feloniously, wilfully, and of his malice aforethought, devising and intending T. B. to poison, kill and murder, on, etc., with force and arms, at, etc., aforesaid, a certain quantity of arsenic, to-wit, two drachms of arsenic (being a deadly poison, feloniously, wilfully, and of his malice aforethought, did put, infuse, mix and mingle in and together with water (he the said J. D. then and

there well knowing the said arsenic to be a deadly poison); and that the said J. D. the said arsenic so as aforesaid put, infused in, mixed and mingled in and together with water, into a certain glass phial bottle of the value of one penny, did put and pour, and the said glass phial bottle with the said arsenic put, infused in, and mixed and mingled in and together with water as aforesaid contained therein, then and there, to-wit, on the same, etc., with force and arms, at, etc., aforesaid, feloniously, wilfully, and of his malice aforethought, in the lodging room of the said G. B., did put and place, in the place and stead of a certain medicine then lately before prescribed and made up for the said T. B., and to be taken by the said T. B., he the said J. D. then and there feloniously, wilfully, and of his malice aforethought, intending that the said T. B. should drink and swallow down into his body the said arsenic, put, infused, mixed, and mingled in and together with water as aforesaid contained in the said glass phial bottle, by mistaking the same as and for the said medicine so prescribed and made up for the said T. B., and to be by him the said T. B. taken as aforesaid. And the jurors, etc., do further present that the said T. B., not knowing the said arsenic put, infused in, and mixed together with water as aforesaid, contained in the said glass phial bottle so put and placed by the said J. D. in the lodging room of the said T. B. in the place and stead of the said medicine then lately before prescribed and made up for the said T. B. and to be taken by him the said T. B. in manner aforesaid, to be a deadly poison, but believing the same to be true and real medicine then lately before prescribed and made up for and to be taken by him the said T. B., afterwards, to-wit, on, etc., at, etc., aforesaid, the said arsenic so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, contained in the said glass phial bottle, so put and placed by the said J. D. in the lodging room of him the said T. B. in the place and stead of the said medicine then lately before prescribed and made up for the said T. B., he the said T. B. did take, drink and swallow down into his body, by means of which said taking, drinking and swallowing down into the body of him the said T. B. of the

said arsenic so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, he the said T. B. then and there became sick and distempered in his body, of which said sickness and distemper of body, occasioned by the said taking, drinking and swallowing down into the body of him the said T. B. of the said arsenic so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, he the said T. B., on the said, etc., at, etc., aforesaid, did die; and so, etc. 3 Chit. Cr. L. 775.

C. Indictment for Murder by Sending Poison.

That G. L., late of, etc., not having, etc., but being moved and seduced, etc., and of his malice aforethought, contriving and intending the said A. B. with poison feloniously to kill and murder, on, etc., with force and arms, at, etc., aforesaid, a great quantity of yellow arsenic, being a deadly poison, with a certain quantity of white wine, feloniously, wilfully, and of his malice aforethought, did mix and mingle, he the said G. L. then and there well knowing the said yellow arsenic to be a deadly poison; and that the said G. L., afterwards, to-wit, on, etc., at, etc., aforesaid, the poison aforesaid, so as aforesaid mixed and mingled with the white wine aforesaid, feloniously, wilfully, and of his malice aforethought, did send to her the said A. B. to take, drink, and swallow down; and that the said A. B., not knowing the poison aforesaid, in the white wine aforesaid, to have been mixed and mingled as aforesaid, afterwards, to-wit, on, etc., at, etc., aforesaid, the said poison so as aforesaid mixed and mingled by the procurement and persuasion of the said G. L., did take, drink, and swallow down, and thereupon the said A. B., by the poison aforesaid so mixed and mingled as aforesaid, and so taken, drank, and swallowed down as aforesaid, became then and there sick and distempered in her body, and the said A. B. of the poison aforesaid, and of the sickness and distemper occasioned thereby from the said, etc., until, etc., at the parish aforesaid, in the county aforesaid, did languish, and languishing did live; on which said, etc., she the said A. B., at, etc., aforesaid, of the poison aforesaid and of the said sickness and distemper thereby occasioned as aforesaid, did die. And so, etc. 3 Chit. Cr. L. 776.

XII. Indictment, Murder by Wrecking Train While Perpetrating Robbery.

"Did then and there wilfully and with malice aforethought kill and murder one Mike Hackett, by then and there displacing and interfering with a certain switch of the St. Louis, Arkansas & Texas Railway, and thereby wrecking and injuring a car and train of cars on said railway, and thereby mashing, wounding, and bruising the said Hackett, who was then and there on said train of cars; from which said mashing, wounding and bruising, inflicted in the manner and by the means aforesaid, the said Hackett did then and there instantly die; and that the said displacing and interfering with said switch, and the said wrecking and injuring of said car and train of cars, and the said killing and murder of said Hackett, were each and all committed by the said John A. Williams in the perpetration of robbery; in this, that the said Williams did then and there fraudulently take from the person and possession of one S. L. Neblett, who was then and there upon said train of cars, and by assault and violence upon the said Neblett, and by putting the said Neblett in fear of life and bodily injury, certain personal property, to-wit, . . . (here the various packages, containing money, jewelry, and other valuables, are specifically set out in the indictment), the property of him, the said Neblett, with the intent of him, the said John A. Williams, to appropriate the same to his own use; and in the perpetration of the said crime of robbery, and by the displacement of and interference with said switch, and the wrecking and injuring of said car and train of cars, all as aforesaid, the said John A. Williams did then and there kill and murder the said Mike Hackett as aforesaid, against the peace and dignity of the State." Williams v. State, 30 Tex. App. 354, 17 S. W. 408.

XIII. Information for Murder by Arson.

"That heretofore, to-wit, on the 25th day of December, 1873, at the county of Sedgwick and state of Kansas, Joseph W. McNutt and Arthur Winner, unlawfully, and of their malice aforethought, contriving and intending one W. W. Seiver, otherwise known as 'Texas,' otherwise known as 'Tex,'

then and there being in a certain frame house situated upon lot No. 73 on Main street in the city of Wichita, in the county and state aforesaid, feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, to burn, kill and murder, then and there, with force and arms, unlawfully, feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, did set fire to and burn the said frame house, he the said W. W. Seiver then and there, before, at, and during the said burning, being in the said frame house, and they the said Joseph McNutt and Arthur Winner then and there, before, at, and during said setting fire and burning, well knowing him the said W. W. Seiver to be in said frame house, and that they, the said Joseph W. McNutt and Arthur Winner, by so setting fire to, and firing and burning the said frame house as aforesaid, then and there did unlawfully, wilfully, feloniously, deliberately, premeditatedly, and of their malice aforethought mortally burn the body of him the said W. W. Seiver, by means of which said mortally burning of the body of him the said W. W. Seiver, he the said W. W. Seiver then and there instantly died." State v. Winner, 17 Kan. 298.

XIV. Indictment, Criminal Negligence in Erecting Building.

"Heretofore and prior to the thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-five, the said Charles A. Buddensieck and Charles Franck, each late of the city and county of New York aforesaid, did erect and construct and cause and procure to be erected and constructed, and did act and assist and were concerned in the erection and construction of a certain building within the said city and county, the same being designed and intended to be used and occupied upon its completion by human beings for dwelling purposes, the said Charles A. Buddensieck and Charles Franck, at the time of the erecting and constructing of the said building, having the entire care, charge and control and supervision of the same. And the said Charles A. Buddensieck and Charles Franck, so having the entire care, charge, control and supervision of the constructing and erecting of the said building, it thereupon became and was

their duty, at the time of such erection and construction, and until the said building should be completed, to cause the walls thereof to be properly bonded and solidly put together, and to be built to a line, and be carried up plumb and straight with close joints; and to cause all joints in the said walls to be well filled with mortar of good quality; and to cause mortar of good quality to be used in the construction of the said walls, in order that the same should be properly and solidly put together; and to cause bricks, stones, iron work, planks, timbers, beams, boards and materials, of good quality and of sufficient strength, to be used in the construction of the said building; and to prevent from being used in such construction any bricks, stones, iron work, planks, timbers, beams, boards or other materials which were not of good quality and of sufficient strength; and to use and exercise every care and precaution in their power to render the said building and every part thereof safe and secure, as well during its construction as upon the completion of the same.

And the said Charles A. Buddensieck and Charles Franck, well knowing the premises, but being wholly unmindful and neglectful of their duty in that behalf, at the time of the erection and construction of the said building, and on divers days and times up to the said thirteenth day of April, in the (year) aforesaid, at the city and county aforesaid, did feloniously and wilfully neglect and omit to cause the walls of the said building to be properly bonded and solidly put together and to be built to a line and carried up plumb and straight with close joints; and did then and there wilfully and feloniously neglect and omit to cause the joints in the said walls to be well filled with mortar of good quality; and did then and there wilfully and feloniously neglect and omit to cause proper mortar to be used in the construction of the said walls; and did then and there wilfully and feloniously neglect and omit to cause bricks, stones, iron work, planks, timbers, beams, boards and materials of good quality and of sufficient strength to be used in the construction of the said building; and did then and there wilfully and feloniously neglect and omit to prevent from being used in such construction divers bricks, stones, iron

work, planks, timbers, beams, boards and other materials which were not of good quality nor of sufficient strength; and did then and there wilfully and feloniously neglect and omit to use and exercise every care and precaution in their power to render the said building and every part thereof safe and secure during its construction and upon the completion thereof; and the said Charles A. Buddensieck and Charles Franck, on the days and times aforesaid, at the city and county aforesaid, did then and there wilfully and feloniously cause, suffer and permit the walls of the said building to be improperly bonded and loosely and flimsily put together; and did then and there wilfully and feloniously cause, suffer and permit mortar of a grossly poor and inferior quality, and mortar chiefly composed of loam to be used in the construction of the said walls; and did then and there wilfully and feloniously cause, suffer and permit divers bricks, stones, planks, beams, timbers, iron work and other materials of poor quality and insufficient strength to be used in the construction of the said building.

In consequence of which said most culpable negligence, acts and omissions on the part of them, the said Charles A. Buddensieck and Charles Franck, the said building afterward, to-wit, on the said thirteenth day of April, in the year aforesaid, did fall to the ground there. And the said Charles A. Buddensieck and Charles Franck, by the falling of the said building in manner aforesaid, on the day and in the year aforesaid, at the city and county aforesaid, with force and arms, in and upon the body of one Louis Walters, in the peace of the people of the State of New York, then and there being in the said building before and at the time of the falling of the same, wilfully and feloniously did make an assault, and him, the said Louis Walters, down upon and against the bricks, stones, planks, timbers, beams, iron work and other component parts of the said building, did then and there, with great force and violence, wilfully and feloniously cast and throw, thereby giving unto him, the said Louis Walters, then and there, in and upon the head, neck, breast, belly, back, sides and other parts of the body of him, the said Louis Walters, divers mortal bruises and contusions, of which said mortal

bruises and contusions he, the said Louis Walters, from the said thirteenth day of April, in the year aforesaid, until the fourteenth day of April, in the same year aforesaid, at the city and county aforesaid, did languish, and languishing did live, on which said fourteenth day of April, in the year aforesaid, the said Louis Walters, at the city and county aforesaid, of the said mortal bruises and contusions died." *People v. Buddensieck*, 103 N. Y. 487, 9 N. E. 41.

XV. Indictment for Murder, Means Unknown.

"And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present that the said George Godas, on the eighth day of September, A. D. 1887, at the said county of Lewis and Clarke, with force and arms, in and upon one John Embody, in the peace of God and the Territory of Montana, then and there being, feloniously, wilfully, and of his deliberately premeditated malice aforethought, did make an assault; and in some way and manner, and by some means, instruments, and weapons to the grand jurors unknown, he, the said George Godas, did then and there feloniously, wilfully, and of his deliberately premeditated malice aforethought, inflict on and create in the said John Embody certain mortal injuries and a mortal sickness, a further description whereof is to the jurors aforesaid unknown, of which said mortal sickness and injuries, so to the jurors aforesaid unknown, the said John Embody then and there instantly died. And so the said George Godas did, in the manner and form aforesaid, feloniously, wilfully, and of his deliberately premeditated malice aforethought, kill and murder the said John Embody, against the peace and dignity of the Territory of Montana, and contrary to the form of the statute in such case made and provided." *Territory v. Godas*, 8 Mont. 347, 21 Pac. 26.

Note.—This form would be stronger under the statute if there be an additional allegation that the assault was made with intent to kill, although the court in the above case held the indictment sufficient.

XVI. Indictment, Death Occurring in Another State.

State of North Carolina, Stokes county,

ss. Superior court of law begun and held on the second Monday after the fourth Monday of September, A. D. 1842.

The jurors for the state, upon their oath present, that William B. Dunkley, late of the said county of Stokes, laborer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the thirteenth day of August, in the year of our Lord one thousand eight hundred and forty-two, with force and arms in the county aforesaid, in and upon one Archibald McHone, in the peace of God and the state, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said William Dunkley, with a certain knife of the value of six pence, which he the said William Dunkley in his right hand then and there had and held, the said Archibald McHone in and upon the right hip, and the left side of the back near the backbone of him the said Archibald McHone, then and there feloniously, wilfully, and of his malice aforethought, did strike and thrust, giving to the said Archibald McHone, then and there with the knife aforesaid, in and upon the said right hip and the left side of the back near the backbone of the said Archibald McHone, several mortal wounds, each of the breadth of three inches and of the depth of six inches; of which said several mortal wounds the said Archibald McHone, from the said thirteenth day of August, in the year aforesaid, until the twenty-ninth day of the same month of August, in the year aforesaid, as well in the county aforesaid, as in the county of Patrick, in the state of Virginia, did languish, and languishing did live, on which said twenty-ninth day of August, in the year aforesaid, the said Archibald McHone, in the said county of Patrick, in the state of Virginia, of the said several mortal wounds died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said William B. Dunkley the said Archibald McHone, in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace and dignity of the state.

John F. Poindexter, Sol'r.

State v. Dunkley, 25 N. C. 116.

XVII. Assault With Intent To Murder.**A. Attempt To Murder With Sword.**

That A. B., late of, etc., on, etc., with force and arms, at, etc., aforesaid, with a certain drawn sword, which he the said A. B. in his right hand then and there had and held, in and upon one S. W., in the peace of God * and our said lord the king, then and there being, did make an assault with an intent him the said S. W. then and there feloniously, wilfully, and of his malice aforethought, to kill and murder, and other wrongs, etc.

(Second count for a common assault.)
3 Chit. Cr. L. 828.

B. Indictment, Attempt To Murder With Pistol.

“The grand jurors of the state of Indiana, in and for the county of Rush, good and lawful men, duly and legally empanelled, sworn and charged in the Rush circuit court, at the March term, 1877, to enquire in and for the body of said county, in the name and by the authority of the state of Indiana, upon their oath, present and charge that, on the 18th day of January, 1877, and in the county of Rush and state of Indiana, William A. Jones, in and upon one Orlando B. Scobey, did then and there unlawfully, feloniously, purposely and with premeditated malice, make an assault, and then and there, at and against, and in contact with, the said Orlando B. Scobey, did feloniously, purposely and with premeditated malice, shoot a certain pistol, then and there loaded with gunpowder and leaden balls, which he the said William A. Jones then and there in his hands had and held, with the intent then and there him the said Orlando B. Scobey, feloniously, purposely and with premeditated malice, to kill and murder.”
Jones v. State, 60 Ind. 241.

C. Indictment, Attempt To Murder With Dangerous Weapon, Injuries Inflicted.

Middlesex. The jurors for our lord the king, upon their oath, present that A. B., late of the parish of ———, in the county of Middlesex, yeoman, on the ——— day of ———, in the ——— year of the reign of our sovereign lord George the third, by the grace of God of the united kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one J.

H., in the peace of God and our said lord the king, then and there being, did make an assault, and her the said C. D. then and there did beat, wound, and illtreat, and one brass candlestick at, towards, and against the said C. D. then and there did cast and throw with intention to strike, bruise, wound, and hurt the said C. D. with the said candlestick, and that the said A. B. then and there, with force and arms, with a certain chair, did strike the said C. D. divers terrible, grievous and dangerous blows upon the head, arms, sides, back, and other parts of the body of her the said C. D., and thereby grievously cut, bruised, and wounded the said C. D., in and upon her head, arms, sides, back, and other parts of her body, in so much that her life was greatly despaired of, with an intent, her the said C. D. then and there feloniously, wilfully, and of his malice aforethought, to kill and murder, and other wrongs, etc. 3 Chit. Cr. L. 828.

D. Indictment, Intent To Kill, With Count for Intent To Maim.

The jurors of the people of the state of New York, in and for the body of the county aforesaid, to-wit:

Lawrence W. Bristol, etc., etc., good and lawful men of the county aforesaid, then and there sworn and charged to inquire for the said people for the body of the county aforesaid, upon their oaths present: That Daniel O’Leary, late of the village of Waterford, in the county of Saratoga aforesaid, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and fifty-seven, with force and arms, at the village of Waterford, in the county of Saratoga aforesaid, in and upon one Margaret Collins, then and there being, feloniously did make an assault, and her the said Margaret Collins, with a certain deadly weapon, commonly called a cleaver, which the said Daniel O’Leary in his right hand then and there had and held, feloniously did beat, strike, and cut and wound, with intent her the said Margaret Collins then and there feloniously and wilfully to kill, and other wrongs to the said Margaret Collins, then and there did, to the great damage of the said Margaret Collins, against the statute in such case made and provided, and against the peace of the people of the state of New York, and their dignity.

And the jurors aforesaid, on their oath aforesaid, do further present that the said Daniel O'Leary, late of the town and village of Waterford, in the county of Saratoga, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and fifty-seven, with force and arms, at the village and county aforesaid, in and upon Margaret Collins, then and there being, feloniously did make an assault, and her the said Margaret Collins, with a certain deadly weapon commonly called a cleaver, which he the said Daniel O'Leary, in both his hands, then and there had and held, feloniously did beat, strike, and cut and wound, with intent her the said Margaret Collins then and there feloniously and wilfully to kill, and other wrongs to the said Margaret Collins, then and there did, to the great damage of the said Margaret Collins, and against the statute in such case made and provided, and against the peace of the people of the state of New York, and their dignity.

And the jurors aforesaid, on their oath aforesaid, do further present that the said Daniel O'Leary, on the said twenty-second day of September, in the year last aforesaid, with force and arms, at the village and county aforesaid, in and upon the said Margaret Collins, then and there being, feloniously did make another assault, and her the said Margaret Collins, with a certain cleaver, which he the said Daniel O'Leary, in both of his hands then and there had and held the said cleaver, being a deadly weapon, feloniously did beat, strike, cut and wound, with intent her the said Margaret Collins then and there feloniously and wilfully to maim, against the form of the statute in such case made and provided, and against the peace of the people of the state of New York, and their dignity.

John O. Mott, district attorney.

O'Leary v. People, 4 Park. Cr. (N. Y.) 187.

E. Indictment, Attempt To Kill Helpless Person by Exposure.

"State of Illinois, Wayne county, ss.

The grand jurors chosen, selected and sworn, in and for the county of Wayne, in the name and by the authority of the people of the state of Illinois, upon their oaths, present that Absalom Nixon, late of the county aforesaid,

laborer, on the twenty-third day of October, in the year of our Lord one thousand eight hundred and thirty-eight, with force and arms, at and in the county aforesaid, in and upon one Adam, a man of color, then and there being a deformed person, and by reason of his being such deformed person, being unable to walk or otherwise to move himself from place to place, and also then and there being deficient in voice, so as to be unable to call aloud, and in the peace of God, and of the people of the state of Illinois, then and there also being, unlawfully did make an assault, and then and there forced and threw the said Adam from a certain wagon, in which he the said Adam then and there was, to and upon the ground, the said ground then and there being frozen and very cold, and then and there did force and compel the said Adam (so being such deformed person as aforesaid, and also by reason of his being such deformed person, being unable to move himself from place to place as aforesaid, and also being deficient in voice, so as to be unable to call aloud as aforesaid), then and there to lie upon the ground, so being frozen and very cold as aforesaid, and then and there did abandon and leave him the said Adam lying on the ground as aforesaid, to the great pain and torture of the said Adam, and to the great damage and impoverishment of his health and strength of body, with intent him the said Adam, by the means aforesaid, then and there feloniously, wilfully and of his malice aforethought, to kill and murder, and other wrongs to him the said Adam then and there did, to the great damage of him the said Adam, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the state of Illinois.

G. B. Shelleby, state's attorney."

Nixon v. People, 3 Ill. 267. (Specially approved as to form by the court.)

XVIII. Verdicts.

A. Verdict, Guilty on One Count, Acquittal on Other.

"We, the jury, find the defendant guilty of murder in the first degree as charged in the second count of the indictment, and we find him not guilty

as to the first count of the indictment.

"W. F. Jeffers,
Foreman."

State v. Blunt, 110 Mo. 322, 339, 19 S. W. 650.

Note.—Sufficient under statute. See general form of verdict in "Judgment Records."

B. Verdict Recommending Mercy.

"We, the jury, find the defendant guilty of murder in the first degree and recommend him to the mercy of the court. Nov. 28th, '93. C. R. Bissbee, foreman." *Grant v. State*, 33 Fla. 291, 14 So. 747.

Note.—Reversed for want of evidence to support verdict. (Form of verdict not in question; propriety of rejecting first verdict, improper in form, and receiving second verdict determined, and second verdict received.)

HOTELS.—See INNS AND INNKEEPERS.

HOUSE BREAKING.—See BURGLARY.

HOUSE OF ILL-FAME.—See DISORDERLY HOUSE.

HUSBAND AND WIFE.

I. Declarations, 588

A. *By Husband and Wife for Work Done by Wife Before Marriage*, 588

B. *Against Husband and Wife for Work Done for Wife Before Marriage*, 588

II. Complaints, 589

A. *Against Husband on Antenuptial Debt*, 589

B. *Where Husband Has Acquired Property of Wife*, 589

C. *Against Married Woman on Her Contract*, 589

D. *Concerning Separate Property*, 589

1. *Alleging Separate Estate*, 589

2. *Alleging Separate Estate in Action Other Than for Payment of Money*, 590

3. *Contract Express To Charge*, 590

4. *Goods Sold for Separate Estate*, 590

E. *Where Husband Has Acquired Separate Property*, 590

III. In Equity, 591

A. *Bill To Enforce Payment Out of Separate Property*, 591

B. *Answers*, 592

1. *By Wife Separated From Husband*, 592

2. *By Husband Separated From Wife*, 592

C. *Decrees*, 592

1. *Sale of Stock and Payment to Separate Use*, 592

2. *Inquiry as to Settlement, and Directions for Settlement*, 592

3. *Share Settled, Husband Bankrupt*, 593

4. *Ordering Trustee To Contribute to Support of Insane Wife*, 593

CROSS-REFERENCES:

ALIENATING AFFECTIONS:

Declaration for Alienating Affections of Wife;

Complaint for Enticing Away Plaintiff's Wife.

ANSWERS:

Answer, Coverture of the Defendant.

ASSAULT AND BATTERY:

Declaration by Husband for Battery of Wife.

BILLS AND ANSWERS:

Introductory Part, Bill by Married Woman Suing by Her Next Friend;

Introductory Part, Bill by Husband and Wife;

Introductory Part of Bill by Feme Covert Whose Husband Is Defendant;

Introductory Part of Bill by Feme Covert Whose Husband Has Abjured Realm.

CRIMINAL CONVERSATION:

Declaration for Criminal Conversation;

Complaint for Criminal Conversation.

DECREES:

Payment of Interest to Married Woman for Her Separate Use;

Usual Directions for Payment of Interest to Husband in Right of His Wife.

EQUITY JURISDICTION AND PROCEDURE:

Petition That Feme Covert May Answer Separately From Her Husband.

ERRORS, ASSIGNMENT OF:

Assignment of Error, Coverture as an Error of Fact;

Plea to Assignment of Error, Coverture as an Error of Fact.

LIMITATION OF ACTIONS:

Replication to Plea of Statute of Limitations, Plaintiff Was Feme Covert.

PARTIES:

Suggestion of Marriage of a Feme Plaintiff After Verdict, or Interlocutory Judgment, and Before Final Judgment.

REVIVOR:

Petition, After Marriage, of Female

Plaintiff, Filed by Husband To
Revive in Joint Names.

SALES:

Complaint for Necessaries Furnished
to Defendant's Wife or Children.

TITLE:

Declaration, Title by Marriage.

WILLS:

Bill by Husband of Legatee Against
Executor.

Declaration, Inducement, Seizin in
Fee, Husband and Wife, in Right
of Wife.

I. Declarations.

**A. Declaration by Husband and Wife
for Work Done by Wife Before
Marriage.**

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D. and M. his wife, defendants, etc.: For that whereas the said M. whilst she was sole and unmarried, to-wit, on, etc., at, etc., was indebted, etc., for the work and labor, etc., before that time done, etc., for the said M. and at her special instance, etc., and being so indebted, she, the said M., in consideration thereof, afterwards, and whilst she, the said M., was sole and unmarried, to-wit, on, etc., aforesaid, at, etc., aforesaid, undertook, etc.

And whereas also, afterwards, and whilst the said M. was sole and unmarried, to-wit, on, etc., aforesaid, at, etc., aforesaid, in consideration that the said plaintiff, at the like special instance, etc., had before that time done, etc., for the said M. she, the said M. undertook, etc., etc. (as in the quantum meruit count), and the said A. B. avers that he therefor reasonably deserved to have of the said M. whilst she was sole and unmarried, the further sum, etc., whereof the said M. afterwards, and whilst she was sole and unmarried, to-wit, on, etc., there had notice. (Add the money counts, and the account stated by the feme before marriage.) Yet the said M., whilst she was sole and unmarried, and the said C. D. and M. since their intermarriage, not regarding the said several premises and undertakings of the said M., have not, nor hath either of them as yet paid, etc. (although often requested so to do), but to pay the same, or any part thereof, to the said plaintiff the said M. whilst she was sole and unmarried, wholly refused, and the said C. D. and M. his wife, have ever since their inter-

marriage, hitherto wholly refused, and still refuse so to do; to the damage of the said plaintiff, etc. Burr. App. 564, §1099.

**B. Declaration Against Husband and
Wife for Work Done for Wife
Before Marriage.**

A. B. and E., his wife, plaintiffs in this suit, by E. F., their attorney, complain of C. D., defendant, etc. (in the usual form). For that whereas the said defendant whilst the said E. was sole and unmarried, to-wit, on, etc., at, etc., was indebted to the said E. in the sum of two hundred dollars, for the work and labor of the said E. by her the said E. before that time done, etc., for the said defendant, and at his special instance, etc. (or, for divers goods, wares and merchandise, by the said E. before that time sold and delivered, to the said defendant, etc.), and being so indebted, he, the said defendant, in consideration thereof, afterwards, and whilst the said E. was sole and unmarried, to-wit, on, etc., aforesaid, at, etc., aforesaid, undertook, etc., the said E. to pay her the sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also, afterwards, and whilst the said E. was sole and unmarried, to-wit, on, etc., aforesaid, at, etc., aforesaid, in consideration that the said E. at his like special instance, etc., had before that time done, etc., he, the said defendant, undertook, etc., the said E. to pay her so much money, etc., as she, etc. And the said A. B. and E. his wife, avers that the said E. whilst she was sole and unmarried, therefor reasonably deserved to have, etc., whereof, etc. (Add the money counts, and the accounts stated with the feme before marriage.) Yet the said defendant not regarding, etc., has not as yet paid the said sums of money, or any part thereof, to the said E. whilst she was sole and unmarried, or to the said A. B. and E. his wife, or either of them, since their intermarriage (although often requested so to do). But he to do this hath hitherto wholly refused, and still doth refuse to pay the same, or any part thereof, to the said A. B. and E. his wife, to the damage of the said A. B. and E. his wife, of four hundred dollars, and therefore they bring their suit, etc. Burr. App. 564, §1098.

II. Complaints.**A. Complaint Against Husband on Ante-Nuptial Debt of Wife.**

I. That the defendant W. Z. is the wife of the defendant Y. Z.

II. That previous to the marriage of the defendants, while said W. Z. was sole and unmarried (here set forth the cause of action against her).

III. The plaintiff further shows, that previous to the marriage of the defendants, said W. Z. owned certain property, to-wit: (here describe the property of the wife which the husband has acquired).

IV. That before their marriage the defendants entered into an ante-nuptial agreement (here state effect of agreement as to transfer of property); and that the value of the separate property of said defendant W. Z. (wife), so acquired by the defendant Y. Z. (husband), was _____ dollars. 1 Abb. Forms 143.

Note.—See statutes of particular state as to liability for ante-nuptial debts.

B. Complaint on Ante-Nuptial Debt Where Husband Has Acquired, After Marriage, Property of Wife.

(I, II and III, as in preceding form.)

IV. That since the marriage of the defendants, and before this action, the defendant W. Z. conveyed to the defendant Y. Z. (here state what was conveyed); and that the value of the separate property of the defendant (wife), so acquired by the defendant (husband), was _____ dollars. 1 Abb. Forms 144.

C. Complaint Against a Married Woman on Her Contract.

I. That the defendant is the wife of one M. N.

II. That at the time of making the note hereinafter mentioned, the defendant was, and still is, seized in fee (or otherwise) in her own separate right of a farm in the town of _____, and county of _____, containing about _____ acres of land, of the value of _____ dollars.

III. (State cause of action; and either show that the transaction was in a separate business carried on by her within this state, or that the consideration was a direct benefit to the defendant's separate estate, or else add):

IV. That in consideration thereof,

the defendant agreed to charge her said estate with the amount of the said _____.

Wherefore the plaintiff demands judgment:

1. That said note be a charge on said estate of defendant;

2. That said estate be applied to the payment of the sum of _____ dollars, with interest from the _____ day of _____, 18____.

3. That a receiver be appointed to take possession of the same, for that purpose. 1 Abb. Forms 150.

D. Concerning Separate Property.**1. Complaint Alleging Marriage and Separate Estate of Plaintiff.**

II. That on the _____ day of _____, 18____, the plaintiff intermarried with one J. S., whose wife she now is.

III. That the consideration of the said note (or of the said transfer, or, indorsement of said note to the plaintiff) was the payment by this plaintiff to the maker (or indorser, or assignor) thereof, of the sum of _____, which said sum was (or the principal and interest of a certain sum which was), at and before the time of her marriage, owned by her (or which was acquired by her, by her trade or services); and thereafter was her sole and separate property, and * so continued until the time of such payment; and that said note thereupon became and ever since has been her sole and separate property.

(Or, III. That the consideration of the said note (or of the said transfer, or indorsement, of said note to the plaintiff) was the payment by the plaintiff to the maker (or indorser, or assignor), of the sum of _____ dollars, which said sum became (or was the principal and interest of a certain sum which became) after her said marriage her sole and separate property by inheritance (or gift, grant, devise, or bequest) from (a person other than her said husband, to-wit, one) M. N., and (continue as above, from the *).

Or, III. That the consideration of (etc., as above), which said sum was the proceeds of certain property, which was at and before (etc., as above), or which said sum was the proceeds of certain property which became after (etc., as above). 1 Abb. Forms 148.

2. *Complaint Alleging Marriage and Separate Estate of Plaintiff in Action Other Than for Payment of Money.*

II. (State marriage, as in preceding form.)

III. That the property hereinbefore mentioned was, at and before the time of her said marriage, owned by her, and ever since has been her sole and separate property.

(Or, III. That the property hereinbefore mentioned was after her said marriage bought by her with the proceeds of certain property, which was at and before the time of her said marriage owned by her; and that ever since the same has been (as above).)

(Or, III. That the property hereinbefore mentioned became, after her said marriage, her sole and separate property, by inheritance (or, gift, grant, devise, or bequest) from M. N., and that ever since the same has been (as above).)

(Or, III. That the property hereinbefore mentioned was after her said marriage acquired by her, by her trade or services entered into on her own and separate account, and ever since, etc. 1 Abb. Forms 150.)

3. *Complaint Against Married Woman, Contract Expressed Intent To Charge Separate Estate.*

(After alleging cause of action, add):

That the defendant is the wife of M. N., and at the time of making said indorsement she had and still has a separate estate, and intended to charge such separate estate by said indorsement.

Wherefore (demanding usual money judgment). 1 Abb. Forms 151.

4. *Complaint Against Husband and Wife for Goods Sold for Her Separate Estate.*

I. That between the _____ day of _____, 18—, and the _____ day of _____, 18—, at _____, the plaintiff furnished to the defendant W. Z., who was then, and still is, the wife of the defendant Y. Z., materials used for the building of a house for her, upon, and for the benefit of, her own separate lands and premises, situated in the town of _____, in the county of _____.

II. That the said defendant (wife) in consideration that the plaintiff would furnish such materials as aforesaid, then and there promised the plaintiff

that she would pay for the same _____ dollars (or, as much as they should be reasonably worth), out of her own separate property, and did appoint the same to be paid for out of her separate property.

III. That such (materials so furnished were reasonably worth the sum of _____ dollars, which) sum became due to the plaintiff from her on the _____ day of _____, 18—, but no part thereof has been paid (except the sum of, etc.)

IV. The plaintiff further shows, on information and belief, that the premises above mentioned and hereinafter more particularly described, were, at and before the _____ day of _____, 18— (which was the day of the marriage of defendants), since have been and now are, her sole and separate property; and the same are worth about _____ dollars, and are bounded and described as follows: (description of premises).

Wherefore the plaintiff demands judgment that the separate property aforesaid of the defendant (wife) be charged with the payment of the said sum of _____ dollars, with interest from _____, together with the costs of this action, and that the said property be applied to the payment of the same, and that a receiver be appointed to take possession of her said separate property, and dispose of it, or of so much thereof as shall be necessary to satisfy the same. 1 Abb. Forms 191.

E. *Complaint on Ante-Nuptial Debt of Wife, Where Husband Has Acquired That Which Became Separate Property of Wife After Marriage.*

(I and II as in II, A.)

III. That since the marriage of the defendants, certain property, to-wit (here describe her separate property), became the sole and separate property of the defendant (wife), by inheritance (or gift, grant, devise, or bequest) from (a person other than her said husband, to-wit: one) M. N.

IV. That thereafter and before this action, the defendant W. Z. conveyed to the defendant Y. Z. (here state what was conveyed); and that the value of the separate property of the defendant (wife), so acquired by the defendant (husband), was _____ dollars. 1 Abb. Forms 144.

III. In Equity.

A. *Bill Relating to Estate of Married Woman, To Enforce Payment Out of Separate Property for Land Conveyed to Separate Use.*

To the honorable the justices of the supreme judicial court, etc.:

Humbly complaining, sheweth unto your honors A. G. R., of the city and state of New York, that C. M. W., of B., in the county of S., and commonwealth of Massachusetts, married woman, wife of J. W. W., did, as your orator is informed and believes, on or about the ——— day of ———, A. D. 1855, purchase in her own name and in her own right, an estate of land and buildings, situated in the town of J., in the county of Q., and state of N. Y., of one I. H., then of said town of J.; which said estate consisted of several parcels or pieces of land, as will more fully appear by the deed thereof from said I. H. to the said C. M. W.; a certified copy whereof, from the registry where the same is recorded, your orator craves leave to produce at the hearing of this case.

And your orator further shows that he is informed and believes that the consideration or price of said estate purchased by the said C. M. W. as aforesaid, was not less than eighteen thousand dollars, which the said C. M. W. paid, or agreed to pay; and that, as a part of said price or consideration, the said C. M. W. assumed and agreed to pay a mortgage for six thousand dollars on said estate, made by the said I. H. to M. S. and H. S., dated on or about the ——— day of ———, 1854; and that, further, for a portion of said price, or consideration of said purchase, the said C. M. W., together with her husband, the said J. W. W., made and executed to the said I. H. a bond for the sum of six thousand dollars, under seal (a copy whereof is hereto annexed, marked "A"), and that, to secure the payment of said bond, the said C. M. W., together with her said husband, executed and delivered to the said I. H. a mortgage on said estate, before mentioned; which said mortgage, or a certified copy thereof, your orator craves leave to produce in court at the hearing of this cause.

And your orator further shows, that, on or about the ——— day of

———, 1859, he purchased, for a valuable consideration, of the said I. H., the bonds before mentioned, given by the said C. M. W. and her said husband to the said I. H., together with the said mortgage given as aforesaid to secure the payment of the same; which were assigned to your orator by the said I. H., by an assignment in writing duly executed, and delivered by the said I. H. to your orator on or about said ——— day of ———, 1859; and your orator became thereby the owner of said bond and mortgage, and the debt and money due from said C. M. W. to the said I. H., and ever since has and still does continue to own and hold the same.

And your orator further shows, that no part of the principal sum, or the interest thereon of said bond (or of the debt due from the said C. M. W., as aforesaid), has been paid since the same was assigned to him; and he is informed and believes that no part of the principal sum of said bond had been paid before the same was assigned to him; but he is informed that the interest due thereon had been paid up to April, 1857; and there is now due to your orator, as he believes, the whole of the principal sum of six thousand dollars on said bond, and the interest thereon, at the rate of six per cent per annum, from April, 1857, to the present time.

And your orator further shows, that he is informed and believes that the said C. M. W. has not paid said first-mentioned mortgage made by said I. H. to H. S., neither the interest or the principal thereof; but, in consequence of her not paying the same as she had assumed and agreed to do, the holders or holder of said mortgage have foreclosed the same, in the manner and form required by the laws of the state of N. Y.; and, under and in pursuance of such foreclosure, said estate has been sold at sheriff's sale to pay said mortgage; and, as your orator is informed and believes, said estate did not bring at said sale above the sum of seven thousand dollars, which, as your orator is informed and believes, was not enough to pay the amount due on said first-mentioned mortgage.

And your orator further shows, that he is informed and believes that the said C. M. W., together with her said husband, has since the date of said bond and mortgage given by her to the said

I. H., and by him assigned to your orator, sold and conveyed said estate to one W. for a large sum or price, the particulars of which are unknown to your orator.

And your orator further shows, that said estate was conveyed to the said C. M. W., as her sole and separate property, and that she was possessed of it as such; and that, as your orator is informed, she has other sole and separate property, either in her own name or in the name or in the hands of some person as trustee; and that such property, either in her own name or in the hands of her trustee, ought to be and is holden for and chargeable with the payment of the amount of said bond, and the interest due thereon; and your orator ought to receive and recover the same from the said C. M. W.'s estate.

But now, so it is, may it please your honors, that the said C. M. W. and the said J. W. W., although often requested to pay to your orator the amount due to him upon said bond and mortgage, utterly and wholly refuse and neglects to comply with such request, or to pay to your orator the same, or any portion thereof; all which is contrary to equity and good conscience, and tends to the manifest injury of your orator.

In consideration whereof, and forasmuch as your orator is entirely remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said C. M. W., upon her corporal oath, may full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinbefore repeated and she thereunto distinctly interrogated, and that according to the best of her knowledge, information and belief;

And that your honors would order and find the amount due to your orator upon said bond and mortgage, and decree that the same may be paid to your orator out of the separate property of the said C. M. W., standing either in her own name, or in the hands of a trustee; and that your orator may have such other and further relief in the premises as the na-

ture of his case shall require, and to your honors shall seem meet;

May it please your honors to grant unto your orator a writ of subpoena, issuing out of this honorable court, to be directed to the said C. M. W., thereby commanding her, under a certain penalty therein to be specified, to be and appear personally before your honors at a certain day, then and there to answer all and singular the premises, and to stand to, perform and abide such order and decree therein as to your honors shall seem meet; and your orator shall ever pray. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1921; *Rogers v. Ward*, 8 Allen (Mass.) 387.

A. G. R.

B. Answers.

1. Answer, Statement by Wife Separated from Husband Claiming Costs.

I have long been separated from my husband, and I humbly submit that I ought to be allowed all the costs, charges, and expenses incurred by me in putting in my answer to the said bill of complaint and in other the proceedings in this suit. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2141.

2. Answer, Statement by Husband Disclaiming Interest by Reason of Separation.

I have long been separated from my wife, and I disclaim all right, title, and interest in or to the said legacy or sum of \$——, so bequeathed to my said wife A. S., for her separate use by the will of the said ——, as in the said bill mentioned, and every part thereof. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2141.

C. Decrees.

1. Decrees, Sale of Stock and Payment to Wife's Separate Use.

It is ordered and decreed that the \$—— (stock) standing, etc., in trust in this cause (the account of, etc), be sold, and that the money to arise by such sale, and \$—— cash in the ——, to the credit of this cause (the like account, etc.), and any interest, etc., be paid to B., the wife of N., for her separate use. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2288.

2. Inquiry, Whether Any Settlement, and if Proper, and if Not, Direction for Settlement.

The court doth order that it be referred to, etc., to inquire whether (the plaintiff or defendant) A. has made any

and what settlement or provision for (the plaintiff or defendant) B., his wife, and the issue of their marriage, or entered into any, and what agreement for that purpose; and if so, whether the same is a fit and proper settlement or provision for the said (plaintiff or defendant) B., and such issue; and if it shall appear that the said plaintiff or defendant) has not made any such settlement or provision, or that such settlement or provision, if any, is not fit and proper, the court doth order that a proper settlement to be made by the said (plaintiff or defendant) A., on, etc., be approved by the, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2288; 2 Seton Dec. (Eng. ed. 1862) 665.

3. *Share Settled by Order, Without Deed, Husband Bankrupt.*

The court doth order that the residue of the said \$——, etc., be carried over in trust in this cause, "The account of the settlement of the defendant C., the wife of W., and her children;" and the court doth declare that the, etc., so to be carried over are to be held in trust for the said defendant C. for her life, and during her present coverture, for her separate use, without power of anticipation, and after her decease in trust for all the children of her present marriage who shall attain the age of twenty-one years, or being daughters shall (attain that age or) marry under that age, equally, and if there shall be no such child, and the defendant C. shall survive the said W., her present husband, in trust for her, her executors, administrators, and assigns; but if she shall die in the lifetime of her said husband, without any child, in trust for the defendants P. and D., as the assignees of his estate and effects; and the court doth order that the interest during the life of the said defendant C., from time to time to accrue due on, etc., so to be carried over be, as the same accrue due, paid to the said defendant C., the wife of the said W., for her separate use, or until further order. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2288; 1 Seton Dec. (Eng. ed. 1862) 665, 666, and notes.)

4. *Decree Ordering Trustee To Contribute to Support of Insane Wife.*

The cause having come before the full court, for a final hearing upon the bill, answers and facts agreed, and the par-

ties, by their respective counsel, having been fully heard, it is ordered and decreed that the said H. D., trustee of the said J. E. D., pay to the said W. W. D., guardian of the said J. E. D., the sum of four hundred dollars, the same to be paid in thirty days after the filing of this decree; and that he afterwards pay to the said W. W. D. the sum of four hundred dollars annually from the time of filing this decree, till the further order of the court; the same to be paid in equal half yearly instalments; the said sums to be paid out of the income of the trust property in the hands of the said H. D.

It is further ordered and decreed, that the costs of this suit, and the reasonable charges of counsel, to be approved and allowed by the court, be paid by said H. D. out of said income.

In default of payment by said H. D. of said sum of four hundred dollars, and costs and expenses hereinbefore mentioned, according to the terms of this decree, within thirty days as aforesaid, it is ordered that an execution issue for the same in due form of law.

It is further ordered and decreed, that the said W. W. D. apply the several sums as aforesaid, except the said costs and charges, to the support and maintenance of the said J. E. D., so that, in addition to what shall be furnished for her by him out of his private property, she may be supplied with everything that ought reasonably to be provided for her comfort and convenience.

By the court. Boston, Jan. 16, 1863.

(Signed) G. C. W., clerk.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2289; *Davenport v. Davenport*, 5 Allen (Mass.) 464.

ILLEGALITY, HOW PLEADED.

I. Answers, 594

- A. *Contract Was Cover for Wager*, 594
- B. *Debt Was for Money Lost at Play*, 594
- C. *Contract Was Void by Law of Place*, 594
- D. *Note Given To Compound Felony*, 594
- E. *Note for Liquors Sold Without License*, 594
- F. *Usury by Antedating*, 594

CROSS-REFERENCES:

BILLS AND NOTES:

Answer, Illegal Interest in Note.

SPECIAL ASSESSMENTS:

Answer, Pleading Illegality of Assessment.

I. Answers.

A. Answer, That the Contract Was Cover for Wager.

I. That at the time of the alleged contract the defendant was not a dealer in the merchandise mentioned therein, nor had he possession or control of any thereof.

II. That it was the intent of the parties not to make any actual sale or delivery thereof, but at maturity of the said contract that the difference between the market value and the contract price should be paid by one party to the other.

III. That the market price of such merchandise at the maturity of the contract was, at the time of making the contract, contingent and uncertain; and the contract was a mere wager on the future market price thereof, and contrary to the statute. 2 Abb. Forms 45.

B. Answer, That Debt Was for Money Lost at Play.

I. That the defendant and the plaintiff played together at a game of chance called ———, for stakes, upon credit, and not for ready money; and at said gaming the plaintiff won ——— dollars of the defendant, which he did not pay.

II. That thereafter the defendant gave the plaintiff the note mentioned in the complaint for said money so staked and lost. 2 Abb. Forms 45.

C. Answer, That the Contract Is Foreign One, Void by Law of Place.

I. That the (contract) alleged in the complaint was made without this state, and in the state of ——— (or, in the kingdom of France), where the defendant was then domiciled.

II. That by an act of the legislature of said state, entitled, An Act, etc., passed on, etc., it is enacted that (here set forth the law relied on, and if there be exceptions, add allegations showing that the contract is not within them). 2 Abb. Forms 44.

D. Answer, That Note Was Given To Compound Felony.

I. That heretofore, on, etc., at, etc., one L. M., the son of the said defendant, had feloniously (here designate the crime, *e. g.*, thus), stolen, taken, and carried away a horse, the property of the plaintiff.

II. That the said defendant, in order to compound and settle said felony, gave the said note; in consideration of which, the plaintiff and others desisted from informing and prosecuting upon said felony.

III. That there was no other consideration for said note. 2 Abb. Forms 45.

E. Answer, Note for Liquors Sold Without License.

I. That the only consideration for said note was for the sale of strong or spirituous liquors, sold by said (payee), in quantities less than five gallons to said defendant in the town of ———, and county of ———, the said (seller), at the time of such sale, having no license for the sale thereof, as required by the laws of 18——, either grocer or tavern license.

II. That the said note was transformed to the plaintiff after it was due, and without consideration, and after he had the full notice of the foregoing facts. 2 Abb. Forms 46.

F. Answer, Usury by Antedating Security.

I. That he gave said bond and mortgage upon a loan made to him by the plaintiff, and which was first agreed for on the ——— day of ———, 18—— (or, to secure the purchase money of lands conveyed to him by the plaintiff on the ——— day of ———, 18——, on which day, and not before, said purchase money accrued to the plaintiff).

II. That the said bond and mortgage were antedated as of the ——— day of ———, 18——, upon an agreement between the parties, that the defendant should secure and pay to the plaintiff, in addition to interest at the rate of seven per cent. on said loan (or, purchase money) from said day, the further sum of ——— dollars as interest thereon from the day on which said bond and mortgage bore date, until the day above named, as a cover for usury.

III. That in pursuance of said usurious agreement, the said bond and mortgage were given, and thereafter said sum of ——— was paid by the defendant, and exacted and accepted by the plaintiff. 2 Abb. Forms 46.

IMPRISONMENT FOR DEBT.—See ARREST IN CIVIL CASES; JUDGMENTS AND DECREES, ENFORCEMENT OF.

INCEST.*Indictment for Incest (a).*

"The grand jury of said county charge, that before the finding of this indictment, William Baker, being then and there the father of one Elizabeth Baker, and within the degree of consanguinity within which marriages are declared by law to be incestuous and void, and then and there knowing the said Elizabeth Baker to be his daughter, did then and there live with the said Elizabeth Baker in a state of adultery, against the peace and dignity of the state of Alabama." Baker v. State, 30 Ala. 521.

Indictment for Incest (b).

"That said defendant, Lewis Kaiser, on or about the first day of January, A. D. 1895, and before the finding and presentation of this indictment, at the county of Placer, and state of California, did wilfully, unlawfully; knowingly, incestuously, and feloniously, upon the person of one Cordelia Kaiser, the daughter of said Lewis Kaiser, commit fornication and have sexual intercourse with, and carnally know the said Cordelia Kaiser, contrary," etc. People v. Kaiser, 119 Cal. 456, 51 Pac. 702.

Indictment for Incest (c).

The jurors of the grand jury of the state of Ohio, within and for the body of the county of Lake, impaneled, sworn and charged to inquire of crimes and offenses committed within said county of Lake, in the name and by the authority of the state of Ohio, on their oaths, do further find and present that Benjamin Robert Brown, late of said county, on the eighth day of November, in the year of our Lord, one thousand eight hundred and eighty-five, with force and arms, in said county of Lake, and state of Ohio, being then and there an unmarried man, did commit fornication with Rose Cramer, by then and there unlawfully and feloniously having sexual intercourse with the said Rose Cramer, the said Benjamin Robert Brown being then and there the uncle of the said Rose Cramer, and the said Rose Cramer being then and there the niece of the said Benjamin Robert Brown, and the said Benjamin Robert Brown, and the said Rose Cramer then and there having knowledge of their relationship, contrary to the form of the statute in such case made and provided, and

against the peace and dignity of the state of Ohio. State v. Brown, 47 Ohio St. 102.

Indictment for Incest (d).

"Did unlawfully, feloniously and incestuously commit adultery with one Ella Branham, a single and unmarried female person, by then and there feloniously and incestuously having carnal knowledge of her, the said Ella Branham,—he, the said Will Nations, and she, the said Ella Branham, then and there being first cousins, and he, the said Will Nations, then and there being a married man,—against the peace and dignity of the state of Arkansas." Nations v. State, 64 Ark. 467, 43 S. W. 396.

INCONSISTENCY OF REMEDIES.—See CHOICE AND ELECTION OF REMEDIES.

INDEBITATUS COUNT.—See ASSUMPSIT.

INDECENT EXPOSURE.—See OBSCENITY.

INDEMNITY.

I. Declaration for Not Indemnifying, 595

II. Complaints, 596

A. *Of Surety Against Principal,* 596

B. *On Promise To Indemnify on Action,* 596

C. *By Retiring Partner on Bond To Indemnify,* 597

D. *Retiring Partner Against Remaining Partners,* 598

CROSS-REFERENCES:**LOST INSTRUMENTS:**

Decree, Order in Case of Lost Deed, With Injunction;

Decree, Order in Case of Lost Mortgage Deeds;

Decree for Indemnity Against Lost Bill of Exchange.

SHERIFFS AND CONSTABLES:

Bond of Indemnity to Sheriff, Title of Property in Dispute;

I. Declaration for Not Indemnifying.

For that whereas heretofore, to-wit, on, etc., at, etc., in consideration that the said plaintiff, at the special instance and request of the said defendant, and for his accommodation, would make and deliver to one T. H., his certain promissory note, in writing, and thereby promise to pay to the said T. H., or order, on demand, the sum of ———

dollars, as for value received by the said plaintiff of the said T. H., he, the said defendant, undertook, and then and there faithfully promised the said plaintiff, that he, the said defendant, would save harmless and indemnify the said plaintiff against the payment of the said sum of ——— dollars, in the said note mentioned, and all charges and expenses he should bear, sustain or be put unto, by reason of his making and delivering of the said note to the said T. H.; and the said plaintiff in fact saith, that he, confiding in the said promise and undertaking of the said defendant, afterwards, to-wit, on, etc., aforesaid, at, etc., aforesaid, did make his certain promissory note in writing, bearing date the same day and year aforesaid, and did thereby promise to pay to the said T. H., or order, on demand, the said sum of ——— dollars, as for value received by the said plaintiff of the said defendant; and that he, the said plaintiff, did deliver the said note, so made by him as aforesaid, to the said T. H.; and the said plaintiff further saith, that the said defendant, not having saved harmless and indemnified the said plaintiff, against the payment of the said sum of ——— dollars, in the said note contained, by the payment thereof, or of any part thereof, to the said T. H.; and the said sum of money being wholly unpaid, he, the said plaintiff, afterwards, to-wit, on, etc., at, etc., was compelled and obliged to pay, and did then and there pay to the said T. H., the said sum of ——— dollars, in the said note mentioned and contained, being then and there due and payable by virtue of the said note, whereof the said defendant, afterwards, to-wit, on, etc., at, etc., aforesaid, had notice. Nevertheless the said defendant, not regarding, etc., hath not yet repaid to the said plaintiff, the said sum of ——— dollars, or any part thereof, nor in any manner indemnified him on account of his having paid the same (although so to do, he, the said defendant, afterwards, to-wit, on, etc., and oftentimes since hath been requested by the said plaintiff, to-wit, at, etc., aforesaid), but hath hitherto, wholly neglected and refused, and still doth neglect and refuse so to do, to-wit, at, etc., aforesaid. (Add the money counts, account stated and breach.) Burr. App. 264, §528; 2 Chit. Pl. 318.

II. Complaints.

A. *Complaint of Surety Against Principal on Promise To Indemnify.*

I. That on the ——— day of ———, 18——, at ———, the defendant, in consideration that the plaintiff would become surety for him by executing a bond (or other obligation), of which a copy is annexed as a part of this complaint, the defendant promised and agreed with the plaintiff that he would indemnify him, and save him harmless from and against all damages, costs, and charges which he might sustain by reason of his becoming surety as aforesaid.

II. That the plaintiff, confiding in such promise of the defendant, duly executed and delivered such bond (or other obligation).

III. That the defendant did not indemnify the plaintiff, and save him harmless from such damages, costs, and charges; but, on the contrary, the plaintiff, by a judgment, on or about the ——— day of ———, 18——, duly given against him by the ——— court, at ———, in an action brought against him upon said bond, was compelled to pay, and on or about the ——— day of ———, did pay ——— dollars to ———, in satisfaction and discharge of said bond, and he incurred also necessary costs and expenses in said action and on account of said bond, to the amount of ——— dollars.

IV. That the defendant had notice of the premises, but has not repaid any part thereof to the plaintiff. 1 Abb. Forms 363.

B. *Complaint on Promise To Indemnify on Action for Money Which Defendant Claimed.*

I. That on or about the ——— day of ———, 18——, one M. N. deposited with the plaintiff ——— dollars.

II. That afterwards, on the ——— day of ———, 18——, the plaintiff, at the request of the defendant, delivered to him the said sum of money of the said M. N., the defendant then claiming the same, and the plaintiff not knowing to whom the same belonged.

III. That the said M. N. then threatened to commence an action at law against him for the recovery of said money.

IV. That afterwards, on the

— day of —, 18—, the plaintiff, at the request of the defendant, agreed with the defendant that he would defend any action which the said M. N. should commence against him for the said money; and the defendant, in consideration of the premises, then promised the plaintiff to save him harmless from the consequences of the said action.

V. That the said M. N. afterwards, on (etc.), prosecuted an action against the plaintiff in the court of common pleas, of — county, for the recovery of the said sum of money, of which the defendant then had notice.

VI. That the plaintiff, with the privity of the defendant, and to the best of his ability, defended the said action; but the said M. N. in — term, 18—, of said court, recovered a judgment against the plaintiff in said action, to the amount of — dollars; and afterwards, an execution issued upon the said judgment, and the plaintiff, to prevent his property from being taken on said execution, was forced to pay, and on the — day of —, 18—, did pay the said sum of — dollars, and, also, the sum of — dollars, for poundage and officer's fees, and other expenses upon the said writ. And the plaintiff was also, by means of the premises, put to other charges and expenses of his moneys, amounting to the sum of — dollars, in defending and settling the said action. 1 Abb. Forms 368.

*C. Complaint by Retiring Partner
Against Sureties in Partner's
Bond To Indemnify.*

I. That on the — day of —, 18—, the plaintiff and one M. K., theretofore co-partners in business as plumbers, in the city of —, under the firm name of M. K. & M. G., dissolved their connection as such co-partners, and thereupon entered into an agreement in writing, of said date, duly executed and signed by them respectively, and delivered, whereby it was, among other things, mutually agreed that the said M. K. should retain and keep to his sole and separate use all and singular the partnership property of every name and character, whether in action or possession, and wheresoever situated; and in consideration thereof, whereas the said co-partnership was indebted to sundry per-

sons in sundry considerable sums of money, he should pay and discharge the debts so due by the said firm to the extent of — dollars from his own individual resources, and to the like extent hold the plaintiff harmless and indemnified, of and from and by reason of any claims or liabilities due by the said firm (or, instead of stating the substance, say, which agreement contained covenants on the part of the said M. K., of which the following is a copy: copy of covenant).

II. That the defendants, in consideration of said agreement between said M. K. and the plaintiff, and of one dollar to each of them then paid by the plaintiff, entered into an understanding in writing, duly executed and signed by them respectively, and delivered to the plaintiff (a copy whereof is annexed as a part of this complaint), whereby they severally undertook and bound themselves to the plaintiff for the faithful performance by the said M. K. of the covenants in said agreement to be kept and performed on said M. K.'s part.

III. That said M. K., under his said agreement with the plaintiff, retained and kept to his sole and separate use all the partnership property of the firm; but has not, pursuant thereto, paid and discharged the debts due by said firm to the extent aforesaid; and has failed to hold this plaintiff harmless and indemnified to the like extent, of and from and by reason of any claim or liabilities due by the said firm.

IV. That at the time of the dissolution of the partnership, and agreement aforesaid, the said firm were indebted to the firm of L. & Co. of —, for merchandise sold and delivered, in the sum of — dollars, which was then due and payable; which indebtedness formed a part of the — dollars, debts of M. K. and M. G., and was included among such debts, to be paid by the said M. K., under his agreement aforesaid with the plaintiff; but the said M. K., although requested, would not pay L. & Co. their said demand, or any part thereof.

V. That on the — day of — last, an action was duly commenced by the plaintiff, in the court of —, to recover upon and by virtue of the aforesaid agreement, from the said M. K. the said amount with interest, then due by the said M. K.

and M. G. to the said firm of L. & Co., amounting to ——— dollars, and interest thereon; and such proceedings were thereupon had, that on the tenth day of December inst., judgment was recovered in such action (which was duly given) in favor of the plaintiff against the said M. K., for the sum of ——— dollars, including costs; upon which judgment execution was at once duly issued against the said M. K., and is returned wholly unsatisfied.

VI. That prior to the commencement of said action, the plaintiff caused notice in writing to be served on the defendants respectively, as sureties aforesaid, of his intention to commence such action to compel the payment of the indebtedness aforesaid to said L. & Co., by said M. K., or for him; but the defendants altogether neglected to pay attention to said notice.

VII. That the plaintiff has necessarily paid or expended, in consequence of the neglect and refusal of said M. K. to comply with his agreement aforesaid with the plaintiff, at different times since the said ——— day of ———, 18—, in addition to the costs of said action included in said judgment, for legal costs, counsel fees, disbursements, and for other reasonable expenses, divers sums of money, amounting in the aggregate to ——— dollars, which remain due and unpaid to the plaintiff by the said M. K., who, although (on the ——— day of ———, 18—), requested, refuses to make payment thereof to the plaintiff.

VIII. That the defendants (although, on the ——— day of ———, 18—, requested), have not paid to the plaintiff the amount of said judgment, or the legal costs, counsel fees, disbursements, and expenses aforesaid. 1 Abb Forms 366.

D. Complaint by Retiring Partner on Remaining Partners' Promise To Indemnify Him Against Damage.

I. That the plaintiff and the defendants, having been partners in trade at ———, under the firm of B. & Z., on the ——— day of ———, 18—, dissolved the partnership, and mutually agreed that the defendants should take and keep all the partnership property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm,

and all costs and charges thence arising.

II. That the plaintiff duly performed all the conditions thereof on his part.

III. That the defendants have not paid all said debts nor indemnified the plaintiff therefrom; but, on the contrary, on the ——— day of ———, 18—, one M. N. recovered judgment, which was duly given in the ——— court against the plaintiff and defendants upon a debt due from the said firm to the said M. N., of which debt the defendants had notice but failed to pay, and on the ——— day of ———, 18—, the plaintiff paid ——— dollars in satisfaction of the same.

(IV. And for a further breach, the plaintiff alleges, etc., setting forth any other liabilities.)

V. That the defendants have not paid the same to the plaintiff. 1 Abb. Forms 365.

INDIANS.

Indictment for Selling Spirituous Liquor to Indian.

That the defendant (naming him), on, etc., at, etc. (stating the time and place), sold and disposed of a quantity of spirituous liquor, to-wit, a pint of whiskey of the value of ten cents, to an Indian of this state, of the Miami nation of Indians, the name of which said Indian, to the jurors aforesaid is wholly unknown, contrary to the form of the statute and against the peace of the state. State v. Jackson, 4 Blackf. (Ind.) 49.

INDICTMENT AND INFORMATION.

I. Caption of Indictment, 605

II. Commencement of Indictment, 605

- A. Addition as Widow, 605
- B. Addition as Yeoman, 605
- C. Person Known by More Than One Name, 605
- D. Addition as Wife, 605
- E. Offense on High Seas, 605
- F. Of Second or Subsequent Count, 606

III. Conclusions of Indictment, 606

- A. Offense at Common Law, 606
- B. Offense Under Statute, 606

IV. Informations, 606

- A. General Form, 606
- B. Ex Officio by Attorney General, 606

V. Statements Used in Framing Indictments, 607

CROSS-REFERENCES:

ABDUCTION:

- Indictment, Abduction of Woman on Account of Her Fortune;
- Indictment, Abduction of Girl Under Sixteen;
- Indictment, Stealing Child Under Age of Ten Years.

ABORTION:

- Indictment for Administering Poison To Procure Miscarriage;
- Indictment for Using Instruments To Procure Miscarriage;
- Indictment for Using Instrument and Administering Drugs.

ACCESSORIES AND ACCOMPLICES:

- Indictment of Principal in Second Degree;
- Indictment of Accessory Before the Fact With Principal;
- Indictment of Accessory Before Fact, Principal Convicted;
- Indictment of Accessory Before Fact as Substantive Felony;
- Indictment Against Accessory After Fact With Principal;
- Indictment Against Accessory After Fact, Principal Convicted.

ADULTERATION:

- Indictment for Selling Adulterated Milk (a, b, c);
- Indictment for Having in Possession Adulterated Milk;
- Complaint for Keeping Adulterated Liquors.

ADULTERY:

- Indictment for Adultery;
- Indictment for Adultery, Continuous Acts.

AFFRAY:

- Indictment for an Affray.

ANIMALS:

- Indictment for Nuisance for Keeping Furious Dog Unmuzzled Near Highway.

ARSON:

- Indictment for Arson at Common Law;
- Indictment for Arson, Burning in Night Time;
- Indictment, Setting Fire to Haystack;
- Indictment for Setting Fire to Own House;
- Indictment for Attempt To Burn Court House;
- Indictment for Attempt To Burn Barn.

ASSAULT AND BATTERY:

- Indictment for Common Assault and Battery;
- Indictment for Two Assaults;

- Indictment, Tearing Hair;
- Indictment, Encouraging Dog To Bite;
- Indictment, Riding Over Person With Horse;
- Indictment for Aggravated Assault and Battery.

BASTARDY PROCEEDINGS:

- Indictment for Bastardy.

BIGAMY:

- Indictment (a, b, c, d).

BLASPHEMY:

- Indictment at Common Law for Verbal Blasphemy.

BREACH OF THE PEACE:

- Indictment for Using Profane and Abusive Language;
- Indictment for Breach of the Peace by Noise and Disturbance.

BRIBERY:

- Indictment for Attempting To Bribe;
- Indictment for Giving Bribe at Election;
- Indictment for Accepting Bribe;
- Indictment for Agreement To Bribe.

BURGLARY:

- Indictment for Burglary With Intent To Steal;
- Indictment for Burglary and Actual Stealing;
- Indictment for Burglary With Intent, and Actual Stealing;
- Indictment for Breaking Out of House;
- Information for Burglary.

CIVIL RIGHTS:

- Indictment for Refusing Accommodations Under State Law.

COMPOUNDING CRIME:

- Indictment for Compounding Crime.

CONSPIRACY:

- Indictment, General Form;
- Indictment for Conspiracy To Defraud Bank;
- Indictment for Conspiracy To Charge With Receiving Stolen Goods.

COUNTERFEITING:

- Indictment for Counterfeiting Coins;
- Indictment for Having in Possession Instruments for Counterfeiting;
- Indictment for Passing Counterfeit Coin;
- Indictment for Passing Counterfeit Bank Note;
- Indictment, Having in Possession Counterfeit National Bank Note With Intent To Pass Same;
- Indictment, Having in Possession Counterfeit Note With Intent To Pass the Same;
- Indictment for Having in Possession

Counterfeit United States Note,
Excluding Particular Description.

CRUELTY TO ANIMALS:

Indictment for Overdriving Team
(a), (b);

Indictment, Turning Fox Loose to
Dogs;

Indictment, Burning a Goose.

DEATH BY WRONGFUL ACT:

Indictment Against Railroad for
Death by Negligence.

DISORDERLY CONDUCT:

Indictment for Disorderly Conduct,
Drunkenness;

Complaint for Using Vulgar Lan-
guage in Hearing of Children;

Complaint for Disturbing Peace by
Noise and Profanity;

Information, Loud and Indecent
Language;

Complaint, Peeking in Window of
Dwelling;

Complaint, Language Likely To
Cause a Breach of Peace;

Complaint, Discharging Firearms in
Corporate Limits;

Indictment for Being a Street Walk-
er.

DISORDERLY HOUSE:

Indictment for Keeping Disorderly
House (a, b, c);

Indictment for Keeping House for
Fighting Cocks;

Indictment for Keeping Bawdy
House;

Information for Keeping Disorderly
House;

Indictment for Leasing Property for
Disorderly House.

DISTURBING PUBLIC ASSEMBLY:

Indictment for Disturbing Congrega-
tion;

Indictment for Disturbing Meeting
by Riotous Conduct;

Indictment for Disturbing Religious
Worship (a, b);

Indictment for Disturbing Religious
Meeting in Private House;

Indictment, Disturbing Salvation
Army.

ELECTIONS:

Information for Refusal of Official
To Administer Oath to Elector;

Indictment for Intimidating Elector
by Threat of Imprisonment;

Indictment for Giving Intoxicant to
Elector;

Indictment for Interference With
Election Officer;

Indictment, Failure of Election Offi-
cers To File Copy of Poll-Books;

Indictment, False Statement as to
Time of Residence;

Indictment for Stating False Resi-
dence on Registration;

Indictment, Voting, Not Being a
Legal Voter in District;

Indictment for Voting, Disqualifica-
tion, Conviction for a Felony;

Indictment for Repeating at Elec-
tion;

Indictment, Betting on Result of
Election.

EMBEZZLEMENT:

Indictment Against Clerk of Bank-
ers;

Information for Embezzlement by
Attorney;

Indictment for Embezzlement of
Property;

Indictment for Aiding and Abetting
Embezzlement;

Indictment for Embezzlement of City
Funds;

Indictment for Embezzlement by Em-
ploye.

EMBRACERY:

Indictment for Embracery, Attempt-
ing To Influence;

Indictment for Embracery, Indefinite
Offer of Gain, Defendant Not a
Party;

Indictment for Embracery, Offer of
Specific Property.

ESTRAYS:

Indictment for Using Estray;

Indictment for Converting Estray.

EXTORTION:

Indictment Against a Constable for
Extortion.

FALSE IMPRISONMENT:

Indictment for False Imprisonment.

FALSE PERSONATION:

Indictment for False Personation of
Owner of Stock;

Indictment for False Personation of
Bail;

Indictment, Allegation of Falsely
Receiving Process as Another;

Information, Obtaining Property or
Money by False Personation.

FORCIBLE ENTRY AND DETAINER:

Indictment for Forcible Entry and
Detainer.

FORGERY:

Indictment for Forging Bond;

Indictment for Forgery, Promissory
Note and Indorsement;

Indictment for Forgery, Deed and
Acknowledgment;

Indictment for Forgery, Bank Check;

Indictment for Forgery, Execution of
Court;

See "How To Use This Volume," Introduction, page v.

Indictment, Having in Possession
Forged Bank Note;

Indictment, Having in Possession
Fictitious Check With Intent To
Utter;

Indictment, Forgery of Grain Check;

Indictment, Forged Instrument Lost.

GAMING:

Indictment for Winning Money at
Cards, Etc., by Fraud;

Indictment, Card Game;

Indictment, Common Gambling;

Indictment for Dealing Faro;

Indictment for Obtaining Money by
Confidence Game;

Indictment, Throwing Dice (for
Turkeys).

HAWKERS AND PEDDLERS:

Indictment for Peddling Without
State License;

Indictment for Peddling Without
City License;

Indictment for Peddling Without
License;

Information, Peddling Without Li-
cense;

Indictment, Selling Drugs and Med-
ical Appliances Without License.

HEALTH:

Indictment for Nuisance Affecting
Health;

Information for Violating Quar-
antine.

HIGHWAYS, STREETS AND BRIDGES:

Indictment for Erecting Fence on
Highway;

Indictment for Nuisance in Obstruct-
ing Highway With Gate;

Indictment for Obstructing Street
With Bay Window;

Information for Obstructing Street
With Lumber;

Indictment for Enclosing Part of
Highway;

Indictment for Refusing To Turn
Out of Traveled Highway;

Indictment for Neglecting To Repair
Street;

Indictment for Failing To Repair
Pursuant to Agreement;

Information for Interfering With
Highway by Unlawful Working.

HOMICIDE:

Indictment for Murder, General
Form;

Indictment for Murder, Shooting,
Immediate Death;

Indictment for Shooting, With Prin-
cipal in Second Degree and Ac-
cessory;

Indictment for Murder, Shooting,
Death Not Immediate;

Indictment for Murder, Beating With
Fists and Kicking on Ground;

Indictment, Beating and Stamping
on the Ground;

Indictment, Killing With Crowbar;

Indictment, Killing With Clevis;

Indictment for Murder, Striking,
Drowning;

Indictment for Murder Against Two,
Which Gave Blow Unknown;

Indictment for Murder, Stabbing
(a, b);

Indictment for Murder, Strangling,
With Help of Person Unknown;

Indictment for Murder, Riding Over
With Horse;

Indictment, Murder by Forcing Sick
Person Into Street;

Indictment for Murder by Poisoning
(a, b);

Indictment for Murder by Poisoning,
Substituting for Medicine;

Indictment for Murder by Sending
Poison;

Indictment, Murder by Wrecking
Train While Perpetrating Robbery;

Information for Murder by Arson;

Indictment for Criminal Negligence
in Erecting Building;

Indictment for Murder, Means Un-
known;

Indictment, Death Occurring in An-
other State;

Indictment, Attempt To Murder
With Sword;

Indictment, Attempt To Murder With
Pistol;

Indictment, Attempt To Murder
With Dangerous Weapon, Injuries
Inflicted;

Indictment, Intent To Kill, With
Count for Intent To Maim;

Indictment, Attempt To Kill Help-
less Person by Exposure.

INCEST:

Indictment for Incest.

INDIANS:

Indictment for Selling Spirituous
Liquor to Indian.

INNS AND INNKEEPERS:

Indictment for Illegally Removing
Baggage.

INSANE PERSONS:

Indictment for Ill-treatment of Lu-
natic.

INTOXICATING LIQUORS:

Indictment for Selling Liquors With-
out License (a, b);

Indictment, Selling Less Than Per-
mitted Quantity;

Information for Illegally Selling
Liquor To Be Drunk on Premises;

Indictment for Giving Away on False Prescription;
 Information, Maintaining Nuisance by Selling Liquor;
 Affidavit, Selling to Minor;
 Affidavit (Complaint) Selling Contrary to Law;
 Indictment, Selling Liquor on Sunday;
 Indictment, Selling on Election Day;
 Complaint, Being Open at Prohibited Hour.

JUSTICES OF THE PEACE:

Indictment of Justice, Failing To Turn Over Property;
 Indictment of Justice, Failing To Report (a, b).

KIDNAPING:

Indictment for Kidnaping;
 Indictment for Kidnaping With Intent To Carry From Residence;
 Information for Kidnaping Under Common Law;
 Indictment for Fraudulent Arrest and Carrying Away From Residence.

LARCENY:

Indictment for Larceny, General Form;
 Indictment, Stealing Hay;
 Indictment, Stealing Sacks of Wheat;
 Indictment, Stealing Oats, Chaff and Beans Mixed Together;
 Indictment, Stealing Wool;
 Indictment, Stealing Promissory Note;
 Indictment for Stealing a Horse;
 Indictment for Stealing Railroad Bonds;
 Indictment for Stealing Money, Currency;
 Indictment for Larceny From Person;
 Information Charging Second Offense.

LEWDNESS:

Indictment for Cohabiting Together as Man and Wife;
 Indictment for Lascivious Cohabitation (a, b, c);
 Indictment for Living in Fornication.

LIBEL AND SLANDER:

Indictment, Common Form;
 Indictment for Libel by "Bad Debt" Envelope;
 Indictment for Libel of Public Official;
 Indictment, Libel Contained in Handbill;
 Information, Libel With Innuendoes Charging Crime;

Indictment for Slander Charging Unchastity.

LICENSES:

Indictment for Not Having License as Pawnbroker;
 Indictment, Failure To Take Out a Business License;
 Indictment for Practising Profession Without License.

LOTTERIES:

Indictment for Selling Lottery Ticket (a, b, c);
 Indictment for Having in Possession Lottery Tickets;
 Indictment for Setting Up Lottery;
 Indictment for Permitting Setting Up of Lottery;
 Indictment for Publishing Advertisements for Lottery;
 Information for Promoting Lottery;
 Information for Selling Lottery Ticket;
 Information, Selling Prize Packages.

MALICIOUS MISCHIEF:

Indictment for Malicious Mischief, Destroying Threshing Machine;
 Indictment for Malicious Mischief, Breaking Fish Pond;
 Indictment for Malicious Mischief, Drowning a Mine;
 Indictment for Malicious Mischief, Destroying a Steam Engine;
 Indictment for Malicious Mischief, Cutting Down River or Sea Banks;
 Indictment for Malicious Mischief, Injuring a Bridge (a, b);
 Indictment for Malicious Mischief, Injuring Stock;
 Indictment, Injury to Dam;
 Indictment for Placing Obstruction on Railway Track;
 Indictment, Destroying Wearing Apparel;
 Indictment for Injury to Harness;
 Indictment for Disfiguring Horse by Cutting Off Mane and Hair From Tail;
 Indictment, Killing Fowls by Poison.

MASTER AND SERVANT:

Indictment for Enticing Servant Under Contract To Leave Employer;
 Indictment, Intimidation of Employee.

MAYHEM:

Indictment for Mayhem at Common Law;
 Indictment Under Statute, Disfiguring Thumb;
 Indictment for Injury to Private Parts.

MISCEGENATION:

- Indictment for Miscegenation (a, b);
- Complaint for Miscegenation.

NEUTRALITY LAWS:

- Indictment, Preparing Military Expedition in Violation of Neutrality Laws;
- Indictment for Fitting Out Vessel in Violation of Neutrality Laws.

NUISANCE:

- Indictment for Nuisance, Maintaining a Dam at Outlet of Lake;
- Indictment, Obstructing Highway by Maintaining Fence;
- Affidavit Charging Maintenance of Nuisance;
- Affidavit, Maintaining Smoke-stack of Insufficient Height.

OBSCENITY:

- Indictment for Selling an Obscene Print;
- Information, Publishing and Selling Obscene Literature;
- Indictment, Exhibiting Obscene Painting.
- Indictment Against a Man for Publicly Exposing His Naked Person.

OBSTRUCTING JUSTICE:

- Indictment for Resisting Officer, Common Law Form;
- Information for Resisting Public Officer, Statutory;
- Indictment for Impeding Officer in Execution of Civil Process;
- Indictment, Assault on Officer;
- Indictment, Resisting Officer Serving Process;
- Indictment, Resisting Receiver Appointed by Court;
- Indictment, Interfering With Witness, Advising Non-attendance;
- Indictment, Interfering With Witness, Administering Intoxicants.

OBTAINING PROPERTY BY FALSE PRETENSES:

- Indictment for False Pretenses, Presenting a Pretended Letter From, and Pretending To Be a Relative of, a Person of Credit;
- Indictment for False Pretenses, Pretending Second Mortgage Was Only Lien;
- Indictment for False Pretense, Pretending To Be Agent of Wholesale Firm;
- Indictment for Obtaining Merchandise by False Pretenses.

OFFICERS:

- Indictment for Official Misconduct, Failure To Pay Over to Successor;

- Indictment for Failure To Make Report of Revenue;
- Indictment Against County Clerk for Failing To File Statements;
- Indictment for Neglect To Supervise Jail;
- Indictment for Neglecting To Keep Road in Repair;
- Indictment for Misconduct in Office, Appropriating Money Contrary to Law.

PARENT AND CHILD:

- Indictment for Solemnizing Marriage Without Consent of Parent.

PERJURY:

- Indictment for Perjury Upon a Trial at the Assizes;
- Indictment for Perjury at State Court;
- Indictment for Perjury in an Affidavit To Hold to Bail;
- Indictment for Perjury, in Affidavit for Continuance;
- Indictment for Subornation of Perjury;
- Indictment for Attempt To Suborn Perjury.

PHYSICIANS AND SURGEONS:

- Indictment for Practicing Without License;
- Information, Practicing Without License;
- Indictment, Illegal Practice of Medicine, Failure To Record Certificate.

PIRACY:

- Indictment for Piracy at Common Law.

POST-OFFICE:

- Indictment for Mailing Obscene Matter;
- Indictment for Mailing Obscene Book;
- Indictment for Sending Lottery Circular Through Mail;
- Indictment for Robbing Mail;
- Indictment for Assisting in Robbing Mail;
- Indictment for Fraudulent Use of the Mail.

PRELIMINARY EXAMINATION:

- Complaint for Preliminary Examination (a, b, c, d, e).

PRIZE FIGHTING:

- Indictment for Prize Fighting (a, b);
- Indictment for Aiding at Prize Fight;
- Indictment, Leaving State To Engage in Prize Fight.

PROFANITY:

- Indictment, Profanity as a Common Law Nuisance;
- Affidavit (Complaint) for Profanity.

PROSTITUTION:

Indictment for Prostitution (Complaint);

Indictment for Prostitution (a, b);

Indictment for Resorting to House of Ill Fame;

Indictment for Placing Wife in House of Prostitution (a, b).

PUBLIC DRUNKENNESS:

Complaint for Public Drunkenness (a, b, c);

Affidavit, Drunk on a Public Street.

PURE FOOD LAWS:

Indictment Under Common Law for Selling Unwholesome Beef;

Indictment for Exposing for Sale and Selling Unwholesome Beef;

Indictment, Killing Young Calf With Intent To Sell.

RAILROADS:

Indictment for Placing Obstruction on Track (a, b);

Indictment Against Railroad for Obstructing Highway With Cars;

Indictment for Attempted Train Robbery;

Indictment, Disturbing Fixture Attached to Switch on Railroad.

RAPE:

Indictment for Rape (a, b);

Indictment, Rape on a Woman of Unsound Mind;

Indictment for Rape of a Child;

Complaint for Preliminary Examination for Rape;

Complaint for Preliminary Examination, Assault With Intent To Commit Rape.

RECEIVING STOLEN GOODS:

Indictment for Receiving Stolen Goods;

Indictment for Receiving Stolen Goods, Naming Principal Felon.

RESCUE AND ESCAPE:

Indictment at Common Law Against Prisoner for Escape;

Indictment for Escape From Jail;

Indictment for Aiding Escape From Jail;

Indictment Against Jailer for Permitting Escape (a, b);

Indictment for Rescuing Prisoner From Officer.

RIOT:

Indictment for Riot, Obstructing Justice;

Indictment for Riot, With Assault and Beating (a, b);

Indictment for Riot, Pursuing for Purpose of Assaulting;

Indictment for Riot, Making Noise and Tumult;

Indictment for Riot, Making Noise and Tumult and Destroying Property;

Indictment for Riot, Charivari.

ROBBERY:

Indictment for Robbery on Highway;

Indictment for Robbery in Dwelling House;

Indictment, Assault With Intent To Rob (a, b, c);

Indictment, Assault With Weapon With Intent To Rob.

SEARCH WARRANTS:

Complaint for Search Warrant.

SEDUCTION:

Indictment for Seduction;

Indictment for Seduction Under Promise of Marriage.

SODOMY:

Indictment for Sodomy.

SOLICITATION:

Indictment for Soliciting a Person To Commit an Offense.

SUNDAYS AND HOLIDAYS:

Indictment for Keeping Open Shop on Sunday;

Indictment for Keeping Open Grocery on Sunday;

Indictment for Working on Sunday;

Complaint for Keeping Open Saloon on Sunday;

Indictment, Keeping Open Room on Sunday and Selling Liquor;

Indictment for Selling Liquor on Sunday;

Indictment for Keeping Open Bowling Alley on Saturday Evening.

THREATS:

Indictment for Sending Threatening Letter;

Indictment for Threatening To Do Injury to Another;

Indictment for Threat With Intent To Extort Money;

Information, for Threat With Intent To Extort Money;

Indictment for Extortion by Force or Fear;

Indictment for White-capping.

TREASON:

Indictment for Treason.

VAGRANCY:

Indictment for Vagrancy.

WEAPONS:

Indictment for Carrying Concealed Weapon (a, b, c);

Indictment for Carrying Concealed Weapon Into Public Assembly (a, b);

Indictment for Carrying Weapon Contrary to Law.

I. Caption of Indictment (a).

"Norfolk. At a general sessions of the peace, holden at S., in the county aforesaid, on the fifth day of October, in the twenty-fifth year of the reign, etc., before A. B., C. D., and their fellows, justices of our said lord the king, assigned to keep the peace of our said lord the king, and also to hear and determine divers felonies, trespasses and other misdemeanors in the same county committed, by the oath of G. H., E. F., etc., good and lawful men of the said county, sworn and charged to inquire for our said lord the king, and the body of the said county, it is presented," etc. 1 Chit. Cr. L. 326.

Note.—The caption formerly concluded "it is presented that," etc., but the preferable form is "it is presented in manner following," that is to say, "Middlesex, to-wit: The jurors, etc." 1 Chit. Cr. L. 334.

Although, in general, the caption does not appear until the return to a writ of certiorari, or a writ of error, yet, in case of high treason, the defendant is entitled to a copy of it in the first instance, after the finding of the indictment, in order that he may be acquainted with the names of the jurors by whom it was presented. The caption is no part of the indictment itself, it is only a copy of the style of the court at which the indictment was found. It is a formal statement of the proceedings, describing the court before which the indictment was found, the time and place where it was found, and the jurors by whom it was found, and these particulars it must set forth with sufficient certainty. The record of the prosecution will not be perfect without the caption, and would not be admissible in evidence. The above form is given by Lord Hale. 1 Chit. Cr. L. 326.

Caption of Indictment (b).

State of New York, county of Kings, ss.: Be it remembered, that, at a Court of Sessions, holden at the City Hall in the city of Brooklyn, in the county of Kings, on the ——— day of November, in the year one thousand eight hundred and fifty-seven, Present, Hon. S. D. Morris, County Judge of said county, and Martin Schoonmaker and John A. Emmons, Esqs., Justices of the Sessions in and for the said county, sitting as such Court of Sessions, a grand jury, of good and law-

ful men, in and for said county of Kings, were then and there duly impaneled, and then and there duly sworn and charged by said court, to inquire into all offenses, as required by the statute in such case made and provided; whereupon it was afterwards presented by said jurors, at said term of said court, in the manner and form as follows, to-wit: (indictment). *Dawson v. People*, 25 N. Y. 399.

II. Commencement of Indictment.**A. Commencement of Indictment, Ad-dition as Widow.**

Middlesex. The jurors for our lord the king upon their oath present, that Elizabeth Powell, late of the parish of Saint Paul, Covent Garden, in the county of Middlesex, widow, on the twentieth day of February, in the sixth year of the reign of our sovereign lord George the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland, king, defender of the Faith, with force and arms, at the said parish of Saint Paul, Covent Garden, in the said county of Middlesex, did, etc. (state offense). 2 Chit. Cr. L. 1.

B. Commencement of Indictment, Ad-dition as Yeoman.

Middlesex. The jurors for our lord the king upon their oath present, that A. B., late of the parish of Saint Martin in the Fields, in the county of Middlesex, yeoman, etc. (proceed as above). 2 Chit. Cr. L. 1.

C. Commencement of Indictment Against Person Known by More Than One Name.

Essex. The jurors for our lord the king upon their oath present, that John Richardson, late of the parish of ———, in the county of Essex, laborer, otherwise called John Baldwin, on, etc. 2 Chit. Cr. L. 2.

D. Commencement of Indictment, Addition as Wife.

Essex. The jurors for our lord the king upon their oath present that E. D., wife of C. D., late of the parish of ———, in the county of Essex, yeoman, on, etc. 2 Chit. Cr. L. 2.

E. Commencement of Indictment for Offense on High Seas.

Admiralty of England. The jurors for our sovereign lord the king upon their oath present that C. D., late of ———, mariner, on, etc., with force and arms upon the high sea, near the

coast of Malabar, in the East Indies, and within the jurisdiction of the admiralty of England, in and on board of a certain ship, called the Adventure galley (whereof the said C. D. was then and there commander), then and there being, feloniously, wilfully, and of his malice aforethought, did, etc. (state the offense and every fact to have happened within the jurisdiction of the admiralty of England aforesaid; and, if for murder, conclude as follows): And so the jurors aforesaid, upon their oath aforesaid, do say that the aforesaid C. D., him the said A. B. upon the high sea aforesaid, in the ship aforesaid, and within the jurisdiction of the admiralty of England aforesaid, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought did kill and murder against the peace of our said lord the king, his crown and dignity. 2 Chit. Cr. L. 3.

F. Commencement of a Second or Subsequent Count.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. D., on, etc., with force and arms, at, etc., aforesaid, etc. (state the offense). 2 Chit. Cr. L. 3.

III. Conclusions of Indictment.

A. Conclusion of Indictment, Offense at Common Law (a).

In contempt of our said lord the king and his laws, to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. 2 Chit. Cr. L. 4.

Conclusion of Indictment (b).

To the great scandal, infamy, disgrace and damage of the said A. B., to the evil and pernicious example of all others, in contempt of our said lord the king, and his laws, and against the peace of our said lord the king, his crown and dignity. 2 Chit. Cr. L. 4.

B. Conclusion of Indictment for Offense Under Statute.

Against the form of the statute (or statutes) in such case made and provided, and against the peace of our said lord the king, his crown and dignity. 2 Chit. Cr. L. 4.

Contrary to the form of the statute of the state in such case made and provided, and against the peace and dignity of the state.

Note.—Conclusions are necessary parts of the indictment, their form being frequently prescribed by state constitutions.

Note.—For matter in relation to endorsements and the formal requisites in general, see article on "Indictment and Information" in STANDARD PROCEDURE.

IV. Informations.

A. General Form of Information.

"Middlesex: Be it remembered that Christopher Robinson, esq., coroner and attorney of our lady the now queen, in the court of our lady the queen, before the queen herself, who prosecutes for our said lady the queen, in this behalf, in his proper person, comes here into the court of our said lady the queen, before the queen herself, at Westminster, on (Monday, next after eight days of the Holy Trinity, in this same term), and for our said lady the queen gives the court here to understand and be informed that," so proceeding to state the facts and circumstances constituting the offense with the same certainty and precision as in an indictment, and in the same form, and according to the same rules, excepting that, in introducing averments, instead of the words, "And the jurors aforesaid, upon their oath aforesaid, do further present," are used the words, "And the said coroner and attorney of our said lady the queen, who prosecutes as aforesaid, further gives the court here to understand and be informed, that," etc., so proceeding to state the offense, and concluding as in an indictment. And to the conclusion of the last count are added these words: "And therefore the said coroner and attorney of our said lady the queen prayeth the consideration of the court here in the premises, and that due process of law may be awarded against him the said J. S. in this behalf, to make him answer to our said lady the queen, touching and concerning the premises aforesaid." Archb. Cr. Pl. 77.

B. Information, ex Officio by Attorney-General.

Michaelmas term, in the 6th year of the reign of King George the fourth. Middlesex (to-wit).

Be it remembered that A. B., esquire, attorney-general of our sovereign lord the now king, who for our said lord the king prosecuteth in this behalf, in his proper person, comes here into the court of our said lord the king, before the king himself, at Westminster, in the county

of Middlesex, on ——— next after ———, in this same term, and for our said lord the king gives the court here to understand and be informed, that C. D., late of ——— yeoman, on, etc. (describe the offense precisely as in an indictment, and conclude each count the same as in an indictment, and if there be several counts, commence each as follows, and conclude the information as below).

And the said attorney-general of our said lord the king, who prosecutes as aforesaid, further gives the court here to understand and be informed, that the said C. D., on, etc. (state the offense as in a second count in an indictment, and conclude the whole as follows):

Whereupon the said attorney-general of our said lord the king, who for our said lord the king in this behalf prosecutes, for our said lord, the king, prays the consideration of the court here in the premises, and that due process of law may be awarded against the said C. D. in this behalf, to make him answer to our said lord the king, touching and concerning the premises aforesaid, etc. 2 Chit. Cr. L. 6.

V. Statements Used in Framing Indictments.

Time and Place.

"Then and there" between each averment. 1 Chit. Cr. L. 220.

Setting Out Instrument.

"To the tenor following." "In these words." "As follows." "In the words and figures following." Id. 234.

In Case of Violence.

"With force and arms" in indictments for offenses which consist in any way of acts of violence. Id. 240.

Knowledge.

"Knowingly," or "well knowing" will supply the place of a positive averment that the defendant knew the facts. Id. 241.

Treason.

"Traitorously" in treason. Id. 242.

Burglary.

"Burglariously." Id. 242.
"Feloniously and burglariously broke and entered the dwelling house in the night time" in burglary. Id. 244.

Felony.

"Feloniously" in all felonies. Id. 242.

Murder.

"Of his malice aforethought" did kill and "murder" in murder. Id. 242.
"Struck" where death results from wounding, beating and bruising. "Mortal" wound where wound causes death. Id. 243.

Rape.

"Feloniously ravish" and "carnally knew" in rape. Id. 243.

Larceny.

"Feloniously took and carried away" in larceny. Id. 244.

Robbery.

"Feloniously and against the will" in robbery. Id. 244.

Piracy.

"Feloniously and piratically" in piracy. Id. 244.

Nuisance.

"To the common nuisance of all the liege subjects of our lord the king" in indictments for nuisance. Id. 245.

Malfeasance.

"Against the peace of the king" in indictments, except mere non-feasance at common law. Id. 246.

Statutory Crime.

"Contrary to the form of the statute in such case made and provided." Id. 290.

Continuendo.

"That W. B., late of, etc., on, etc., and on divers other days and times between that day and the day of the taking of this inquisition." 3 Chit. Cr. L. 643.

"That T. G., late of, etc., yeoman, on, etc., and on divers other days and times between that day and the day of the taking of this inquisition, unlawfully did." 3 Chit. Cr. L. 642.

Note.—Most of the statements set out above have been held terms of art, for which there are no equivalent expressions. See citations above.

INFANTS.

I. Guardians Ad Litem, 609

- A. *Petition for Appointment by Infant Defendant*, 609
- B. *Petition for Appointment of Prochein Ami*, 609
- C. *Order Appointing Guardian*, 609
- D. *Order Appointing Prochein Ami*, 609
- E. *Order That Defendant Procure Appointment*, 609
- F. *Order Appointing Guardian on Failure of Infant To Procure*, 610

G. *Bound by Prochein Ami*, 610

II. Pleadings at Common Law, 610

A. *Declarations*, 610

B. *Pleas*, 610

1. *In Abatement, Infancy of Defendant*, 610

2. *In Abatement, Infancy of Plaintiff*, 610

3. *Infancy as Bar*, 610

C. *Replications*, 611

1. *To Plea in Abatement*, 611

2. *To Plea in Bar, Ratification*, 611

3. *To Plea in Bar, Necessities*, 611

4. *Traverse to Plea of Infancy*, 612

5. *To Statute of Limitations, Plaintiff an Infant*, 612

D. *Rejoinders*, 612

1. *Traverse of Replication to Plea of Statute of Limitations*, 612

2. *Denial That Goods Were Necessities*, 612

3. *Denial of Ratification*, 613

III. Pleadings Under the Code, 613

A. *Complaint by Infant Showing Appointment of Guardian*, 613

B. *Answers*, 613

1. *In Abatement*, 613

2. *General Answer*, 613

3. *Infancy in Bar*, 613

4. *Want of Discretion as to Hired Horse*, 613

5. *Ratification by Infant*, 613

IV. Infancy as Error of Fact, 613

A. *Assignment*, 613

B. *Plea to Assignment*, 614

V. Judgment Records, 614

A. *Verdict for Plaintiff*, 614

B. *Verdict for Defendant, Not Necessities, No Ratification*, 614

VI. In Equity, 614

A. *Decree Nisi Against Infant*, 614

B. *Decree Absolute*, 614

C. *Decree, Infants Not Bound*, 615

D. *Order Appointing Guardian*, 615

E. *Order for Increase of Maintenance*, 615

CROSS-REFERENCES:

ANSWERS:

Commencement of Answer by Infant.

ARREST IN CIVIL CASES:

Capias at Suit of Infant.

BILLS AND ANSWERS:

Introductory Part of Bill on Behalf of Infant;

Title to Answer, Infant;

Title to Answer, Infant and Adult.

DECLARATION AND COMPLAINT:

Commencement of Declaration Where Infant Is Plaintiff.

DEMURRER:

Demurrer in Equity for Infancy of Plaintiff, No Next Friend.

DIVORCE:

Complaint for Divorce on Account of Non-age.

GUARDIAN AD LITEM:

Petition for Guardian Ad Litem of Infant Plaintiff Over Fourteen;

Order Appointing Guardian Ad Litem for Infant Plaintiff;

Petition by General Guardian, or Relative, or Friend, for Appointment of Guardian Ad Litem for Infant Under Fourteen;

Notice of Application for Guardian Ad Litem by Relative or Friend;

Petition by Infant Defendant for Appointment of Guardian Ad Litem;

Order Appointing Guardian Ad Litem for Infant Defendant;

Petition for Guardian Ad Litem by Relative or Friend of Infant;

Notice to Defendant or His Guardian That Plaintiff Will Apply for Guardian Ad Litem;

Order of Appointment on Defendant's Failure To Procure the Appointment After Notice;

Petition for Guardian Ad Litem in Case of Publication;

Order Appointing Guardian Ad Litem in Case of Publication;

Petition To Assign Guardian Ad Litem by Infant Defendant;

Affidavit for Guardian Ad Litem to Infant Defendant;

Petition for Appointment of Guardian Ad Litem for Infant Defendant by Plaintiff;

Order, Guardian Assigned on Application of Infant or Non Compos; Guardian Assigned to Infant or Non Compos on Motion of Plaintiff.

GUARDIAN AND WARD:

Petition for Appointment of a General Guardian;

Master's Report on Petition for General Guardian;

Order Appointing General Guardian; Bond of General Guardian.

Order Appointing Guardian Nominated by Infant;

Inventory of Property of Infant;

Order on Interlocutory Account of Guardian;

Decree on Final Account of Guardian;

Petition for Leave To Transfer Fund to Non-resident Guardian;

Order Directing Transfer of Funds to Non-resident Guardian;

Petition for Leave To Sell Real Es-

tate for Support and Education of Infant;

Petition for Leave To Mortgage Infant's Real Estate;

Notice of Application To Sell Real Estate of Minor;

Order To Publish Notice of Application To Sell Minor's Property;

Order Granting License To Sell Land of Minor;

Petition, Action To Set Aside Sale of Real Estate, Insufficient Price, No Confirmation;

Order Setting Aside Sale of Land of Ward;

Oath of Guardian on Sale of Land of Minor;

Bond of Guardian on Sale of Land of Minor;

Notice of Sale of Minor's Land by Guardian;

Report of Sale of Land by Guardian;

Confirmation of Sale of Land by Guardian;

Receipt for Purchase Money by Guardian.

HABEAS CORPUS:

Petition for Habeas Corpus To Obtain Custody of Infant (a, b).

INJURIES TO PERSONS:

Declaration, Injury to Child by Improperly Guarding Machinery.

INTOXICATING LIQUORS:

Affidavit, Selling to Minor.

PARENT AND CHILD:

Complaint by Parent for Services of Minor Son.

PARTNERSHIP:

Decree, Infants Declared Entitled to Profits Against Survivor of Partnership, Also Executor.

PLEA IN EQUITY:

Plea in Equity of Infancy of Plaintiff, No Prochein Ami.

VERDICT:

Special Answer With General Verdict.

I. Guardians Ad Litem.

A. Petition for Appointment of Guardian for Infant Defendant.
To (the judge or officer to whom the petition is presented):

The petition of C. D., an infant under the age of twenty-one years, to-wit, of the age of (twenty years and two months), respectfully sheweth:

That an action has been commenced against your petitioner, in the supreme court of judicature of the people of the state of New York, by A. B., for (here state the cause of action).

But as your petitioner is an infant, as above set forth, he prays that K. L., of (the city of Brooklyn, in the county of Kings, merchant), may be appointed the guardian of your petitioner in the defense of said suit according to the statute in such case made and provided. Burr. App. 235, §498.

B. Petition for Appointment of Prochein Ami for Infant Plaintiff.

To his honor (John W. Edmonds, circuit judge of the first circuit of the state of New York):

The petition of A. B., an infant, under the age of twenty-one years, to-wit, of the age of (nineteen years and seven months), respectfully sheweth:

That your petitioner is about to commence a suit in the supreme court of judicature of the people of the state of New York, against C. D., for (here state the cause of action).

But as your petitioner is an infant, as above set forth, he prays that J. N., of (the city of New York, counselor-at-law), a competent and responsible person, may be appointed to prosecute the said suit for your petitioner, as his next friend, according to the statute in such case made and provided. Dated this (fifteenth day of February, 1840). Burr. App. 234, §497.

C. Order Appointing Guardian for Infant Defendant.

Ordered, that K. L., within (or above) named, be, and he is hereby appointed the guardian of C. D., the defendant in the suit mentioned in the within (or above) petition. Dated the (17th day of March, 1846). Burr. App. 221, §454.

D. Order Appointing Prochein Ami.

Ordered, that J. N., within (or above) named, be, and he is hereby appointed the next friend of A. B., in the suit mentioned in the within (or above) petition. Dated the ——— day of March, 18—. Burr. App. 221, §453; Yates' Forms 347.

E. Order That Defendant Procure Appointment of Guardian.

Ordered, that the defendant in this cause procure the appointment of a guardian therein, within ten days after the service of this order upon him, or that some discreet person will be appointed by me to be guardian for the said defendant, in the defense of the above entitled suit. Dated the ———

day of ———, 18—. Burr. App. 221, §455.

F. Order Appointing Guardian for Infant Defendant on Failure To Procure Appointment by Infant.

It appearing by affidavit that my former order, dated, etc., requiring the defendant in this cause to procure, etc. (reciting the first order), has not been complied with, on the part of the defendant, I do therefore hereby appoint P. S. H., esq., a discreet person, to be guardian for the said defendant, in the defense of the above entitled suit. Dated the ——— day of ———, 18—. Burr. App. 221, §456; Yates' Forms 347.

G. Bond by Prochein Ami To Infant for Moneys Which May Be Recovered.

Know all men by these presents, that we, ———, of ———, I. S., of ———, and I. N., of ———, are held and firmly bound unto A. B. (the infant), in the sum of ——— dollars (double the amount claimed in the suit), lawful money of the United States, to be paid to the said A. B. (penal part in the usual form).

The condition of this obligation is such that if the said ——— shall duly account to the said A. B. for all moneys which may be recovered in a certain suit about to be commenced in the supreme court of judicature of the people of the state of New York, by the said A. B. against C. D. for (state briefly the cause of action), and in which suit the said ——— hath been duly appointed the next friend of the said A. B., then this obligation to be void; otherwise to be in full force and virtue.

(Signatures and seals of obligors.)

Sealed and delivered in presence of

(Endorsed.)

Approved this ——— day of ———, 1846.

J. W. E., circuit judge.

Burr. App. 511, §1028a.

II. Pleading at Common Law.

A. Declaration by Infant in King's Bench.

A. B., by E. F., who is admitted by the court of our lord the now king, before the king himself, here to prosecute for the said A. B., who is an infant within the age of twenty-one

years, as the next friend of the said A. B., complains of C. D. being, etc. 2 Chit. Pl. 32; 2 Saund. 117f; Tidd's Pr. (9th ed.) 99.

Declaration by Infant in Common Pleas.

C. D. was attached to answer A. B. of a plea of trespass on the case (as the plea is), and thereupon the said A. B., by E. F., who is admitted by the court of our lord the king of the bench here, to prosecute for the said A. B., who is an infant within the age of twenty-one years, as the next friend of the said A. B., complains that where-as, etc. 2 Chit. Pl. 32.

B. Pleas.

1. Plea in Abatement of Infancy of Defendant.

And the said C. D., defendant in this suit, by R. J., her guardian, by the court now here specially admitted to defend for her the said defendant, who is under the age of twenty-one years, comes and defends the wrong and injury when, etc., and prays judgment, etc. (the usual form), because she says that she the said C. D., at the day of the (exhibition of the bill aforesaid), was, and yet is, under the age of twenty-one years, to-wit, of the age of nineteen years and no more, to-wit, at, etc., aforesaid. And this she is ready to verify. Wherefore she prays judgment of the bill, etc., aforesaid (as in usual form), and that the same may be quashed, etc. (Add affidavit.) Burr. App. 333, §600; Lill. Ent. 3.

2. Plea in Abatement of Infancy of Plaintiff.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury, when, etc., and prays judgment of the said bill (or writ) and declaration, because he says that the said plaintiff is an infant under the age of twenty-one years, to-wit, of the age of (nineteen) years, to-wit, at ———, in the county aforesaid (the venue), and this he is ready to verify; wherefore, inasmuch as the said plaintiff hath sued therein in his own person, and not by his next friend, the said defendant prays judgment of the said bill (or writ) and declaration, and that the same may be quashed. Burr. App. 333, §599; Yates' Forms 108.

3. Plea of Infancy as Bar.

And the said C. D., defendant in this suit, by G. H., his attorney (or, if the defendant be still an infant,

say: "by K. L., admitted by the supreme court of judicature of the people of the state of New York, before the justices thereof, as guardian of the said defendant, to defend for the said defendant, who is an infant, under the age of twenty-one years"), comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he the said defendant, at the time of the making of the said several supposed promises and undertakings in the said declaration mentioned, was an infant within the age of twenty-one years, to-wit, of the age of (nineteen) years (the precise age is not material), to-wit, at, etc. (the venue). And this he the said defendant is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 345, §632; 3 Chit. Pl. 909.

C. Replications.

1. *Replication To Plea in Abatement of Infancy.*

And the said plaintiff says that his said bill (or the said writ, or declaration), by reason of anything by the said defendant in his said plea alleged, ought not to be quashed, because he says that at the time of the commencement of this suit, he the said plaintiff was above the age of twenty-one years, to-wit, of the age of twenty-two years (without this that he was at the time an infant, under the age of twenty-one years). And this he the said plaintiff prays may be inquired of by the country. And the said defendant likewise, etc. Burr. App. 374, §677.

2. *Replication To Plea of Infancy, Ratification After Coming of Age.*

And the said plaintiff, as to the said plea of the said defendant, by him (secondly) above pleaded, says that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant,* because he says that the said defendant, after the making of the said several promises and undertakings in the said declaration mentioned, and before the commencement of this suit, to-wit, on, etc. (the day of his becoming of age, but the precise day is not ma-

terial), at, etc. (the venue), aforesaid, attained his age of twenty-one years. And the said plaintiff further says that the said defendant, after he had so attained his age of twenty-one years, and before the commencement of this suit, to-wit, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, at, etc. (the venue), aforesaid, assented to, and then and there ratified and confirmed the said several promises and undertakings in the said declaration mentioned. And this he the said plaintiff is ready to verify. Wherefore he prays judgment and his damages by him sustained, on occasion of the non-performance of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him, etc. Burr. App. 380, §694; 3 Chit. Pl. 1147.

3. *Replication To Plea of Infancy, Goods Were Necessities.*

A in last form to the *, inserting after the word "pleaded," the words, "so far as the same relates to the several promises and undertakings in the said (first, second, third, fourth and sixth) counts of the said declaration mentioned;" and adding the words, "in respect of the promises in those counts respectively mentioned," and then as follows: because he says that the said meat, drink, washing, lodging and other necessities in the said (first and second) counts of the said declaration respectively mentioned to have been found and provided by the said plaintiff for the said defendant, were, at the time of finding and providing the same meat, drink, washing, lodging and other necessities, suitable to the then degree, estate and condition of the said defendant, to-wit, at, etc. (venue), aforesaid, and that the said goods, wares and merchandise, in the said (third and fourth) counts of the said declaration respectively mentioned to have been sold and delivered by the said plaintiff to the said defendant, were, at the time of the sale and delivery thereof, also necessities suitable to the then degree, estate and condition of the said defendant, to-wit, at, etc. (venue), aforesaid; and that the money in the said (sixth) count of the said declaration mentioned to have been paid, laid out and expended by the said plaintiff, to and for the use of the said defendant, was so paid, laid out and expended by the said plaintiff in

and about the purchase of necessities, fit and suitable for the then degree, estate and condition of the said defendant, to-wit, at, etc. (venue), aforesaid. And this he the said plaintiff is ready to verify; wherefore he prays judgment, and his damages by him sustained on occasion of the not performing of the said several promises and undertakings in the said (first, second, third, fourth and sixth) counts of the said declaration mentioned, to be adjudged to him, etc. (Nolle prosequi as to residue.) And as to the said plea of the said defendant by him (secondly) above pleaded, so far as the same relates to the said several promises and undertakings in the said (fifth, seventh and last) counts of the said declaration mentioned, the said plaintiff saith that he will not further prosecute his suit against the said defendant in respect of the said last mentioned promises and undertakings, or any of them; therefore as to the said last mentioned promises and undertakings, let the said defendant be acquitted, and go thereof without day, etc. Burr. App. 381, §695; 3 Chit. Pl. 1146.

4. *Replication, Traverse To Plea of Infancy.*

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, because he said that the said defendant, at the time of the making of his said several promises and undertakings in the said declaration mentioned, was of the full age of twenty-one years, to-wit, at, etc. (the venue), aforesaid, and not within the age of twenty-one years, in manner and form as the said defendant hath above, in his said (second) plea in that behalf alleged. And this he the said plaintiff prays may be inquired of by the country, etc. Burr. App. 375, §679; 3 Chit. Pl. 1146.

5. *Replication To Plea of Statute of Limitations, Plaintiff an Infant.*

(As in II, C, 2, and then as follows): Because the said plaintiff says that at the time the said causes of action accrued to him (or her), he was an infant, under the age of twenty-one years, to-wit, at, etc. And this, etc.

(conclude with verification). Burr. App. 384, §702.

D. *Rejoinders.*

1. *Rejoinder, Traverse of Infancy in Replication To Plea of Statute of Limitations.*

And the said defendant, as to the said replication of the said plaintiff to the said (second) plea of the said defendant, says that the said plaintiff ought not by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him the said defendant, because he says that the said plaintiff was not an infant under the age of twenty-one years at the time of the said causes of action did accrue to him. And of this he the said defendant puts himself upon the country, etc. Burr. App. 391, §721; Yates' Forms 330.

2. *Rejoinder, Denial That Goods Were Necessities.*

And the said defendant, as to the said replication of the said plaintiff to the said (second) plea of the said defendant, says that the said plaintiff ought not by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him the said defendant, because he says that the said meat, drink, washing, lodging and other supposed necessities in the said (first and second counts) of the said declaration respectively mentioned to have been found and provided by the said plaintiff for the said defendant, and the said goods, wares and merchandise, in the said (third and fourth) counts of the said declaration respectively mentioned to have been sold and delivered by the said plaintiff to the said defendant, were not necessary or suitable to the then degree, estate and condition of him the said defendant, and that the said money in the said (sixth) count of the said declaration mentioned to have been paid, laid out and expended, by the said plaintiff to and for the use, and on the account of the said defendant, was not so paid, laid out and expended by the said plaintiff in and about the purchase of such necessities, in manner and form as the said plaintiff hath above in his said replication to the said (second) plea of the said defendant in that behalf alleged. And of this the said defendant puts himself upon the country, etc. Burr. App. 390, §717; 3 Chit. Pl. 1220.

3. *Rejoinder, Denial of Ratification of Contract.*

And the said defendant, as to the said replication of the said plaintiff to the said (second) plea of the said defendant, says that the said plaintiff ought not by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him the said defendant, because he says that he the said defendant did not, after he had attained the age of twenty-one years, and before the commencement of this suit, assent to, ratify or confirm the said several promises and undertakings in the said declaration mentioned, or any or either of them, in manner and form as the said plaintiff hath above in his said replication in that behalf alleged. And of this he the said defendant puts himself upon the country. (And the said plaintiff likewise, etc.) Burr. App. 389, §716; 3 Chit. Pl. 1221.

III. Pleadings Under the Code.

A. *Complaint by Infant Showing Appointment of Guardian ad Litem (a).*

A. B., an infant, by C. D., his guardian, plaintiff, against Y. Z., defendant.

The plaintiff complaining of the defendant alleges:

I. That the plaintiff is an infant, under the age of twenty-one years.

II. That on the _____ day of _____, 18—, at _____, upon application duly made on his behalf, the said C. D. was, by an order of this court (or by an order made by Hon. _____, a judge of this court; or by Hon. _____, county judge for _____ county), duly appointed the guardian of the plaintiff for the purposes of this action. 1 Abb. Forms 145.

Complaint by Infant Plaintiff, Showing Appointment of Guardian ad Litem (Short Form) (b).
(Commencement as above.)

II. That on the _____ day of _____, 18—, at _____, the above named _____ was, by Hon. _____, a justice of this court (or county judge of _____ county), duly appointed guardian of the plaintiff for the purposes of this action. 1 Abb. Forms 145.

B. *Answers.*

1. *Answer in Abatement, Infancy of Plaintiff.*

That the plaintiff is an infant under the age of twenty-one years, and has

no guardian appointed herein. 2 Abb. Forms 24.

2. *General Answer of Infant or Lunatic in Foreclosure, Partition, Etc.*

This defendant, answering by his said guardian, says that he is a stranger to all and singular the matters and things in the complaint in this action set forth, and that he is an infant under the age of twenty-one years, and claims such interest in the premises as he is entitled to; and he submits his rights and interests in the matters in question in this action to the protection of the court. 2 Abb. Forms 166.

3. *Answer, Infancy of Defendant in Bar.*

That at the time of making the supposed contract (and of the delivery of the goods, or other consideration) alleged, he was under the age of twenty-one years, to-wit, _____ years of age. 2 Abb. Forms 41.

4. *Answer, Infancy and Want of Discretion as To Hired Horse.*

I. That at the time of the supposed grievances alleged in the complaint, said horse was in the possession of the defendants by virtue of a contract of bailment for hire; and that the alleged beating and fatiguing by over-driving, occurred and took place through the unskilfulness and the want of knowledge, discretion and judgment of the defendant.

II. That on the termination of the contract of bailment the defendant returned and redelivered to the plaintiff the said horse in full life.

III. That at the time of the bailment, and of the committing of the supposed grievances, the defendant was under the age of twenty-one years, to-wit, _____ years of age. 2 Abb. Forms 120.

5. *Answer, Ratification by Infant After Coming of Age.*

I. That said (infant), after the making of said deed, attained the age of twenty-one years.

II. That thereupon (or afterwards), and on or about the _____ day of _____, 18—, and before this action, he assented to, ratified and confirmed the same, with full knowledge of the facts. 2 Abb. Forms 165.

IV. *Infancy as Error of Fact.*

A. *Assignment, Infancy as an Error of Fact.*

Afterwards, to-wit, on the (first Mon-

day of May), in this same term, before the said justices of the supreme court aforesaid, at the (city hall in the city of New York), comes the said C. D., by G. H., his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, to-wit, that he the said C. D. appeared in the suit aforesaid, by W. S., his attorney; nevertheless the said C. D., at the time of his said appearance, and also at the time of giving the judgment aforesaid, was under the age of twenty-one years, to-wit, of the age of ——— years, and no more; to-wit, at, etc.; in which case the said C. D. ought to have been admitted to appear in the court aforesaid, to defend the suit aforesaid, by his guardian, and not by his attorney; therefore in that there is manifest error. And this he the said C. D. is ready to verify. Wherefore he prays that the judgment aforesaid, for the error aforesaid, may be revoked, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the judgment aforesaid, etc.

G. H., attorney for plaintiff in error.

Burr. App. 411, §767; Till. Forms 154.

B. Plea To Assignment of Error of Infancy as an Error of Fact.

And hereupon the said A. B., by E. F., his attorney, freely here in court comes and says that by reason of anything above for error assigned, the judgment aforesaid ought not to be revoked, annulled or held for nothing; because he says that the said C. D., at the time of his said appearance, to-wit, in the term of ———, and also at the time of giving the judgment aforesaid, was of the full age of twenty-one years, to-wit, at ——— aforesaid. And of this he the said A. B. puts himself upon the country, etc. E. F., attorney for defendant in error.

Burr. App. 414, §772; Till. Forms 154.

V. Judgment Records.

A. Verdict for Plaintiff, Plea of Infancy in Assumpsit.

That the said defendant, at the time of making of the said several promises and undertakings above mentioned, was not within the age of twenty-one years, in manner and form as the said defendant hath above in that behalf alleged: and they assess, etc. Burr. App. 419, §785.

B. Verdict for Defendant on Several Issues, Infancy, Not Necessities, No Ratification.

That (the said defendant, at the time of the making of the several promises, in the first and second counts of the said declaration mentioned, was an infant, within the age of twenty-one years, in manner and form as the said defendant hath above in that behalf alleged): And as to the second issue above joined between the said parties, the jurors aforesaid, upon their oath aforesaid, say that (the goods, wares and merchandise in the third and fourth counts of the said declaration mentioned, were not necessary or suitable to the degree, estate or condition of the said defendant, in manner and form as the said plaintiff hath above in that behalf alleged): And as to the last issue above joined between the said parties, the jurors aforesaid, upon their oath aforesaid, say that (the said defendant did not, after he attained the age of twenty-one years, assent to, ratify or confirm the several promises or undertakings in the fifth and sixth counts of the said declaration mentioned, or any of them, in manner and form as the said plaintiff hath above in that behalf alleged. Burr. App. 426, §813; Archb. Forms 146.

VI. In Equity.

A. Decree Nisi Against Infant.

And this decree is to be binding on the defendants, the infants, unless they shall respectively, within six months after attaining their respective ages of twenty-one years, on being served with subpoena to show cause against this decree, show unto this court good cause to the contrary. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2292; 2 Seton Dec. (Eng. ed., 1862) 685.

B. Decree Absolute Against Infant.

Upon motion, etc., by counsel for the plaintiff, who alleged that the defendant A. attained the age of 21 years on the ——— day of ———, and that the said defendant was, on the ——— day of ———, duly served with a subpoena to show cause against the decree made in this cause, dated, etc., as by the affidavit of, etc., filed, etc., appears, and no cause having been shown to the contrary thereof, as by the ———'s certificate also appears, and upon reading, etc., this court doth order that the said decree be made absolute against the said defendant A.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2293; 2 Seton Dec. (Eng. ed., 1862) 685.

C. Decree, Infants Not Bound, Former Accounts To Be Adopted, if Beneficial.

This court doth "declare that the plaintiffs are entitled to the benefit of the decree dated, etc., and the several proceedings under the same, and subsequent or previous thereto, against all the defendants to this (supplemental) cause, except the infant defendant H., the only son of the defendant J., and the first tenant in tail in esse under the testator's will; and doth also declare that the said decree and orders, and the accounts taken under the same, are not binding on the said defendant, the infant." Usual accounts of personalty, and inquiries as to realty, any accounts settled in testator's lifetime not to be disturbed. "And if it shall appear to be for the benefit of the infant defendant H. to adopt any of the accounts already taken under the decree and orders in the original cause, such accounts are to be adopted to such extent, or in such respects as shall appear to be for the benefit of the said infant defendant." And this decree is to be without prejudice as between the plaintiff and all the defendants except the said infant, to any of the decrees and orders, proceedings and arrangements, made prior to the date hereof. Adjourn, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2294; 2 Seton Dec. (Eng. ed., 1862) 690, 691; Baillie v. Engance, 10 Sim. (Eng.) 167.

D. Order Appointing Guardian of Person and Maintenance.

(This, etc.) appoint B., of, etc., guardian of the person of A., the infant, during his minority, or until further order; and it is ordered by the court that the sum of \$—— a year be allowed for the maintenance and education of the said infant for the time past, from the —— day of ——, the time of the death of C., his father, and for the time to come during his minority; and he paid to the said B., his guardian, during his minority, or until further order, by equal half-yearly payments of \$—— each, on the —— day of ——, and the —— day of —— in each year, the first of such payments to be made on the —— day of ——, out of the interest from time to time to

accrue due on the, etc. Standing, etc. (or by the receiver appointed in this cause, out of the rents and profits of the estates of said A., the infant). And let such payments be allowed the said receiver from time to time in passing his accounts. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2295; 2 Seton Dec. (Eng. ed., 1862) 700.

E. Order for Increase of Maintenance of Infant.

It is ordered that the sum of \$—— a year be allowed in addition to the said sum of \$—— a year, allowed by the order dated, etc., making together the sum of \$—— a year, for the maintenance and education of A., the infant, for the time to come during his minority (or such increased allowance to commence on, or as from); and be paid to, etc. (as in form above). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2295.

INFORMATION.—See INDICTMENT AND INFORMATION; QUO WARRANTO.

INFORMATION AND BELIEF.

- I. General Denial, 615
- II. Denial of Knowledge Explaining Ignorance, 616
- III. Specific Denial, 616
- IV. General Denial by Several Defendants, 616
- V. Affidavit in Support of Complaint, 616

CROSS-REFERENCE:

BILLS AND ANSWERS:

Statement in Answer, Belief Without Personal Knowledge;
Statement in Answer, Denial by One, Belief in Denials by Other.

I. Answer, General Denial of Knowledge or Information Sufficient To Form a Belief (a).

Says that he has no knowledge or information sufficient to form a belief as to the truth of any of the allegations of the complaint (respecting the same). 2 Abb. Forms 18.

Note.—Or "denies that he has any knowledge," etc.

Answer, General Denial of Knowledge or Information Sufficient To Form a Belief (b).

Says that he has no knowledge or information other than is afforded by said (pleading), that (reciting allegation), and cannot therefore admit, but

on the contrary he denies, etc. 2 Abb. Forms 19.

II. Answer, Denial of Knowledge, etc., Explaining Ignorance.

Says that he has never been within the state of ——— (the place where the transactions were alleged by the complaint to have taken place), and has never personally transacted any business therein, and has no personal knowledge of what therein occurred; and he has no knowledge or information sufficient to form a belief as to the truth of any of the allegations of the complaint respecting the same (or as to whether, reciting specific allegation). 2 Abb. Forms 19.

Note.—See note to I.

III. Answer, Specific Denial of Knowledge or Information Sufficient To Form a Belief.

Says that he has no knowledge or information sufficient to form a belief that, etc. 2 Abb. Forms 21.

Note.—See note to I.

IV. Answer, General Denial of Information, etc., by Several Defendants.

Severally say, each for himself, that he has no knowledge or information sufficient to form a belief as to the truth of any of the allegations of the complaint (respecting the same). 2 Abb. Forms 19.

Note.—See note to I.

V. Affidavit in Support of Complaint, Where Material Allegations Are There Made on Information and Belief.

L. M., of ———, being duly sworn, says:

That he is familiar with all the material matters stated in the complaint in this action, on the information and belief of the plaintiff, and has actual knowledge thereof; and that from such knowledge he knows that the matters of fact therein stated are true (here may add statement as to means of knowledge, etc., e. g., thus): That deponent, until within a few days last past, was in the employ of said defendant as bookkeeper, and had free access to the books of said copartnership and of said defendant, and had and has personal knowledge of the financial and other business matters of the said concern, and of said defendant. 2 Abb. Forms 327.

INHERITANCE.

I. Declaration Against Heir on Bond of His Ancestor, 616

II. Declaration Against Heir and Devisee of Obligor, 617

III. Plea of Rien Per Descent by Heir, 617

IV. Replication to Plea of Rien Per Descent by Heir, Assets at Commencement of Suit, 617

V. Replication to Plea of Rien Per Descent by Heir, Assets Before Commencement of Suit, 617

VI. Complaint Against Heir by Creditors of Deceased, 617

VII. Complaint by Creditors of Deceased Against Next of Kin, 618

VIII. Complaint Against Heir or Devisee Where He Has Conveyed Land, 618

IX. Answer by Heir or Devisee, Nothing by Descent or Devise, 618

X. Bill by Next of Kin for Share, 618

XI. Decree in Favor of Heirs, Declaring Void Deed by Imposition, 620

I. Declaration Against Heir on Bond of His Ancestor.

A. B. complains of C. D., heir of E. F., deceased, being in the custody of the marshal of the Marshalsea of our lord the now king, before the king himself, of a plea, that he render to him the said plaintiff the sum of ———l. of good and lawful money of Great Britain, which he owes to and unjustly detains from him. For that whereas the said E. F. in his lifetime, whose heir the said defendant is, to-wit, on, etc., at, etc. (venue) by his certain writing obligatory, sealed with his seal, and now shown, etc. (state the profert or excuse. See "Oyer and Profert") acknowledged himself to be held and firmly bound to the said plaintiff in the said sum of ———l. above demanded, to be paid to the said plaintiff whenever he, the said E. F., should be thereunto afterwards requested, for which payment to be well and truly made, he the said E. F. bound himself and his heirs firmly by the said writing obligatory. Nevertheless, the said E. F. in his lifetime, and the said defendant since the death of the said E. F. (although often requested so to do) have not, nor hath either of them, as yet

paid the said sum of ————l. or any part thereof, to the said plaintiff, but the said E. F. in his lifetime, and the said defendant since his decease, have hitherto wholly refused, and the said defendant still wholly refuses so to do; to the damage, etc. 2 Chit. Pl. 468.

II. Declaration Against Heir and Devisee of Obligor.

A. B. complains of C. D. and E. F. which said C. D. is heir of G. H., deceased, and which said E. F. is devisee of the said G. H. of divers lands and tenements of the said G. H., deceased, by his last will and testament being in the custody, etc., of a plea, that they render to him, the said A. B. £——— of lawful, etc., which they owe to and unjustly detain from him. For that whereas the said G. H., of whom the said C. D. is heir, and the said E. F. is devisee as aforesaid, in his lifetime, to-wit, on, etc., at, etc. (venue) by his certain writing obligatory, sealed with his seal, and to the court, etc. (profert. See "Oyer and Profert") acknowledged himself to be held and firmly bound unto the said plaintiff in the said sum of £——— above demanded, to be paid to the said plaintiff, when he the said G. H. should be thereunto requested, and for which payment well and truly to be made, the said G. H. did, by the said writing obligatory, bind himself and his heirs to the said plaintiff. Nevertheless, the said G. H. in his lifetime, and the said defendant his heir, and the said E. F., devisee as aforesaid (although often requested so to do) have not, nor hath either of them, as yet paid the sum of £——— above demanded, or any part thereof, to the said plaintiff, but to pay the same to the said plaintiff have wholly neglected and refused, and the said C. D. and E. F. still neglect and refuse to pay the same, or any part thereof, to the said plaintiff; to the damage, etc. 2 Chit. Pl. 469.

III. Plea of Rien Per Descend by Heir.

And the said defendant by E. F., his attorney, comes and defends the wrong and injury, when, etc., and says, that he ought not to be charged with the said debt by virtue of the said supposed writing obligatory (or indenture, etc.) Because he saith, that he the said defendant hath not, nor at the time

of the exhibiting the bill of the said plaintiff, in this behalf (or, if in C. P. or by original, "at the time of the commencement of this suit") nor at any time before or since, had any lands, tenements, or hereditaments, by descent from his said father (or brother, etc., according to the fact), in fee simple, and this he is ready to verify, wherefore he prays judgment, if he, as son (or brother, etc.) and heir of the said G. H., deceased, ought to be charged with the said debt, by virtue of the said writing obligatory. 3 Chit. Pl. 974.

IV. Replication to Plea of Rien Per Descend, That Defendant Had Assets at Time of Commencement of Suit.

(Precludi non.) Because he saith, that the said defendant hath, and at the time of the exhibiting of the said bill of the said plaintiff (or, if in C. P. or by original, "at the commencement of this suit") had sufficient lands, tenements and hereditaments by descent from his said father ("or brother," etc., according to the fact) in fee simple, wherewith the said defendant could and might and ought to have satisfied the said debt of the said plaintiff above demanded. And this the said plaintiff prays may be inquired of by the country, etc. 3 Chit. Pl. 1174.

V. Replication to Plea of Rien Per Descend, That Defendant Had Assets Before Commencement of Suit.

(Precludi non.) Because, according to the form of the statute in such case made and provided, he saith, that the said defendant after the death of the said E. F., his father, and before the day of exhibiting the said plaintiff's bill in this behalf (or, if in C. P. or, by original, say, "before the commencement of this suit"), to-wit, on, etc., at, etc. (venue) aforesaid, had divers lands and tenements by hereditary descent as heir to the said E. F. in fee simple, whereby he might have satisfied the said plaintiff the debt and damages aforesaid. And this, etc. 3 Chit. Pl. 1174.

VI. Complaint Against Heir by Creditor of Deceased.

I. State facts showing a debt of the decedent, due and still unpaid.

II. That on the ———— day of

_____, 18____, at _____, said (decedent), being owner in fee (or otherwise) of the property hereinafter described, died intestate (as to said property); and that more than three years before this action, to-wit, on the _____ day of _____, 18____, letters of administration upon the estate of said (decedent) were duly issued and granted to one M. N. by the surrogate of the county of _____, of this state, appointing said M. N. administrator of all the goods, chattels, and credits which were of said deceased (or, if he left a will, the probate and issue of letters may be alleged, as in the preceding form).

III. That the defendant is the sole heir (or, defendants are the only heirs) of said deceased, and that the following described premises descended from the deceased to him (them) as such: (description of premises).

IV. That the personal assets of said (decedent) were not sufficient to pay and discharge the plaintiff's demand.

Or, IV. That the said (decedent) left no personal assets within this state to be administered (except a small amount, in value not exceeding _____ dollars, which is not sufficient to pay and discharge the plaintiff's demand).

Or, IV. That after due proceedings before the surrogate's court of the county of _____, by (stating briefly what), the plaintiff has been unable to collect his said debt (except the sum of _____ dollars) from the personal representatives of said (decedent, or, from his next of kin, or, legatees).

Wherefore, the plaintiff demands judgment that said premises be sold, and the sum of _____ dollars, with interest thereon from the _____ day of _____, together with costs of this action, be paid to the plaintiff out of the proceeds thereof. 1 Abb. Forms 534.

VII. Complaint by Creditor of Deceased Against Next of Kin.

I. (State facts showing a debt of the decedent, due and still unpaid).

II. That on the _____ day of _____, 18____, at _____, said (decedent) died intestate; and that on the _____ day of _____, 18____, letters of administration upon the estate of said (decedent) were granted to one M. N., by an order duly made by the surrogate of the county of _____,

of this state, appointing said M. N. administrator of all the goods, chattels, and credits which were of said deceased (or, allege death, leaving a will, etc., as in next form).

III. That before the commencement of this action said administrator (or, executor) paid over assets of the estate to the defendant, who is one of the next of kin (or, to the defendants, who are the next of kin) of the deceased, amounting to the sum of _____ dollars. 1 Abb. Forms 533.

VIII. Complaint Against Heir or Devisee Where He Has Conveyed Land.

As in either preceding form, adding:

V. That the defendant did, on the _____ day of _____, 18____, convey said mentioned premises to one O. P., and that the premises so conveyed by him were reasonably worth _____ dollars.

Wherefore the plaintiff demands judgment for (the amount of the debt, but not exceeding the value of the premises, etc.). 1 Abb. Forms 536.

IX. Answer by Heir or Devisee, Nothing by Descent or Devise.

That he had not at the commencement of this action (or, at any time before or since), any lands, tenements, or hereditaments, by descent from his said father (or, brother, or otherwise as in complaint), (or, by devise from said testator). 2 Abb. Forms 159.

X. Bill by Next of Kin for Share (a).

Humbly complaining show unto your honors, your orator and oratrixes, S. M., of, etc., C. M., of, etc., widow, and A. L. of etc., widow, that A. M., late of, etc., gentleman, was, in his lifetime and at the time of his death, possessed of and well entitled to a considerable personal estate, consisting of moneys in the funds, debts due to him, household goods, plate, linen, china, wearing apparel, and divers other effects of a considerable amount and value, and particularly was possessed of a large number of shares in the stock of _____. And your orator and oratrixes further show that the said A. M., in and about the month of, etc., departed this life, intestate, and without issue, leaving F. M., his wife, one of the defendants hereinafter named, and your orator, his brother, and your oratrixes, his sisters and only next of kin him surviving. And your orator

and oratrixes further show, that since the death of the said intestate, the said F. M., his wife, has obtained letters of administration of the goods, chattels, rights, and credits of the said intestate to be granted to her, by and out of the proper court, and has, by virtue thereof, possessed herself of the personal estate and effects of the said intestate to a very large amount and value, and much more than sufficient to pay and satisfy his just debts and funeral expenses, exclusively of the said shares of stock. And the plaintiffs further show, that being entitled as brothers and sisters of the said intestate to a distributive share of his personal estate, the plaintiffs have frequently, by themselves and their agents, applied to the said F. M. and requested her to come to a full and true account with the plaintiffs for the personal estate and effects of said intestate, and to pay them respectively one-third part each of one moiety of the clear residue thereof, with which just and reasonable requests the plaintiffs hoped the said F. M. would have complied. But now so it is, etc. And the said defendant pretends that the personal estate and effects of the said A. M. were small and inconsiderable, and not more than sufficient to pay and satisfy his debts and funeral expenses, and that she has applied all such personal estate and effects in a due course of administration. Whereas the plaintiffs charge the contrary thereof to be the truth, and so it would appear if the defendant would set forth, as she ought to do, a full and true account of all and every the personal estate and effects of the said intestate, which have been possessed or received by the said defendant, or by her order, or to her use, and of her application thereof. And the plaintiffs further charge that the said F. M. has declared to several persons that she means to obtain a transfer of the said shares of stock and to sell and dispose of the same and to withdraw herself to ———, with the produce thereof; and the corporations, in which such stock is held, intend to permit her to make such transfer. All which actings, etc.

And that the defendants may answer the premises, and that an account may be taken by and under the direction of this honorable court of the personal estate and effects of the said intestate,

A. M., possessed by or come to the hands of said defendant, F. M., his widow and administratrix, or to the hands of any other person or persons, by her order or for her use; and also an account of the said intestate's debts and funeral expenses, and that the said intestate's personal estate may be applied in a due course of administration, and that the clear residue thereof may be ascertained, and that the plaintiffs respectively may be paid one-third part each of one moiety of such clear residue, and that in the meantime the said defendant, F. M., may be restrained by the injunction of this honorable court from selling or disposing of or transferring the said stock, and that the ——— may be restrained from permitting such sale or transfer. (And for further relief.)

May it please, etc.

(Pray subpoena and injunction against F. M., and the said ——— [corporations].). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2022.

Bill by Next of Kin for Share (b).

1. A. B., late of, etc., deceased, was, at the time of his death, possessed and entitled of and to a considerable personal estate.

2. The said A. B. died on the ——— day of ———, (a widower and) intestate, leaving the plaintiffs and ——— and ———, his children and sole next of kin, him surviving.

3. On the ——— day of ——— the defendant procured letters of administration to the goods, chattels, and credits of the said A. B. to be granted to him by the proper court for that purpose, and the said defendant thereby became and now is the sole legal personal representative of the said A. B.

4. The defendant, as such administrator as aforesaid, has taken possession of all the movable chattels of the said A. B., and has received certain sums of money in respect of debts which were owing to the said A. B. at the time of his decease.

5. The assets of the said A. B., which have come to the hands of the defendant, were and are much more than sufficient for payment of all the debts and funeral expenses of the said A. B., and he has paid or ought to have paid the same.

6. The defendant has, in fact, in his hands, a large surplus or residue in

respect of the intestate's personal estate, which is divisible and ought to be divided amongst the plaintiffs and the said ——— and ———, as his sole next of kin.

7. The plaintiffs have applied to the defendant to furnish them with an account of the personal estate of the intestate, and of the application thereof, and to divide the residue thereof amongst the plaintiffs and the said ——— and ———, but he has refused so to do.

Prayer.

The plaintiffs pray as follows:

1. That an account may be taken of the personal estate of the intestate, come to the hands of the defendant, or of any person or persons by his order or for his use.

2. That an account may be taken of the debts and funeral expenses of the intestate.

3. That the clear residue of the personal estate of the intestate may be ascertained, and that one equal ——— part of such residuary estate may be decreed to be paid to each of the plaintiffs, and that another equal ——— part thereof may be decreed to be paid to the defendant, and to each of them, the said ——— and ———.

4. (Prayer for general relief.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2024.

XI. Decree in Favor of Heirs, Declaring Void Deed Obtained of Their Ancestor by Imposition.

This cause came on to be heard by consent of counsel, at the last term of this court, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the court as follows, viz.: that the deeds of conveyance dated the ninth day of May, 1805, and executed by C. W. to A. H., in the pleadings mentioned, ought not to be permitted to stand as absolute and bona fide conveyances to the said A. H., the same having been obtained from the said C. W. by the said A. H., by imposition upon him, he being at the time of the execution thereof in a state of great mental and bodily weakness, as well from the visitation of Providence as from his extreme old age. And it is further ordered, decreed, and declared by the court, that, under all the circumstances of the case, the same deeds of conveyances

ought to be permitted to stand as security for any advances made, and charges incurred, and allowances due, to the said A. H., by reason of the premises stated in the pleadings, but no further; and as to all other purposes the same are to be held and decreed to be utterly void; and the same is hereby ordered and decreed accordingly.

And it is further ordered and decreed by the court, that it be referred to A. B., Esquire, a master for this purpose, to take an account of all debts, claims, and dues between the said A. H. and the said C. W., during his lifetime; and in taking such account, the said master is to charge the said A. H. with all the personal estate received by him from the said C. W., including that conveyed by deed of gift to his wife, as in the pleadings mentioned, and also with all the rents and profits of said real estates; and the said A. H. is to be allowed credits for all advances made, and charges incurred, and allowances due, for labor and services to and for the said C. W. during his lifetime; and also credit for all repairs and improvements made by the said A. H., in and about the same real estates. And the said master is also to take in like manner an account of all the rents and profits of the same real estates since the death of the said C. W., and is in like manner to be allowed credit for all repairs and improvements on the same estates during the same period. And the said master is to give notice of his meetings, for the purpose of taking into consideration the premises, to all the parties in interest.

And all further orders and directions are reserved until the coming in of the master's report. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2281; *Harding v. Wheaton*, 2 Mason (U. S.) 390-392.

INJUNCTIONS.

I. In Equity, 622

A. Prayer for Injunction, 622

1. *For Injunction and Subpoena*, 622
2. *Against Transfer*, 623
3. *Against Working Quarry*, 623
4. *Against Receiving Partnership Debts*, 623
5. *To Restrain Proceedings at Law*, 623

B. Notice of Motion for Special Injunction, 623

C. Orders for Injunctions, 623

1. *On Notice or Ex Parte*, 623
2. *Ex Parte Interim*, 624
3. *Ex Parte*, 624

D. Dissolution, 624

1. *Notice of Motion*, 624
2. *Order To Dissolve or Continue*, 624
3. *Continued on Hearing*, 624

E. Decrees, 624

1. *Making Injunction Perpetual at Hearing*, 624
2. *For Mandatory Injunction*, 624
3. *Restraining Town and Its Officers*, 625
4. *To Restrain Use of Real Estate in Violation of Agreement*, 625

F. Writ of Injunction, 625**G. Committal for Breach, 626****II. Under the Codes, 626****A. Complaints, 626**

1. *To Restrain Negotiation of Bill or Note*, 626
2. *To Enjoin Withdrawal of Collateral Securities*, 626

B. Notice of Motion for Injunction, 627**C. Notice of Motion in Interpleader, 627****D. Undertaking on Injunction, 627****E. Approval of Undertaking, 627****F. Undertaking on Injunction Against Corporation, 627****G. Bond on Injunction To Stay Proceedings, 627****H. Affidavit of Sufficiency, 628****I. Order Denying Motion, 628****J. Injunction by Judge's Order, 628****K. Injunction by the Court, 628****L. Certified Copy of Injunction for Service, 628****M. Order To Show Cause Against Injunction, With Restraint, 628****N. Preliminary Injunction With Order To Show Cause, 629****O. Against Bank With Order To Show Cause Against Appointment of Receiver, 629****P. Dissolution, 629**

1. *Notice of Motion*, 629
2. *Order Dissolving*, 629
3. *Order Dissolving on Ground of Abatement*, 630

Q. Damages, 630

1. *Notice of Motion To Ascertain Damages*, 630
2. *Order of Reference*, 630
3. *Notice of Motion To Confirm Report of Referee*, 630
4. *Order Confirming Report*, 630

III. Statements of Matters Enjoined, 630**A. Concerning Real Property, 630**

1. *Waste or Alienation*, 630
2. *Plowing or Cutting Timber*, 630
3. *Waste, House or Ornamental Trees*, 631
4. *Working Mine*, 631
5. *Tenant of Mine*, 631
6. *Undermining Land*, 631
7. *Removing Fixtures*, 631
8. *Taking Rents and Profits*, 631
9. *Taking Land Without Payment*, 631
10. *Erection of Building*, 631
11. *Obstructing Lights*, 632
12. *Violation of Covenant To Build*, 632
13. *Underletting*, 632
14. *Carrying on Business Forbidden by Lease*, 632

B. Nuisance, 632

1. *Noisy Bells*, 632
2. *Continuance of Slaughter House*, 632
3. *Burning Brick*, 632

C. Transfers of Property, 632

1. *Transferring Negotiable Paper*, 632
2. *Transfer of Stock*, 632
3. *Transfer of Assets*, 632

D. Copyrights, Trade-Marks, Etc., 632

1. *Publishing*, 632
2. *Publishing Private Letter*, 633
3. *Disclosure of Secrets by Clerk*, 633
4. *Use of Secret in Trade in Violation of Contract*, 633
5. *Infringement of Trade-Mark*, 633
6. *Infringement of Sign*, 633

E. Partnerships, 633

1. *Interfering With Partnership Matters*, 633
2. *Interfering With Partner's Rights*, 633

F. Reorganization of a Corporation, 634**G. Restraining Proceedings at Law, 634**

1. *Confession of Judgment*, 634
2. *Proceeding in Ejectment*, 634
3. *Proceeding on Contract*, 634
4. *Proceedings With Leave to Proceed to Judgment*, 634
5. *Proceedings at Law in Case of Interpleader*, 634
6. *Proceeding for Dispossession*, 634

H. Contractor Interfering After Forfeiting Contract, 634**I. Resuming Practice After Having Sold Business, 635****J. Authorizing Laying of Railroad, 635**

K. *Laying Railroad in City Streets*, 635

L. *Stopping a Way*, 635

CROSS REFERENCES:

ACCOUNT AND ACCOUNTING:

Decree for General Account, Injunction Continued;

Decree, Injunction Continued, Judgment as Security.

BILLS AND ANSWERS:

Prayer for Injunction To Stay Waste;

Prayer for Injunction To Restrain Defendant From Proceeding at Law.

COPYRIGHT PROCEEDINGS:

Bill To Restrain Infringement of Copyright and for Accounting;

Decree for Perpetual Injunction Upon Printing, Publishing, Etc.;

Order for Injunction Staying Partial Infringement.

CREDITORS' SUITS:

Injunction in Creditors' Actions Against Selling, Etc.

DECLARATION AND COMPLAINT:

Complaint on Undertaking Given on Obtaining Injunction.

INTERPLEADER:

Order for Injunction in Interpleader on Payment Into Court;

Order for Injunction on Undertaking as to Subject-Matter.

JUDGMENTS:

Judgment of Perpetual Injunction Enjoining Construction or Authorization of Railroad.

LANDLORD AND TENANT:

Complaint by Lessor Against Lessee for Injunction and Damages.

LOST INSTRUMENTS:

Decree, Order in Case of Lost Deed, With Injunction.

NUISANCE:

Complaint, Prayer for Judgment for Injunction Against Nuisance, and for Damages;

Decree for Abating and Reducing Mill Dams, Etc., With Injunction.

PARTNERSHIP:

Complaint To Enjoin Late Partner From Continuing Business After Dissolution;

Bill for Dissolution and To Restrain Collecting Debts;

Prayer in Bill for Accounting, Receiver and Injunction in Partnership.

PATENTS:

Bill To Restrain Infringement of Patent Right;

Decree Staying Infringement of

Patent After Verdict Establishing Patent;

Decree Staying Infringement of Patent as to Machinery.

Decree Staying Infringing Patent as to Bricks;

Decree, Declaration of Validity of Patent, Infringement, Account, Perpetual Injunction.

SALES:

Complaint Against Fraudulent Buyer, Seeking Injunction Restraining Sale Pending Suit.

SPECIAL ASSESSMENTS:

Complaint To Enjoin a Municipal Corporation From Deeding Land Sold for Illegal Special Assessment.

STAY OF PROCEEDINGS:

Notice of Motion for Injunction To Stay Proceedings at Law.

TRADE-MARKS AND TRADE NAMES:

Complaint To Restrain Infringement, Name of Periodical;

Complaint To Restrain Infringement of Trade-Mark, and for Damages;

Decree Awarding Perpetual Injunction on Use of Another's Trade-Marks;

Decree Awarding Injunction Against Shipping Goods With Plaintiff's Trade-Mark;

Decree Awarding Injunction Against Use of Trade-Mark.

WASTE:

Bill To Restrain Waste;

Decree Awarding Injunction To Stay Felling Ornamental Timber and Other Waste.

Decree Staying Waste by Tenants in Common;

Decree Awarding Injunction, Trees To Intercept View;

Decree Awarding Injunction, Trees To Shade or Shelter.

WATERS AND WATERCOURSES:

Complaint, Action To Restrain Destroying Water Supply for Irrigation by Mining Operation.

I. In Equity.

A. *Prayer for Injunction.*

1. *Prayer for Injunction and for Subpoena.*

May it please your honors to grant unto your orator (or to the plaintiff) not only a writ of injunction, issuing out of, and under the seal of this honorable court, to be directed unto the said C. D., etc., etc., to restrain them, their servants, workmen and agents from committing waste, etc., but also a writ of subpoena, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1907.

See "How To Use This Volume," Introduction, page v.

2. *Prayer for Injunction Against Transfer of Property.*

Wherefore the plaintiff prays that the said H. E. may be enjoined from passing the said property of the Columbia Insurance Company now in his possession, into the possession of said insurance company, or of any agent or officer thereof, without the order and direction of this honorable court, and that the said H. E. may discover under oath what promissory notes and other property of the said insurance company may now be in his possession or under his control, and that he may be required to deliver up the same into the custody of this honorable court, and that the amount of the debts due from the said insurance company to the plaintiff on said policies of insurance may be fixed and determined, and that so much of the property of said insurance company now in the hands of the said H. E. as may be necessary for that purpose may be applied for the payment of the debt due to the plaintiff from said insurance company as aforesaid, and to grant the plaintiff such other and further relief as to justice and equity may appertain.

To this end may it please your honors to grant unto your orator not only your writ of injunction to be directed to the said H. E., and said company, restraining him from putting away said promissory notes and other property, and directing him to place the same in the custody of such person or persons as your honors may appoint, but also, etc. (prayer for subpoena against said H. E. and the Columbia Insurance Company). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1963; *Silloway v. Columbia Ins. Co.*, 8 Gray (Mass.) 199.

3. *Prayer for Injunction Against Working Quarry.*

And that in the meantime the said L. M. and his agents and workmen may be restrained, by the order and injunction of this honorable court, from getting, taking, and carrying away any stone from the said quarry, except for building and other purposes in and upon N. farm aforesaid. (General relief.) May it please, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1964.

4. *Prayer for Injunction Against Receiving Partnership Debts (a).*

And that in the meantime the said defendant W. P. may be restrained by the order and injunction of this honorable court from collecting or receiv-

ing any partnership debts or other moneys, and that some proper person may be appointed to collect and receive the same; and that proper directions may be given for the conduct and management of the said partnership business in future, for the joint and equal benefit of your orator and the said W. P. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1968.

Prayer for Injunction Against Receiving Partnership Debts (b).

And that in the meantime the said defendant C. B. may be restrained, by the order and injunction of this honorable court, from collecting or receiving the partnership debts or other moneys. (And for further relief, etc.) May it please, etc.

Pray subpoena against C. F., and subpoena and injunction against C. B. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1969.

5. *Prayer To Restrain Proceedings at Law, and for Injunction.*

And that the said C. D., etc., their counselors, attorneys, solicitors, officers or agents, may be restrained by an injunction issuing out of this court, from proceeding further against your orator (or the plaintiff) in the said action commenced against him in the, etc., court of, etc., and now pending and at issue therein, for the recovery of, etc. And that your orator (or the plaintiff) may have, etc. (Prayer for general relief.) May it please your honor to grant unto your orator (or the plaintiff) a writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said C. D., etc., etc., commanding them and each of them absolutely to desist and refrain from proceeding further against your orator (or the plaintiff) in said action. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1904.

B. *Notice of Motion for Special Injunction.*

Take notice, etc., etc., that the defendant ——— and his agents (workmen and servants), may be restrained from (here follows the prayer in the bill) until the hearing of this cause, or the further order of the court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2150.

C. *Orders for Injunctions.*

1. *Order for Injunction on Notice or ex Parte, on Undertaking.*

Upon motion, etc., by counsel for the plaintiff, and upon hearing counsel

for the defendant (or reading an affidavit of notice of this motion to the defendant, or if moved ex parte before the defendant has appeared to the bill, the clerk's certificate of the filing of the plaintiff's bill in this cause on the — day of —). Enter affidavit in support, and in opposition, if any; and if ex parte, add: And the plaintiff, by his counsel, undertaking to abide by any order this court may make as to damages, in case this court should hereafter be of opinion that the defendant shall have sustained any, by reason of this order, which the plaintiff ought to pay, if so and also undertaking to accept short notice of motion to dissolve the injunction hereby awarded), this court doth order that an injunction be awarded to restrain the defendants A., his servants, workmen and agents from, etc.; until the hearing of this cause, or until the further order of this court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2305.

2. *Ex Parte Interim Order for Injunction.*

Usual undertaking as to damage (form above). Let the defendant, his servants, workmen and agents, be restrained from, etc.; until after the — day of —, or until the further order of this court. (If so, and let the plaintiff be at liberty to serve the defendant with a notice of motion for the — day of — for an injunction in this cause.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2305.

3. *Order for ex Parte Injunction.*

Upon the application of the plaintiffs, and upon reading an affidavit of, etc. (enter evidence); and the plaintiffs, by their solicitors, having undertaken, etc. (form above), and having signed, etc., to that effect, accordingly this court doth order that an injunction be awarded, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2305; 2 Seton Dec. (Eng. ed., 1862) 867.

D. *Dissolution.*

1. *Notice of Motion To Dissolve Injunction.*

Take notice, etc., etc., that the injunction issued in this cause may be dissolved, with costs. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2153.

2. *Order, Injunction Dissolved or Continued on Motion.*

Upon motion, etc., by counsel for the defendant (if plaintiff appears, and upon hearing counsel for the plaintiff),

and upon reading the order dated, etc. (enter affidavits and answers, if any, and if plaintiff does not appear, an affidavit of service of notice of this motion on the plaintiff). This court doth order that the injunction awarded by the said order dated, etc., do stand dissolved (or be continued until the hearing of this cause, or until the further order of this court). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2324.

3. *Injunction Continued on the Hearing.*

And it is ordered that the injunction awarded against the defendant H. by the order dated, etc., be continued until further order of this court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2325.

E. *Decrees.*

1. *Decree Making Injunction Perpetual at Hearing.*

This court doth order that the injunction granted (awarded) in this cause to restrain the defendants, their servants, agents or workmen from printing, publishing or vending a book, comedy, or farce called, etc., or any part thereof, be made perpetual; and the plaintiff (by his counsel) waiving the account prayed by the bill, the court doth not think fit to direct any account. Defendants to pay plaintiff's costs. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2325; 2 Seton Dec. (Eng. ed., 1862) 944.

2. *Decree for Mandatory Injunction, Enjoining Return of Documents.*

This court doth order that an injunction be awarded to restrain the defendant H. from detaining and keeping possession of the books, deeds, documents and papers removed as mentioned in the plaintiffs' affidavit by the said defendant, or by his order, from the chambers occupied by the plaintiffs, for retaining which no written authority has been produced by the defendant, as mentioned in the plaintiffs' affidavit of, etc., or any of them, except the five boxes not claimed by the plaintiffs, and from permitting the same or any or either of them, except the said five boxes, to remain away from the office of the plaintiffs, or from parting with the books, etc., removed by the defendant, or by his order, from the chambers occupied by the plaintiffs, or any of them, except the five boxes, to any person or persons other than the plaintiffs, and from destroy-

ing, mutilating or obliterating the said books, etc., or any or either of them, except as aforesaid, or any part or parts thereof respectively, or any entries or entry therein, or from making any alteration, interlineation or erasure in the same, or any of them; until, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2323; 2 Seton Dec. (Eng. ed., 1862) 936.

3. *Decree, General, Restraining a Town and Its Officers.*

And the inhabitants of the said town of B., and all their officers and servants, are hereby enjoined and commanded that they apply the said money to the payment of the legal debts and liabilities of the town, and to no other purpose; and that they shall not at any time, by their vote, or by taxation, or by pledge of the credit of the town, or by the use of its funds, or in any other manner, make any provision, directly or indirectly, for the payment of the money mentioned in the said claims of J. H. and S. O. M., and of E. B. G., set forth in the bill, nor any part thereof, or for the indemnity, in whole or in part, of any person or persons by whom said sums of money have been paid or may hereafter be paid, in whole or in part, or of any person who may be interested in the same, or in any way directly or indirectly, to evade the true intent and effect of this decree. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2323; Frost v. Belmont, 6 Allen (Mass.) 152.

4. *Decree To Restrain Use of Real Estate in Violation of Agreement.*

And now this cause having been fully heard, it is ordered and decreed that the demurrer be overruled. Thereupon the said defendants, by the agreement of their counsel on file in the cause, do consent that the plaintiff's bill be taken as confessed by them, and all the facts therein stated as fully proved and established on the part of said plaintiffs; and that thereupon this court shall render such final decree in favor of the plaintiffs as by the law of this commonwealth and the facts so established they are properly entitled to have, and according to the prayer of their bill, with taxable costs in favor of said plaintiffs.

The court doth thereupon decree that the said defendants, and each of them, their agents, assistants and abettors, be forever hereafter perpetually en-

joined, and they are hereby enjoined, to desist and refrain from all use of the premises numbered two on Hayward Place aforesaid, or any portion of the same; and from appropriating or applying the same to the purposes of a restaurant, eating house, saloon, or any similar use, by whatever name called or known, and from all use or application of said lot, or the buildings thereon, or any portion of the same, for any purpose whatever, except that of a "dwelling house only," and that in the ordinary common acceptance of that term.

And it is further decreed that the plaintiffs recover of the defendants their legal, taxable costs in the premises.

And it is further ordered that the clerk of this court do issue a proper writ of injunction, for the carrying the other portions of this decree into effect, on application of the plaintiffs, at any time after the first day of May next.

By the court.

—, clerk.

Boston, Feb. 8th, 1864.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2314; Parker v. Nightingale, 6 Allen (Mass.) 341.

F. *Writ of Injunction.*

Commonwealth of Massachusetts.

S——, ss. To H. E., of B., in said county, his servants, agents, attorneys and counselors, and each and every of them, greeting:

Whereas it has been represented unto the justices of our supreme judicial court, now holden at Boston, within and for said county, sitting as a court of chancery, that the Columbia Insurance Company, of Columbia, South Carolina, is a foreign insurance company, and that said company is largely indebted to D. S., of N., in the county of E., as in said D. S.'s bill of complaint, this day filed in our said court, is alleged, and that the said company have no property in this commonwealth which can be come at to be attached or taken on execution, and that you the said H. E. have a large amount of the property of the said company now in your possession; consisting chiefly of valuable promissory notes belonging to said company.

We, therefore, in consideration of the premises, do strictly enjoin and command you the said H. E., and all

and every the persons before named, from passing any promissory notes or other property now in your possession, or under your control, belonging to the said Columbia Insurance Company, into the possession of any person whatever, and especially not into the possession or control of the said company, or any officer or agent of the same; but to keep and retain the same in your own hands, until the further order of our said court or some one of the justices thereof.

Witness, L. S., esquire, at B., this _____ day of _____,

_____, clerk.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2324.

G. Committal for Breach of Injunction.

Whereas the plaintiff on the _____ day of _____, obtained an injunction (recite injunction; or, if writ not issued and served, whereas by an order dated, etc. Recite order for injunction). Now, upon motion, etc., and upon (if the defendant appears, hearing counsel for the defendant and) reading (if the defendant does not appear, an affidavit of, etc., filed, etc., of notice of this motion to the defendant) the said order, the affidavit of, etc. (enter evidence); and this court, being of opinion, upon consideration of the facts disclosed by the said affidavit of, etc. (or the said affidavits) that the said defendant has been guilty of a contempt of this court by a breach of the said injunction, doth order that the said defendant A. do stand committed to the _____ prison for his said contempt. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2325; 2 Seton Dec. (Eng. ed., 1862) 945.

II. Under the Codes.

A. Complaints.

1. Complaint To Restrain Negotiation of Bill or Note.

(Allege making of note for specified object, and its failure.)

II. That the defendant still retains said note in his possession; and though, on the _____ day of _____, 18— the plaintiff requested him to deliver it up, he refused so to do.

Wherefore the plaintiff demands:

1. That the defendant be enjoined from negotiating, transferring or enforcing the same.

2. That it be delivered up and canceled.

3. And for the costs of this action. 1 Abb. Forms 566.

2. Complaint on Note Against Maker and Indorser, and To Enjoin Withdrawal of Collateral Securities Held by Indorser.

I. That on the _____ day of _____, 18—, at _____, the defendant (maker), for the purpose of inducing the plaintiff to sell him certain goods, agreed to give him, in payment therefor, the said defendant's promissory note, indorsed by the defendant (indorser); and represented to the plaintiff that the said (indorser) would be adequately indemnified, by collateral security, for his indorsement.

II. That the plaintiff was thereby induced to sell and deliver to the said (maker) certain goods, of the value of _____ dollars.

III. That on the _____ day of _____, 18—, at _____, in consideration thereof, the said (maker), by his promissory note, promised to pay to the order of the said (indorser) _____ dollars, _____ months (or days) after said date.

IV. That the said (indorser) indorsed the same to the plaintiff.

V. That on the _____ day of _____, 18—, the same was presented to the said (maker) for payment, but was not paid.

VI. That due notice thereof was given to said (indorser).

VII. That the same has not yet been paid.

VIII. That the said (maker), when he procured the said indorsement from the said (indorser), lodged with him six promissory notes, for the aggregate sum of _____ dollars, made by one M. N., and indorsed by the said defendant (maker) as security for such indorsement.

IX. That the said defendant (maker) is endeavoring to withdraw the said notes from the said (indorser), in order to prevent their application in payment of the demand of plaintiff on the said indorsement.

X. That the plaintiff has requested the said (indorser) to apply the said notes to the payment of the plaintiff's said claim, but he refuses to do so.

Wherefore the plaintiff demands judgment:

1. For _____ dollars, with interest from the _____ day of _____, 18—.

2. That the notes placed in the hands of the said (indorser), as security, be applied to the payment of the said sum.

3. That the defendants be restrained by injunction from disposing of the said notes to any person other than the plaintiff. 1 Abb. Forms 566.

B. Notice of Motion for Injunction.

Please take notice that on the complaint in this action (and on the annexed affidavit) the undersigned will move the court, at a special term to be held at ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, or as soon thereafter as counsel can be heard (or will move before Mr. Justice ———, at his office, in the city of ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon),* for an injunction order to restrain the defendant, his agents and servants, from (here state concisely for what the injunction is required, as, for example, in III, A, 1, III, L); and for such other or further order as may be just. 2 Abb. Forms 328.

C. Notice of Motion for Injunction in Interpleader.

(As in preceding form to the *, continuing): that the plaintiff may be at liberty within ten days to pay into this court, in trust in this cause, the sum of ——— dollars, in the pleadings of this cause mentioned, and to deposit in such manner as the court shall direct, the two promissory notes in the complaint mentioned, for the sums of ——— and ——— dollars respectively; and that upon his so doing an injunction may be awarded to restrain the said defendant Y. Z. from (here state acts to be restrained); and for such other or further order as may be just (and for the costs of this motion). 2 Abb. Forms 328.

D. Undertaking on Injunction in Ordinary Cases.

Whereas the plaintiff is about to apply (or has applied) for an injunction restraining the above named Y. Z. from (state very briefly the object of the injunction):

Now, therefore, we (the said A. B., of ———, and) C. D., of No. ——— street, in the city of ———, merchant, and E. F., of the village of ———, builder, undertake, pursuant to the statute, that the said plaintiff will pay to the said Y. Z. such dam-

ages, not exceeding ——— dollars, as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff is not entitled thereto. And the damages may be ascertained by a reference, or otherwise, as the court may direct.

Signed and delivered in presence of (witness). 2 Abb. Forms 329.

E. Indorsement of Approval on Undertaking on Injunction.

I approve the within undertaking as to its form and manner of execution (and certify that the within named surety is worth ——— dollars over and above all debts and responsibilities he owes or has incurred). 2 Abb. Forms 330.

F. Undertaking on Injunction Against Corporation.

Whereas A. B. is about to apply (or has applied) for an injunction, which may, among other things, suspend the general and ordinary business of the defendants, the Z. Company, who are a corporation:

Now, therefore, we (the said A. B., of ———, and) C. D., of No. ——— street, in the city of ———, merchants, and E. F., of the village of ———, builder, undertake, pursuant to the statute, that the plaintiff shall pay all damages, not exceeding the sum of ——— dollars, which such corporation shall sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled to such injunction. And the damages may be ascertained by a reference, or otherwise, as the court may direct.

Signed and delivered in presence of (witness). 2 Abb. Forms 330.

G. Bond on Obtaining Injunction To Stay Proceedings.

Know all men by these presents, that we, A. B., of No. ——— street, in the city of M., and C. D., of the village of ———, are held and firmly bound unto Y. Z., of ———, in the sum of ——— dollars, lawful money of the United States of America, to be paid to the said Y. Z., his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, and our executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the ——— day of ———, 18—.

Whereas the above named A. B. has

applied to the ——— court of ——— for an injunction to stay proceedings by said Y. Z., in a certain personal action pending in the said court, wherein the said Y. Z. is plaintiff, and the said A. B. is defendant, after (verdict and before) judgment therein:

Now, the condition of this obligation is such that if the above bounden A. B. shall well and truly pay unto the said Y. Z., his executors, administrators and assigns, all such damages and costs as may be awarded to him or them by the court, at the final hearing of the cause (and if deposit is dispensed with, add: and shall also pay the sum of—specify amount of deposit—whenever ordered by the said court), then this obligation to be void; otherwise to remain in full force and virtue.

(Signatures and seals.)

Signed, sealed and delivered in the presence of (witness). 2 Abb. Forms 330.

H. Affidavit of Sufficiency of Bond on Injunctions.

C. D., a surety in the within (or annexed) bond, being duly sworn, says that he is a householder, resident within this state, to-wit, at ———, and that he is worth ——— dollars (amount of bond) over and above all debts and demands against him.

(Acknowledgment or proof.) 2 Abb. Forms 331.

I. Order Denying Motion for Injunction Without Prejudice.

Upon reading (the complaint in this action, and affidavit of M. N.), and on hearing O. P. for the plaintiff:

Ordered, that the plaintiff's motion for an injunction be denied, without prejudice to its renewal upon the same or other papers. 2 Abb. Forms 332.

J. Injunction by Judge's Order, Common Form (a).

It appearing satisfactorily to me by the affidavit of ——— (the above named plaintiff, and of M. N., dated on the ——— day of ———, 18—), that sufficient grounds for the order of injunction exists:

I do hereby order that the defendant Y. Z., his agents and servants, refrain from (here state acts to be enjoined; see III, A, 1, III, L), until the further order of this court; and in case of disobedience to this order, you will be

liable to the punishment therefor prescribed by law.

(Date.)

(Signature of judge.)

Justice of ——— court.

(Signature of plaintiff's attorney.)

2 Abb. Forms 334.

Injunction by Judge's Order (b).

In the name of the people of the state of New York. (Address to defendant):

For the causes stated in the annexed (complaint and affidavits):

You are commanded to refrain from ———, until the further order of the court.

(Date.)

(Signature of judge.)

Justice of ——— court.

(Signature of plaintiff's attorney.)

2 Abb. Forms 335.

K. Injunction by the Court.

At a special term of the ——— court of ———, held at the ——— in the ——— of ———, on the ——— day of ———, 18—.

Present: M. N., justice.

(Title of the cause.)

On reading and filing the complaint in this action (and the affidavits of ——— and ———, dated the ——— day of ———, 18—), and on motion of O. P., counsel for plaintiff:

Ordered, that the above named defendant Y. Z., his agents and servants, be commanded to refrain from (here state acts enjoined), until the further order of this court.

Enter.

(Initials of judge.)

(Signature of plaintiff's attorney.)

2 Abb. Forms 335.

L. Certified Copy of Injunction by Court for Service.

(As above, except that instead of the direction to enter, is subscribed the signature and addition of the clerk.) 2 Abb. Forms 335.

M. Order To Show Cause Why Injunction Should Not Issue, With Restraint Meanwhile.

On the annexed affidavit (or complaint verified by the affidavit of the plaintiff), let the defendant show cause before me (or at a special term of this court) at ———, on the ——— day of ———, 18—, why an injunction should not be issued restraining him from (here state acts to be en-

joined; see III, A, 1, III, L), and for such other or further relief as may be just.

And it is further ordered that said defendant, his agents and servants, be in the meantime restrained, and is hereby forbidden to suffer or commit any of said acts until the further order of the ——— court.

(Signature of judge.)

Justice of ——— court.

2 Abb. Forms 335.

N. Preliminary Injunction, With Order To Show Cause.

On the sworn complaint in the above entitled action, and on the affidavit of N. M. therein, a motion being made by D. B., of counsel for the plaintiff, for a preliminary injunction against the defendant, and sufficient reason appearing why the same should be granted:

It is hereby ordered that, until the further order of this court (here state acts to be enjoined; see III, A, 1, III, L).

And on the complaint in this action, and said affidavit of N. M., let the defendant or its attorney show cause before this court, on the ——— day of ——— instant, at ——— o'clock in the ——— noon on that day, at the city hall in the city of New York, why the foregoing order, or some order to be made of like purport and effect, should not be continued in full force, and until the final judgment and decree in this suit; and until the foregoing order is modified, let the same be in full force and effect.

(Signature of judge.)

Justice of ——— court.

(Signature of plaintiff's attorney.)

2 Abb. Forms 336.

O. Injunction Against Banking Corporation, With Order To Show Cause Why Receiver Should Not Be Appointed.

It appearing by the complaint in this action, and the affidavit of the plaintiff, that the defendants are a corporation or association, having banking powers, and exercising the business of banking under the laws of this state, and that they have refused and are unable to pay their debts; and it appearing, also, that the plaintiff is a creditor of such corporation or association, and that this action has been commenced by the service of a copy of the summons and complaint herein on the said defendants:

Therefore, on reading and filing the said complaint and proof of service, and an undertaking with sureties approved by this court, and on motion of J. B., of counsel for the plaintiff, the defendants appearing by their counsel D. L., and admitting notice of this application, it is ordered that the defendants and their officers be, and they are hereby enjoined and restrained from paying out, or in any way transferring or delivering to any person any of their moneys, property, or effects, until the further order of this court (except so far as to receive payment of the same in specie or bills of other banks of the city of ———). But the defendants are not enjoined from delivering up securities to which they have no claim.

And it is further ordered, that the said defendants show cause before this court, on Thursday, the ——— day of ——— instant, at the chambers thereof, city hall, New York, at the opening of the court, or as soon thereafter as counsel can be heard, why one or more receivers should not be appointed to take charge of their property and effects, with the usual powers of receivers in like cases, and according to the statutes in such cases made and provided. 2 Abb. Forms 336.

P. Dissolution.

1. Notice of Motion To Dissolve or To Modify Injunction.

Please take notice that on (designate papers), the undersigned will move the court, at a special term to be held at ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, or as soon thereafter as counsel can be heard (or will move before—designating the judge who granted the order—at his office in the city of ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon), that the injunction issued in this action be dissolved (or be modified so as to permit defendant to, etc.), with costs; and for such other or further relief as may be just. 2 Abb. Forms 353.

2. Order Dissolving Injunction.

(If made by the court, say: "At a special term," etc.)

On reading and filing the answer of the defendant (and the affidavit of G. H.), and on motion of M. N., counsel for defendant, and after hearing O. P., counsel for plaintiff (or and on proof

of service of notice of motion, and no one appearing) in opposition:

Ordered,* that the injunction granted by me (or by A. B., a justice of this court, or county judge of _____ county), on the _____ day of _____, 18—, against the above named Y. Z. be vacated and dissolved (with _____ dollars costs, to abide the event of the action). 2 Abb. Forms 353.

3. Order Dissolving Injunction on Ground of Abatement.

(As in preceding form to the *, continuing): That the plaintiff (or the legal representatives of the deceased plaintiff) revive this action against the (legal representatives of the) defendant within _____ days; or that, in default thereof, the injunction granted herein by me (or my M. N., a justice of this court, or county judge of _____ county), on the _____ day of _____, 18—, against the above named Y. Z. be vacated and dissolved, with _____ dollars costs. 2 Abb. Forms 354.

Q. Damages.

1. Notice of Motion To Ascertain Damages by Injunction.

Please take notice that on the undertaking and other proceedings in this cause, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard,* for a reference to ascertain the damages sustained by reason of the injunction granted in this cause on the _____ day of _____ last; and for such other or further order as may be just (and for the costs of this motion). 2 Abb. Forms 354.

2. Order of Reference as Damages by Injunction.

On reading and filing notice of this motion, and on motion of M. N., counsel for defendant, after hearing O. P., counsel for plaintiff:

Ordered, that it be referred to Q. R., to ascertain the damages sustained by the defendant by reason of the said injunction, and to report the same to the court (and that _____ days' notice of the hearing be given to C. D. and E. F., the sureties named in the undertaking given on obtaining said injunction). 2 Abb. Forms 354.

3. Notice of Motion To Confirm Report of Referee on Damages by Injunction.

(As in II, Q. 1, to the *, continuing): to confirm the report of the referee, appointed on the _____ day of _____, 18—, to ascertain the defendant's damages by reason of the injunction heretofore granted in this action (and for judgment thereon against the sureties); and for such other, etc.

(Date.)

(Signature.)

(Address to plaintiff's attorney and to sureties.)

2 Abb. Forms 355.

4. Order Confirming Report as To Damages by Injunction.

On reading and filing the annexed order to show cause (or notice of motion), and affidavit and certificate, and the referee's report, and the evidence on which the same was founded, and on motion of M. N. for the defendants, and after hearing O. P. for plaintiffs, and for (the sureties) in opposition:

Ordered, that the said report of the referee herein be, and the same hereby is, in all respects, confirmed (except as to the item of _____ dollars, paid by the defendants to the constable for his services in taking possession of the property, and attending to sell the same; and as to that item, that it be reduced to _____ dollars, and that on the defendant's consenting to such reduction the report be thereon confirmed), with _____ dollars costs of this motion. 2 Abb. Forms 355.

III. Statements of Matters Enjoined.

A. Concerning Real Property.

1. Injunction Against Waste or Alienation.

From pulling down or otherwise injuring the buildings standing on the premises hereinafter described, or any part thereof, or from committing any waste, spoil, or destruction upon the said premises, and from executing and procuring to be executed any conveyance of the said premises, to any person or persons other than to the plaintiff, or as he shall direct.

The said premises are known as _____, and are bounded and described as follows (description). 2 Abb. Forms 338.

2. Injunction Against Waste by Plowing or by Cutting Timber.

From plowing up any of the fields

forming part of the premises (designating them), from cutting down, felling, barking, or otherwise wasting or impairing any timber trees, or underwood standing and growing on (designating the premises), and from committing any further or other waste or spoil in or upon the said land and premises. 2 Abb. Forms 338.

3. *Injunction Against Waste in Respect of House or Ornamental Trees.*

From committing waste, spoil, or destruction in the mansion or other houses upon (designate the premises), and from cutting down any timber or other trees growing upon the said estates, which are planted or growing there for the protection of the said mansion and other houses belonging to the said estates, or for the ornament of the said house, or which grow in lines, walks, or vistas, or otherwise for the ornament of the said houses, or of the gardens, parks, or pleasure grounds thereunto belonging; and, also, to restrain him, his servants, workmen and agents from cutting down any timber or other trees, except at seasonable times, and in husband-like manner; and likewise from cutting saplings and young trees not fit to be cut, as and for the purposes of timber. 2 Abb. Forms 338.

4. *Injunction Against Working a Mine.*

From working the veins or seams of coal, iron, stone and other minerals lying in, upon or under the (designate lands), and from digging, getting and carrying away or selling or disposing of the coal, culm and iron, stone and other minerals produced therefrom. 2 Abb. Forms 339.

5. *Injunction Against Tenant of Mine.*

From carrying the brick-clay, or bricks or tiles made thereof, off the land (designating it); from working away sufficient barriers in the seam in the parts adjoining; from making a communication into adjoining collieries, and from draining any other mines, or permitting the same to be drained, by means of the demised colliery; and from permitting the communication complained of to continue open, and from permitting any water to flow through the same into the demised colliery; and from raising, by means of the shafts on the demised premises,

any coal of any other proprietor; and from carrying the same over the demised premises. 2 Abb. Forms 339.

6. *Injunction Against Undermining Plaintiff's Land.*

From excavating or removing any soil from any land adjoining the plaintiff's premises (designating them), which shall cause the plaintiff's land, by reason of the withdrawal of its lateral support, to fall away or subside. 2 Abb. Forms 341.

7. *Injunction Against Removing Fixtures.*

From removing or causing to be removed from the premises hereinafter described any bricks, timber, building materials, copper pans or fixtures. Said premises are known as ———, at ———, and described as follows: (description). 2 Abb. Forms 340.

8. *Injunction Against Taking Rents and Profits.*

From collecting, receiving, or intermeddling with the rents and profits of the premises known as ———, at ———, and described as follows: (description). 2 Abb. Forms 340.

9. *Injunction Against Taking Possession of Lands Without Payment.*

From entering upon any part of the lands hereinafter described, until the said defendants shall have paid the plaintiff ——— dollars; and that if the said defendants shall not pay the said sum of ——— dollars, being the residue of the purchase money of said lands, by the said ——— day of ———, then, and in such case, the said defendants are hereby restrained from in any wise proceeding with the works of their railroad, in, upon or over any part of the said lands.

The said premises are known as ———, and bounded and described as follows: (description). 2 Abb. Forms 339.

10. *Injunction Against Erection, and To Compel Removal, of Buildings.*

From continuing the projected buildings, or commencing any other buildings whatever, on the garden or plot of ground described as follows (description), or any part thereof; and also from permitting such part of the said buildings as have been already erected on the said garden or plot of ground from remaining thereon. 2 Abb. Forms 341.

11. *Injunction Against Obstructing Lights.*

From rebuilding or completing, or improving the message or dwelling house (designating it), or making or erecting any building or improvements whatsoever, or in such a manner as to darken, injure or obstruct any of the (ancient) lights or windows of the plaintiff's messages or tenements, or either of them (designating them), until the further order of the court. 2 Abb. Forms 341.

Note.—Ancient light doctrine is not generally accepted in United States.

12. *Injunction Against Violation of Covenant To Build.*

From erecting upon (here designate the land) any brewery, or other building, except one private house or ornamental cottage, to be erected on (designating what part). 2 Abb. Forms 342.

13. *Injunction Against Underletting.*

From granting or making, or contracting to grant or make, any leases, underleases, or assignments of any part of the premises (designating them), demised by A. B. to C. D. by a lease dated on, etc. 2 Abb. Forms 343.

14. *Injunction Against Carrying on Business Forbidden by Lease.*

From carrying on the auction business, or selling goods at public auction, in the store, No. _____ street, in the city of _____; and from conducting therein any business other than the regular dry goods jobbing business. 2 Abb. Forms 343.

B. *Against Nuisance.*

1. *Injunction Against Noisy Bells.*

From tolling or ringing the chapel-bell and the church-bells in the _____ church, at _____, or any of such bells, and from permitting the said bell or bells, or any of them, to be tolled or rung so as to cause or occasion any nuisance, disturbance or annoyance to the plaintiff and his family residing in his dwelling house at (designating residence). 2 Abb. Forms 340.

2. *Injunction Against Continuance of Slaughter House.*

From occupying a building erected by the defendant Y. Z. on the north side of Twelfth street, between Fifth and Sixth avenues, in the city of New York, as a slaughter house, and from

slaughtering any animals in such building, and from permitting the building to be used as a slaughter house. 2 Abb. Forms 340.

3. *Injunction Against Nuisance, Burning Brick.*

From burning or manufacturing, or causing to be burnt or manufactured, bricks on a piece of land or premises in the defendant's possession (describe the premises by name or abutments, or otherwise. If by abutments, the description may be thus: abutting on the east, south and west on the lands and premises of the plaintiff), situate in the town of _____ in the county of _____, and whereon is erected a brick kiln, so as to occasion damage or annoyance to the plaintiff as owner, or to his tenants respectively as occupiers, of a dwelling house of the plaintiff (describe the plaintiff's premises), situate in _____ aforesaid. 2 Abb. Forms 340.

C. *Transfers of Property.*

1. *Injunction Against Transferring Negotiable Paper.*

From indorsing, assigning, or in any way transferring (here describe the note or bill, e. g., thus), a bill of exchange drawn by M. N. upon the above named A. B. for _____ dollars, bearing date on or about the _____ day of _____, 18—, and payable _____ months after said date, and accepted by said A. B. 2 Abb. Forms 343.

2. *Injunction Against Transfer of Stock.*

From selling, or transferring, or incumbering, _____ shares of the capital stock of the _____ company, standing on the books of the said company in the name of _____; and the said company are, in like manner, restrained from permitting such sale, transfer, or incumbering (and from paying any dividend thereon), without the order and direction of this court. 2 Abb. Forms 343.

3. *Injunction Against Transferring Assets.*

From selling, assigning, transferring, pledging, or otherwise disposing of, any of his property, except what is by law exempt from execution; or from in any manner interfering therewith until the further order of the court. 2 Abb. Forms 344.

D. *Copyrights, Trade Marks, Etc.*

1. *Injunction Against Publishing.*

From printing, publishing, or causing

or being in any way concerned in the printing, publishing, or selling, or exposing to sale, or otherwise disposing of, any copies of (designate book), or any other book purporting to be or resembling the book so printed, published and sold by or for plaintiff (other than and except plaintiff's own selection, printed and published by plaintiff's order, and for plaintiff's own use and benefit. 2 Abb. Forms 344.

2. *Injunction Against Publishing Private Letter.*

From printing, publishing, circulating, or in any manner, either by writing or otherwise, making public a letter written by M. N. on or about the _____ day of _____, 18—, and forwarded to O. P. at _____, or any part thereof. 2 Abb. Forms 344.

3. *Injunction Against Disclosure of Secrets by Clerk.*

From taking or retaining any copies of, or extracts from, any of the books, papers, documents, or extracts of the above named A. B. & Co., or either of them, in the possession, custody, or power of the defendant; and from communicating the said particulars, or the contents thereof, or any of the information therein contained, to any person or persons whatever; and from communicating any of the information possessed or acquired by him relating to the said co-partnership, or the affairs or secrets thereof, or the clients thereof, by means of his having been employed as accountant or clerk by said A. B. & Co., and having access to said books, papers, and documents. 2 Abb. Forms 344.

4. *Injunction Against Use of a Secret in Trade by One Who Acquired it in Violation of Contract.*

From selling, or causing or procuring to be sold, under the title and designation of "Morison's Universal Medicine," or "Morison's Vegetable Universal Medicine," any medicine made or manufactured by the defendant, or by or under his order or direction; and from making or compounding any medicines according to the secret in the complaint mentioned, etc.; and from in any manner using the secret of compounding the said medicines, or any part thereof. 2 Abb. Forms 345.

5. *Injunction Against Infringement of Trade-Mark.*

From selling or exposing for sale, or procuring to be sold, any composi-

tion or blacking described as, or purporting to be, blacking manufactured by Day & Martin, in bottles, having affixed thereto such labels as are mentioned in the complaint, or any other labels, so contrived or expressed as, by colorable imitation or otherwise, to represent the composition or blacking sold by the said defendant to be the same as that manufactured and sold by the plaintiff; and from using trade-cards, so contrived or expressed as to represent that any composition or blacking sold, or proposed to be sold by the defendant, is the same as that manufactured or sold by the plaintiff. 2 Abb. Forms 345.

6. *Injunction Against Infringement of Sign.*

From running, or in any manner using or causing to be used, for the conveyance of passengers, any omnibus, having painted, stamped, printed, or written thereon the words or names, "London Conveyance," or "Original Conveyance for Company," or any other names, words, or devices painted, stamped, printed, or written thereon, in such manner as to form or to be a colorable imitation of the names, words, and devices painted, stamped, printed or written on the omnibuses of the plaintiffs. 2 Abb. Forms 345.

E. *Partnerships.*

1. *Injunction Against Interfering With Partnership Matters.*

To restrain the defendant Y. Z. from selling, assigning, or transferring, receiving, collecting, discharging, or encumbering, or in any manner disposing of or interfering with any portion of the property, real or personal, of the co-partnership heretofore (and now) existing between the plaintiff and defendant, and of which an accounting is sought in this action, or of the debts, accounts, and demands, contracts, bills, bonds, notes, or evidences relating thereto, things in action, or other equitable property or interests and effects of any kind whatever of said co-partnership, or in which they have an interest, and from doing, or suffering to be done, any act or thing to enable any person to obtain any portion of said property. 2 Abb. Forms 347.

2. *Injunction Against Interfering With Partner's Rights.*

From applying any of the moneys and effects of the co-partnership otherwise than in the ordinary business, and

from obstructing or interfering with the plaintiff in the exercise and enjoyment of his rights under the partnership articles. 2 Abb. Forms 347.

F. Injunction Against Reorganization of Corporation.

That the said corporation, and the agents and officers thereof, be restrained from conveying, assigning, or making over the real and personal property of the city, or any part thereof, to any person or persons, upon and for the purposes (designating those intended), or any of such purposes, or in any other manner, in furtherance of the intention of the society to surrender the existing charter; and from affixing the common seal of the society to any deed or instrument for such purposes, or any of them; and from surrendering the existing charter, and affixing the common seal of the society to any deed or instrument for that purpose; and from accepting a new charter, or any charter, inconsistent with the existing charter of the society. 2 Abb. Forms 348.

G. Restraining Proceedings at Law.

1. Injunction Against Entering Confession of Judgment.

From entering up judgment on a warrant of attorney (or statement of confession), executed by the plaintiff A. B. to the defendant Y. Z. (or otherwise naming the parties), and dated on or about the _____ day of _____, 18—, and from commencing any proceedings thereon. 2 Abb. Forms 347.

2. Injunction Against Proceeding in Ejectment.

To restrain the defendant Y. Z. from proceeding further against the plaintiff A. B. in the action commenced against him in the _____ court of this state, for the recovery of the possession of (designating premises), with their appurtenances; and also from instituting or proceeding in any new or other action at law for the recovery of the possession of said premises or any part thereof. 2 Abb. Forms 351.

3. Injunction Against Proceeding at Law on Contract.

To restrain the defendant Y. Z. from proceeding further in his action at law against A. B., above named, upon the bond of the said A. B., dated the _____ day of _____; and from instituting or proceeding in any new or other action at law upon such bond; and from commencing any action or

actions against the plaintiff for the recovery of (designating the alleged debt). 2 Abb. Forms 351.

4. Injunction Against Proceeding, With Leave To Proceed To Judgment.

(As above, adding): But you are at liberty, without prejudice to the equitable rights of the plaintiff, to proceed to judgment only in the suit at law which you have commenced against the said A. B., notwithstanding this injunction. 2 Abb. Forms 352.

5. Injunction Against Proceedings at Law in Case of Interpleader.

(Add to III, G, 3): Upon the plaintiff paying into the hands of the clerk of this court the sum of _____ dollars, mentioned in the complaint in this action. 2 Abb. Forms 352.

6. Injunction Against Proceeding for Dispossession.

From taking any proceedings to dispossess the plaintiff from the house and lot, No. _____ street, in the city of _____, and particularly from issuing any warrant of removal, or taking possession upon proceedings commenced before Judge M. N., of the county of _____, on the ground that the demised premises were deserted by the tenant (or that rent was unpaid). 2 Abb. Forms 352.

H. Injunction Against Contractor Interfering After Forfeiting Contract.

From retaining possession of, or entering upon, or interfering with, the main line of the plaintiff's railway from H. to C., and the branch line of railway from the main line to the intended junction with the M. and L. Railway at T., and the works connected with the main and branch lines respectively; and from proceeding in any manner to construct, complete, or repair the works, by the contract of the _____ day of _____, 18—, agreed to be constructed, completed, or repaired, or any of such works; and from removing, or causing or permitting to be removed, the materials of any description being on or about the said lines of railway and works, or any part thereof respectively, or any of such materials; and from in any manner interfering with or disturbing the possession or use or enjoyment by the company, their officers, contractors, agents, servants, or workmen, of the

said lines of railway and works, or any part of the same respectively; and from in any manner obstructing or preventing the company, their officers, contractors, agents, servants, or workmen from constructing, completing, or repairing the said works by the contract agreed to be constructed, completed, or repaired, or any of such works; and from in any manner interfering with or preventing the company, their officers, contractors, agents, servants, or workmen, in the use or employment of the said materials in constructing, completing, or repairing the works, or any of them. 2 Abb. Forms 342.

I. Injunction Against Resuming Practice, After Having Sold Business.

From practicing as an attorney or solicitor in any part of ———, either in his own name or in the name of any other person; and from endeavoring to induce any persons who were the clients of B. & C. to cease or abstain from employing A. & B. as their attorneys or solicitors. 2 Abb. Forms 344.

J. Injunction Against Authorizing Laying of Railroad in City.

That an injunction order may be issued by this court, directed to the said defendants, the mayor, aldermen, and commonalty of the city of New York, their counselors, attorneys, solicitors, and agents restraining and enjoining them, and each and every of them, and all others acting in aid of assistance of them, from granting, or in any way or manner authorizing, J. S. and others, the persons named in a resolution, a copy of which is hereto annexed, or their associates, or any other person or persons whomsoever, the right, liberty or privilege of laying a double or any track for a railway in said Broadway, from the South Ferry to 57th street, or any railway whatsoever in said Broadway, or of breaking or removing the pavement, or in any other manner to obstruct the said street, preparatory to or for the purpose of laying or establishing any railway therein. 2 Abb. Forms 341.

K. Injunction Against Laying Railroad in City Street.

From entering into, or upon, Greenwich and Washington streets for the purpose of laying or establishing a railroad therein, and from digging up or subverting the soil, or doing any

other act in those streets tending to inumber them, or to prevent the free and common use thereof, as the same shall have been heretofore enjoyed (until compensation shall have been made therefor, pursuant to the provisions of the statute). 2 Abb. Forms 342.

L. Injunction Against Stopping a Way.

From stopping up, obstructing, or injuring, or from continuing to stop up, obstruct, or injure the free passage of (distinctly designating the way). 2 Abb. Forms 341.

INJURIES TO PERSONS.

I. Declarations, 636

- A. *Injuries, Falling Into Area Way*, 636
- B. *Against Manufacturer of Elevator, Injury While Testing*, 637
- C. *Injury to Employe Using Defective Appliance*, 638
- D. *Injury to Person Passing in Unloading Wagon*, 639
- E. *Injury Caused by Defective Insulation of Electric Light Wires*, 639
- F. *Injury to Child by Improperly Guarding Machinery*, 641
- G. *Collision Between Row Boat and Tug*, 641
- H. *Injuries by Collision Between Street Cars*, 642
- I. *Action by Being Run Over While on Track*, 643

II. Complaints, 643

- A. *Injuries Caused by Unguarded Excavation Near Sidewalk*, 643
- B. *Injury to Employe, Defective Appliance*, 644
- C. *Injuries Received at Grade Crossing*, 644
- D. *Injuries Caused by Train Falling Through Bridge*, 645
- E. *Injuries by Sudden Start of Train*, 646
- F. *Injuries on Jumping From Street Car, Collision Being Imminent*, 646

III. Defenses, 647

- A. *Alleging Failure To Use Proper Care*, 647
- B. *Failure To Observe Approach of Train*, 647
- C. *Setting Up Act of God*, 648
- D. *Claim Satisfied and Discharged*, 649
- E. *Satisfaction by Co-Defendant*, 649

IV. Demurrer, That Negligence Is Insufficiently Alleged, 649

V. Reply to Claim of Satisfaction, 649

CROSS REFERENCES:

ADMIRALTY:

Label for Assault and Battery
Against Master and Mate.

ANIMALS:

Declaration for Keeping a Dog Ac-
customed To Bite;
Complaint for Keeping a Mischiev-
ous Dog, by Which Plaintiff Was
Bitten.

ASSAULT AND BATTERY:

Declaration for Common Assault on
Person;
Declaration, Trespass for Assault and
Battery;
Declaration by Master for Battery
of Servant;
Declaration by Husband for Battery
of Wife;
Complaint for Assault and Battery
(a. b);
Complaint for Assault and Battery
and False Imprisonment.

CASE (THE ACTION OF TRESPASS ON
THE):

Declaration Against Occupier of
House for Laying Rubbish in the
Street Whereby a Carriage Was
Overturned.

DEATH BY WRONGFUL ACT:

Notice of Injury;
Complaint, Death by Wrongful Act
Setting Out Defect;
Notice of Injury to Railroad Com-
pany;
Complaint Against Railroad by Per-
sonal Representative for Negligence
Causing Death;
Complaint Against Owner of Ware-
house, Walls of Which Fell on
Deceased;
Answer, Setting Up Contributory
Negligence;
Declaration Against a Railroad, Run-
ning Over Intoxicated Person.

MASTER AND SERVANT:

Declaration for Negligence, Not Pro-
viding a Safe Place for Employee;
Complaint by Servant of Railroad,
Injured by Defective Machinery;
Notice to Employer of Injury;
Complaint for Wrongful Discharge
After Agreement To Employ in
Consideration of Release for Per-
sonal Injuries.

MUNICIPAL CORPORATIONS:

Complaint Against Municipality, Neg-
lect of Excavation in Street.

NEGLECT:

Declaration Against Owner of Coach

for Negligence of Servant in Driv-
ing Against Chaise;

Complaint, Negligence of Servant in
Driving Against Plaintiff's Ve-
hicle;

Complaint Against Railroad, Cross-
ing Accident;

* Complaint for Laying Rubbish in
Street Whereby Plaintiff Was
Thrown Out of Carriage;

Complaint for Keeping Open Dan-
gerous Hatchway Through Which
Plaintiff Fell;

Answer, Plaintiff's Own Negligence
in Falling Into Hole.

I. Declarations.

A. *Declaration, Injuries Caused by
Falling Into Unguarded Area-
way.*

"And whereas, also, the said de-
fendant, before and on March 19, A. D.
1888, was the possessor and owner of
certain other premises, with the ap-
purtenances, situate in the city of
Grand Rapids, in the county aforesaid,
upon which said premises the said de-
fendant owned and possessed a build-
ing which was occupied and used for
various business purposes, a portion of
said building being used as a theatre.

"And whereas, there now is, and be-
fore and on the same day and year
aforesaid there were, several separate
public entrances and exits to said
building on the east side thereof, sit-
uate upon the premises aforesaid, and
there now is, and before and on the
same day and year aforesaid there
was, a sidewalk built on said prem-
ises upon the east side of said build-
ing for all persons to pass and re-
pass at their free will and pleasure
into and from said building, as well
as for all persons to pass and repass
at their free will and pleasure from
Pearl street to Lyon street, in the
city of Grand Rapids, in the county
aforesaid, and which had for a long
time theretofore been used by the pub-
lic as aforesaid, and which said user
was upon the invitation of the said
defendant, and with his full knowledge
and consent.

"And plaintiff further avers that
there now is, and before and on the
same day and year aforesaid there
was, a certain area or hole opening
into a certain cellar or vault of, and
belonging to, said building and prem-
ises of the defendant, which said area
or hole opening into said cellar or vault

as aforesaid was situate on said premises upon the east side of said building, and between said building and said sidewalk so built along the east side of said building, as aforesaid.

"Yet the said defendant, well knowing the premises, while he was so the possessor and owner of the said building and premises with the appurtenances, and while there was such area or hole as aforesaid, to-wit, on the day and year aforesaid, wrongfully and negligently permitted the said area or hole to be and continue, and the same was then and there, so negligently, insufficiently, and defectively guarded that by means of the premises, and for want of proper and sufficient guards to the said area or hole, the said plaintiff, who was then and there passing along said sidewalk on said premises, situate along the east side of said building as aforesaid, with reasonable and due care, and without negligence on his part, accidentally and unavoidably fell into said area or hole, by means whereof the said plaintiff then and there became and was greatly hurt, cut, bruised, and wounded," etc. *Brezee v. Powers*, 80 Mich. 172, 45 N. W. 130.

B. Declaration Against Manufacturer of Elevator for Injury to Servant of Owner While Testing.

And for a second count in this behalf the plaintiff avers, that heretofore, to-wit: on the 2nd day of February, 1881, Digby V. Bell, Samuel Post and Charles B. Haynes, doing business under the name of the Detroit Soap Company, employers of said plaintiff, were engaged or about to engage in the manufacture of bar soap; that from thence to the time of the injury hereinafter mentioned, said plaintiff continued to be the servant of said employers, whose duty it was, together with other servants so likewise employed, to perform general work and labor in the manufacture of said soap, and handling the same during the different processes of manufacture and preparation of the same for market. That defendant was engaged in the business of manufacturing and putting up machinery, and professed to be skilful in the erection and setting up of hoisting apparatus, known as elevators, and competent to construct and set up the same in a

workmanlike manner, and in such complete order that the same, with reasonable care, could be used and run without danger of injury to human life; that so professing his competency as aforesaid, as a convenient means of delivering said soap from one floor to another of the building used and occupied by the employers of said plaintiff for the manufacturing purposes aforesaid, the said defendant constructed and set up in the building aforesaid, for the employers of said plaintiff, the said hoisting apparatus or machine called an elevator, for the use of said employers and their servants, and to enable said employers and their servants to remove said soap from one floor to another of said premises, as might be necessary and convenient in the manufacture of said soap, and the preparation of the same for market; that said defendant having so constructed and provided said elevator, as aforesaid, heretofore, to-wit: on the 25th day of June, 1881, professed to the employers and to the servants of said employers, and represented to said employers, to said servants, and to this plaintiff, that said elevator in the said premises was placed and set up by him for the purposes aforesaid, and was intended by him to be used by said employers and their servants for the purpose of enabling them so as aforesaid to remove said soap from one floor to another of said premises, as might be necessary and convenient for said employers, or for their said servants, in the due performance of their duty, as workmen in and about said premises; and said defendant professed and particularly represented to each and all of the parties aforesaid that said elevator was so constructed as to run either by steam or hand power, was in complete running order and would safely lift or carry two thousand pounds. And thereupon the said plaintiff, confiding in the representations aforesaid, and by command and at the request of said defendant, not knowing that said elevator was dangerous and unsafe for such purpose, with due and proper care and skill in that behalf, and in the ordinary performance of his duty in handling said soap, went upon said elevator. That at the time he so went upon said elevator, the said elevator was wholly unsafe and dangerous, and was not in complete run-

ning order, and would not safely lift or carry two thousand pounds; and that defendant then knew, and from long before then, well knew, and had full means of knowing the same was dangerous, and likely to break and fall down and injure persons when used in the ordinary manner, for the purposes aforesaid, and with a much less weight than two thousand pounds; that it was the duty of said defendant not to so have provided said elevator in said state for the said purpose, but to have properly constructed said elevator, and to have taken care that said elevator was not unsafe and dangerous, but was put up in a proper and safe state for the purposes aforesaid, and would safely lift or carry two thousand pounds; and said duty particularly devolved upon said defendant, in that any unskillful, improper or unworkmanlike construction of the same, or the putting up of the same, so that it would not safely lift or carry two thousand pounds, would be in the use and running of the same imminently dangerous to human life, as defendant well knew. That by reason of the aforesaid insecure, wrongful and improper conduct of said defendant, in not taking care that said elevator was safe and sufficiently and properly constructed for the purposes aforesaid, and the dangerous, insecure and unsafe state of said elevator, the same while being so used as aforesaid, by said plaintiff, in the ordinary manner, and with due and reasonable skill and care, and while the said plaintiff was upon it, and with a weight much less than two thousand pounds, to-wit: fourteen hundred pounds, and while said elevator was in the vicinity of one of the upper floors of said building, the said elevator broke, fell and dropped to the lower floor, whereby and by reason whereof the plaintiff had two ribs broken, was injured in his spine, and was otherwise greatly cut, wounded, bruised, maimed and lamed, so as to be unable to perform any service for his employers, or to earn any compensation therefor, for a long space of time, to-wit: one month, and was so permanently injured, that though afterwards partially recovering, yet from thence hitherto the said plaintiff, by reason of his inability and inefficiency, occasioned by the injury aforesaid, has been obliged to work for a much less sum than he otherwise could have

earned; and will hereafter at all times be obliged in consequence of said injury to work for a much less sum than he otherwise would have been able to earn, and was also obliged to pay out a large sum for medical attendance; and also suffered great pain of body and mind, to-wit: in the county aforesaid. *Necker v. Harvey*, 49 Mich. 517, 14 N. W. 503.

C. Declaration, Injury to Employee Using Defective Appliance.

"*Morris Burk*, plaintiff herein, a resident of said county, by *J. W. Donovan*, his attorney, complains of above-named defendants, also doing business in said county, of a plea of trespass on the case, filing this amended declaration, and the original hereof, as commencement of suit.

"For that whereas, said plaintiff, while yet a minor (he having only come of age in April, 1890), and while in the employ of said defendants, who were box and wood material makers at Wyandotte, in said county, as a common laborer in and about defendants' works, to-wit: about May 11, 1887, while under the direction, management, and control of said defendants as aforesaid, was injured as hereinafter set forth, to-wit: At the date and place aforesaid the defendants were box-makers and wood-workers, and in and about which employment defendants' employes were required to use certain swift-running and dangerous machinery, also owned and managed by defendants, to-wit: wheels, belts, and pulleys, knives and shafts, all run by steam power, and to manage which it became and was the duty of said defendants to use care, caution, and strong, safe, and sound machinery, in and about its manufacturing of box material, staves, timbers, and divers kinds of wood-work, as aforesaid, and to keep the same in safe condition; yet said defendants, well knowing the premises, and carelessly neglecting to provide said works (in which plaintiff was set to work by defendants, their servants and agents) with the usual safe wheels, belts, pulleys, shafting, and sound machinery, did, to-wit: on the day aforesaid, carelessly neglect, allow, and permit a portion of their said belting, to-wit: one of the main belts in the shop where plaintiff was employed, to become worn, weak, broken, frayed out, unsafe, and dangerous

to this plaintiff, and to all other persons in their said employ, and the workmen in and about said factory.

"And plaintiff avers that, while in his regular employ as laborer and helper in said works, he was sent and directed by the foreman of said works to put a belt on one of the shafts aforesaid, in the regular way, and did carefully proceed and attempt to adjust said belt as usual, and which, if sound, could be put on with ease and safety, not knowing its weak, half broken, and dangerous condition, when a loose strip of said belt suddenly caught and entangled the plaintiff's left arm, drawing it violently over the wheel and shaft, and breaking the wrist, forearm, and arm and fingers of plaintiff, without any fault of his own, and by and through the carelessness of said defendants in permitting the use of said unsafe, frayed out, and dangerous belt, which the defendants well knew to be unsafe, unsound, and dangerous; whereby this plaintiff, on the day aforesaid, while in said employ, and in the due discharge of his duty (in working around said machinery), and without any carelessness on his part, and while exercising due and proper care, was caught and mangled by said broken and unsafe belt connected with said machinery, which so entangled his arm as to draw him violently over the wheel of defendants' works, while in swift motion, instantly wrenching and twisting and crushing plaintiff's left wrist, forearm, and arm, hand, and fingers, causing plaintiff great sickness and bodily disorder therefrom, for about one year thence next following; and also causing said arm to be shorter by an inch than the plaintiff's other arm, and greatly deforming said left arm, hand, and fingers of plaintiff, and permanently disabling and injuring this plaintiff from earning his usual wages, to-wit, about \$10 a week, for one year, and from earning full wages ever since said date, to his loss and damages in wages \$1,000, and fully \$200 for board and nursing, and from which injuries plaintiff had never fully recovered, and is permanently injured, all without fault of plaintiff, and wholly by and through the carelessness and negligence of defendants in failing to keep, provide, and use safe, sound, whole, and reliable belts and machinery as aforesaid, especially after having been

warned of the ragged, torn, broken, and unsafe condition of the belt aforesaid, which defective belt broke and injured plaintiff in the manner aforesaid, to his damage \$10,000, whereby an action hath accrued to plaintiff as aforesaid, and therefore he brings suit, etc." *Burk v. Burrell*, 88 Mich. 289, 50 N. W. 296.

*D. Declaration, Injury to Person
Passing in Unloading Wagon.*

"And the plaintiffs say that the defendants are teamsters and common carriers, and as such were by their agents and servants engaged in unloading and delivering from a wagon a cask of oil across the sidewalk in Broad Street in Boston into the warehouse of Mixer & Whitman there situate; and the female plaintiff was passing along said sidewalk at the same time, and in the exercise of due care attempted to pass over and across the skids then and there placed by the defendants' agents and servants from the wagon across the sidewalk into the warehouse, and then and there being used by them in unloading and delivering the cask of oil as aforesaid, that she might proceed upon her lawful business without delay; but the defendants' agents and servants so carelessly and negligently managed and handled said cask of oil, and so carelessly and negligently failed to control it, that said cask of oil came upon the female plaintiff, throwing her down with great violence, crushing and fracturing her hip, and inflicting other serious injuries upon her person, by reason of all which the female plaintiff has lost the use of her hip and leg, and has suffered great pain of body, and anguish of mind, has become permanently disabled, and her general health permanently impaired." *Murphy v. Deane*, 101 Mass. 455.

E. Declaration, Injury Caused by Defective Insulation of Electric Light Wires.

"Also for that, whereas, the said defendant, the Jersey City Electric Light Company, heretofore, to-wit, on the 25th day of August, 1898, was the owner and did operate, manage, and control a certain electric light and power plant, with its machinery, poles, wires, and appliances, in the city of Jersey City, in the county of Hudson aforesaid. And whereas, the said defendant, on the day and year afore-

said, in the city of Jersey City, in the pursuit of its said business, had the management and control of a certain line of electric light and power wires extending through and along various streets in the city of Jersey City, in the county of Hudson aforesaid, and into various houses and buildings located on the line of said streets, one section or portion of which line extended through and along a certain street or avenue in said city called or known as 'Bergen Avenue,' over which said street the said line was suspended by poles, and from said poles on Bergen Avenue said wires were strung or conducted to and into a certain building known as the 'Carteret Club House,' and said wires, consisting of two lines of wires, were strung or suspended from said line of wires to a certain light or air shaft in said Carteret Club House to a point in the easterly side of said light shaft, and were then continued in a downward course to a converter and transformer on the westerly side of said air shaft, and within a short distance of the floor or bottom of said shaft, which floor or bottom of said shaft formed the room of the toilet room in said building, and said two wires were then turned eastwardly and southwardly and upwards into the southerly wall of said light shaft, forming a network of wires in said shaft in said building known as the 'Carteret Club House.' And whereas, the said defendant, on the 25th day of August, 1898, was accustomed, and for a long space of time theretofore, to-wit, for the space of two years, had been accustomed, to use said line of wires for the purposes of furnishing light and power to buildings and manufactories in said city of Jersey City by electricity, and to that end was accustomed, and for the said space of time had been accustomed, to pass and did pass through said line of wires, and through each and every wire of said line in said light shaft, a strong and powerful current of electricity, dangerous to the life of any human being who might come in contact therewith. And the plaintiff avers that at the time the defendant so placed its wires in said light shaft of said Carteret Club House it well knew it would be necessary for mechanics and others to enter and

work therein, in and about the care and repair of said light shaft, and that it was the duty of the said defendant to keep the said wires safely, securely, and completely insulated, so that workmen and others lawfully entering in and upon said light shaft should not be injured by contact therewith; but that the said defendant, notwithstanding such knowledge, and disregarding its said duty in the premises, carelessly and negligently maintained the said wires, and carelessly and negligently protected the same by defective insulation, and carelessly and negligently failed to protect and cover said wires with safe or sufficient insulating material, and carelessly and negligently permitted the covering used thereon to become worn, defective, and wholly insufficient to render them safe to persons coming in contact therewith. And the plaintiff further says that on the day and year aforesaid, at Jersey City, in the county of Hudson aforesaid, while the said plaintiff was lawfully engaged at work in repairing and refitting the said air shaft, he, the said plaintiff, came in contact with one of the said wires without any fault, carelessness, or negligence on his part, and thereby received said current into his body, through and by means of which he, the said plaintiff, was greatly shocked, burned, hurt, and wounded, maimed, sick, sore, and disordered, and so remained and continued for a long space of time, to-wit, from thence hitherto, during all which time he was hindered and prevented from performing and transacting his lawful affairs and business during that time to be done and transacted, and will continue so for the remainder of his life, and also was forced to pay, lay out, and expend a large sum of money, to-wit, the sum of one thousand dollars, in and about endeavoring to be healed of his burns, wounds, sickness, and disorder, and in caring for himself, to-wit, at Jersey City aforesaid. Wherefore, and by reason of the premises, he, the said plaintiff, saith that by the wrongful acts, omissions, and negligence of the said defendant the said plaintiff is injured and hath sustained damage in the sum of twenty thousand dollars, and therefore he brings his suit," etc. *Anderson v. Jersey City E. L. Co.*, 63 N. J. L. 387, 43 Atl. 654.

F. Declaration, Injury to Child by Improperly Guarding Machinery.

"That, on the 25th day of April, 1884, the defendant was possessed of, using, operating and controlling a planing mill, 347 feet east of South Lincoln street, 322 feet south of Blue Island avenue, and 116 feet west of South Wood street, in Chicago, Cook county, Illinois; that said planing mill was an open and unguarded structure situated in a lot or parcel of land to which free access was allowed, where children were allowed and permitted, with the knowledge and consent of the defendant, to congregate and play at pleasure adjacent to certain streets and highways in the midst of a thickly settled and populous district of said city, and supplied with certain dangerous machinery, to-wit, planers, consisting among other things of certain revolving interlocking cog-wheels of such a character as to be attractive to children, and appeal to their childish curiosity, the dangerous character of which the defendant knew; that the defendant, well knowing the premises, while so operating said mill, and while said mill remained open and children were allowed to play around it as aforesaid, wrongfully, carelessly, negligently and improperly permitted the third planer from the north end of said mill to be, and continue badly, insufficiently and defectively covered, and the plaintiff, a child of the age of nine years, drawn and attracted to said dangerous machinery by childish curiosity, then and there necessarily and unavoidably, while exercising all due care and caution for his own safety, had his left hand caught in said interlocking wheels, and four fingers of his said left hand so badly injured that the said fingers had to be amputated, and the thumb of his left hand was split and torn, and thereby suffered great pain and mental anguish, was prevented from transacting his business and lost large gains and profits, and his means of making and earning a living were greatly reduced, and his said injuries are permanent and lasting; that he expended five hundred dollars endeavoring to be healed."

The second count contains substantially the same allegations and the additional allegation, "That said planing mill and platform on which the plan-

ers were located was, with the knowledge and consent of the defendant, a common playground for children." *Jensen v. Wetherell*, 79 Ill. App. 33.

Note.—The court said: "The filing nine counts for the purpose of stating the facts which appellant relies on seems to us wholly unnecessary."

G. Declaration, Collision Between Row-Boat and Tug.

"In a plea of the case, for that the said plaintiff at Northport, in said county of Waldo, on the 23d day of August, A. D. 1877, was in a small row-boat upon the waters of the Penobscot bay, a public thoroughfare for boats, vessels and steamers, and in the use of ordinary care, and the said Ross and Howell were, then and there, by their servants and agents, in possession of a certain steam tug-boat, called the C. B. Sanford, to the side of which said Ross and Howell by their servants and agents then and there in charge of the said steam tug-boat had then and there attached a vessel, and was then and there towing the same by force of the steam of said tug-boat.

"And the said plaintiff avers that the said Ross and Howell by their said servants and agents, then and there in charge of said steam tug-boat and vessel thereto attached, so negligently, carelessly, and unskillfully managed said boat and vessel that the said vessel for want of good and sufficient management, then and there fell foul of, ran down, and capsized the said row-boat of plaintiff, in which she then and there was as aforesaid, and then and there threw the plaintiff into the water, and dragged her a great distance, to-wit: five hundred feet, at great speed through the water, dislocated her right shoulder, broke one of her ribs, fractured two other of her ribs, jammed, bruised and otherwise injured said plaintiff internally and externally, by reason whereof her life was despaired of, and on account of all which she was greatly frightened and has endured great pain, agony and suffering, been put to great expense in surgical and medical attendance and for nurse, medicine and board, and has been obliged to give up her business, and has become, as she avers, permanently injured, maimed and disfigured for life, and disabled, all to the damage of said plaintiff (as

she says) the sum of six thousand dollars." *Gilmore v. Ross*, 72 Me. 194.

II. *Declaration, Injuries by Collision Between Two Street Cars.*

"Rebecca C. Beath, plaintiff herein, by Fred H. Warren, her attorney, comes into court, according to the form of the statute authorizing the commencement of suit by declaration, and complains of the Rapid Railway Company, a corporation organized and existing under and by virtue of the laws of the state of Michigan, of a plea of trespass on the case, for that whereas, heretofore, to-wit, on the 17th day of October, A. D. 1895, and for some time prior thereto, said defendant was a body corporate, organized and existing under the laws of the state of Michigan, and was then and there engaged in the business of maintaining and operating a certain line of railway extending along the Gratiot road, so called, from the city of Detroit, in the county of Wayne, to the city of Mt. Clemens, in the county of Macomb, upon which line of railway it operated and propelled cars by means of electricity, and was upon, to-wit, the 17th day of October, A. D. 1895, and ever since has been, and now is, engaged in the business of carrying goods and passengers for hire, as a common carrier, on the line of its said railway so maintained and operated in the counties aforesaid.

"And plaintiff further alleges that on, to-wit, the 17th day of October, A. D. 1895, she was a passenger upon defendant's said railway, in a car belonging to and operated by said defendant, running on the Gratiot road, so called, to and towards the city of Detroit; and she then and there paid or caused to be paid to said defendant the full fare demanded by it for passage in said car over its said line of railway, to-wit, from the said city of Mt. Clemens to the said city of Detroit. And thereupon it became and was the duty of the defendant safely then and there to carry and convey the said plaintiff from the said city of Mt. Clemens to the city of Detroit, aforesaid, and to exercise great care in directing, propelling, operating, and maintaining the said car in which plaintiff was a passenger so that said car would pass safely over its said line of railway, to-wit, from the city of Mt. Clemens to the city of Detroit

aforesaid, and to so direct, manage, control, maintain, and operate its said line of railway that the cars running thereon, to-wit, on the Gratiot road, so called, between said above-mentioned cities, would not be brought into collision with each other while running back and forth over and along said line of railway aforesaid; and it also became and was the duty of said defendant to employ careful, competent, skilful, prudent, and sober servants and agents to handle, control, direct, manage, and operate its cars running on and along its said line of railway, and to so direct, manage, and control the movement and operation of its said cars that they would not strike, collide with, or in any manner interfere with each other while running on and along said line of railway, and particularly so that the car in which plaintiff was a passenger would not be brought into collision with any other car propelled or driven over defendant's said line of railway in an opposite direction, or otherwise.

"And plaintiff further alleges that said defendant did not regard its said duties, but, on the contrary thereof, wrongfully, negligently, and wilfully disregarded the same, in this, to-wit, that it did not then and there safely carry and convey said plaintiff from said city of Mt. Clemens to said city of Detroit; that it failed to exercise due care in directing, propelling, operating, managing, and maintaining said cars in which plaintiff was a passenger so that it would pass safely over said line of railway aforesaid; that it did not so direct, manage, control, maintain, and operate its said line of railway as to avoid a collision between the cars running back and forth thereon; that it did not employ careful, competent, skilful, prudent, and sober servants and agents to handle, control, direct, manage, and operate its cars running on and along its said line of railway, and failed to so direct, manage, and control the movement and operation of its said cars that they would not collide with each other, and particularly so that the car in which plaintiff was a passenger would not collide with any other car of said defendant's being propelled or driven over said line of railway in an opposite direction, or otherwise.

And plaintiff further alleges that as the car in which she was a passenger

was being propelled and driven on said line of railway along the Gratiot road, so called, to-wit, from said city of Mt. Clemens towards the city of Detroit aforesaid, and when it had reached a certain point in the said county of Macomb between switch number five (5) and switch number four (4), to-wit, about three and one-half miles from said city of Mt. Clemens, the defendant, by its servants and agents, acting for and in its behalf, wrongfully, negligently, and wilfully disregarding its duties as aforesaid, then and there so improperly, carelessly, heedlessly, recklessly, and negligently drove, propelled, directed, operated, and managed its cars running each way on and along its said line of railway that a collision occurred between a car running towards the city of Mt. Clemens, and a car in which plaintiff was a passenger; that by reason of said collision said cars were badly wrecked and damaged, and the plaintiff, without any fault or negligence on her part, and while in the exercise of due care and caution, was violently thrown from her seat, and was then and there caught and crushed between the framework and the seat of the car in which she was a passenger, and did then and there suffer serious and permanent injury to her head, arms, legs, thighs, ribs, spine, hips, back and kidneys, and did then and there receive serious and permanent internal injuries, and did then and there suffer a serious and permanent rupture of the tissues in the region of the kidneys, and did then and there receive a serious and permanent injury to her right hip, hip joint, pelvis and thigh, and was then and there paralyzed and otherwise permanently injured, and was then and there greatly bruised, hurt, and wounded, and became sick, sore, lame, and disordered, and so remained and continued for a long time, to-wit, from thence hitherto; and plaintiff has ever since suffered great physical pain and injury, and has undergone great mental anxiety and nervous prostration, and was confined to her bed for a long space of time, to-wit, three months, and was compelled to lay out and expend for medical services and for medicines and surgical appliances a large sum of money, to-wit, two thousand dollars, and has ever since been unable to perform and transact her lawful affairs and business;

and plaintiff avers that by reason of the premises she is permanently injured and disabled, and that all of said losses and injuries resulted from the aforesaid acts of negligence and wrongdoing on the part of the defendant, to the plaintiff's damage fifty thousand dollars, and therefore she brings suit.

"Dated March 30, 1896." Beath v. Rapid R. Co., 119 Mich. 512, 78 N. W. 537.

Note.—If it is sought to recover items of damage not necessarily flowing from the injury, such elements must be specifically alleged.

I. Declaration, Action for Being Run Over While on Track.

For that whereas the defendants before and at the time of the committing of the grievances hereinafter mentioned, to-wit, on the 30th day of August, in the year 1869, were the owners of a certain railroad, to-wit, of a railroad from the said city of Norfolk, which connects with the South-side railroad, at or near the city of Petersburg, and of a certain engine and cars, then under the care and management of certain servants of the said defendants; nevertheless the said defendants, by their said servants, so carelessly, negligently and improperly behaved and conducted themselves in and about the management, control, and direction of the said engine and cars, that the same, by and through the default, carelessness, negligence, and improper conduct of the said servants of the said defendants, then with great force and violence were driven and struck against the said plaintiff, by means whereof the right arm of the plaintiff was so fractured and injured that it became necessary to amputate the same, and the said arm was thereupon amputated, and he was otherwise greatly wounded, bruised and injured, and so remained for a long space of time; and also by means of the premises the plaintiff was so maimed as to be disabled for the remainder of his life. To the damage of the said plaintiff of \$30,000. Norfolk & P. R. Co. v. Ormsby, 27 Gratt. (Va.) 455.

II. Complaints.

A. Complaint, Injuries Caused by Un-guarded Excavation Near Side-walk.

"Bridget Doyle, the plaintiff in this action, respectfully shows to this

honorable court, that on or about the second day of November, 1867, at the city of New York, Michael Mulren, the defendant, had caused certain excavations to be made on the lot and sidewalk fronting the same, situated on the west side of James street, about seventy feet south from the corner formed by the intersection of said street and New Bowery, and known as No. 27 James street, to the best knowledge, information, and belief of the plaintiff.

"That said excavations were so made on the said lot and sidewalk fronting on the same, to the depth of eight to ten feet or thereabouts.

"And this plaintiff further shows that the said excavations were at the time aforesaid, left in a negligent and careless condition, in this, that they were left without sufficient guards, or any guards for proper protection of pedestrians on the said sidewalk and street, and that the said negligent and careless condition was and remained and continued dangerous to passers by.

"That at or about eight o'clock P. M., of the second day of November, 1867, while this plaintiff was passing along the said sidewalk as she lawfully might, intending to go from Chatham-square to No. 65 James-street, she did without any negligence or carelessness on her part, fall into the said excavation so made in the said lot and sidewalk, so being negligently and carelessly unguarded and unprotected as aforesaid.

"That by reason of the premises the said plaintiff has sustained damages, as she is advised and believes, in the sum of one thousand dollars.

"Wherefore she demands judgment against the said defendant for her damages in the premises, in the sum of one thousand dollars." *Doyle v. Mulren*, 7 Abb. Pr. N. S. (N. Y.) 258.

B. Complaint, Injury to Employee by Defective Appliance.

1. That the defendant was at the time hereinafter mentioned and now is a corporation, duly created and existing under the laws of the state aforesaid. 2. That the plaintiff was, on or about the 16th day of November, in the year of our Lord 1896, in the employ of the defendant company as a fireman, and was there actively engaged at work on a train of said defendant company, running between

Charleston and Savannah. 3. That while so engaged at Ridgeland, in the county of Beaufort and state aforesaid, as fireman on train proceeding from Savannah to Charleston, under charge and control of Robert Smart, engineer, it became the plaintiff's duty to stand upon a certain platform on which wood was piled, and from said platform to load the tender with fuel, by throwing sticks of wood therein. That after supplying the tender with wood as aforesaid, on a signal that the engine was about to move, the plaintiff stepped to the edge of the said platform and thence endeavored to step on to the engine. 4. That by reason of the broken and unsound condition of the said platform, which caused the fall of the plaintiff, and the sills on which it rested, the said platform gave way under the weight of the plaintiff, and forcibly precipitated him upon the iron structure of the engine. 5. That the broken and unsound condition of the said platform, which caused the fall of the plaintiff as aforesaid, was the result of the carelessness and negligence of the defendant in not keeping said platform in good, reasonable and safe repair. 6. That by reason of the fall aforesaid, the plaintiff sustained serious wounds and bruises in his arm, side and leg, and also injuries of an internal nature, causing him severe bodily pain and suffering, so that he is not able to perform his accustomed labor. That he has already expended a considerable amount of money for medicine and medical attendance, and is advised by his physicians that his said injuries will probably disable him permanently from performing such labor as he was heretofore capable of performing, and will continue to cause him pain and require medical attention and medicine for the rest of his life. 7. That by reason of the carelessness and negligence of the defendant, as hereinbefore set forth, the plaintiff has been damaged \$10,000. Wherefore, the plaintiff demands judgment against the defendant for the sum of \$10,000, and for the costs and disbursements of this action. *Johnson v. Charleston, etc. R. Co.*, 55 S. C. 152, 32 S. E. 2, 33 S. E. 174.

C. Complaint, Injuries Received at Grade Crossing.

"Plaintiff states that defendant is a

body politic, duly incorporated by the state of Missouri, and engaged in the transportation of passengers and freight in cars propelled by steam, over certain lines of railway by it owned and controlled, between the city of St. Louis and points south thereof; that defendant uses its cars and locomotives within the limits of the city of St. Louis, and has constructed divers railway tracks across and along streets of said city, among others along Front Street, sometimes called Main Street, in the southern part of said city, which is a public street, highway, and thoroughfare of said city, dedicated to the use of its citizens.

"Plaintiff states that, on the morning of the eighteenth day of June, 1880, while plaintiff, the said Anna, was walking along said Front or Main Street, between Clement and Bryan Streets, as she lawfully might do, defendant, in an unlawful manner, caused one of its locomotives and train of cars to be run and conducted along and over said Front or Main Street in so negligent, careless, and reckless a manner as to strike and run over plaintiff Anna, without any negligence on her part contributing thereto.

"Plaintiff further states, that no bell was rung on said locomotive or train of cars while running over said public street, as so required by proper and prudent management, and that said train was permitted to run along said street at a much greater speed than six miles per hour, and without giving any signal or warning of its approach.

"And plaintiff further states, that in wrongfully causing and permitting said cars to run along said public thoroughfare as aforesaid, defendant also violated the provisions of ordinance No. 10,305 of the city of St. Louis, entitled 'An ordinance to regulate the speed, within the limits of the city of St. Louis, of cars and locomotives propelled by steam power,' approved January 22, 1877, by which it is provided that when running within the limits of the city of St. Louis, the bell of the engine shall be constantly sounded.

"Plaintiff states, that by reason of the neglect, careless and unlawful conduct of defendant in running said locomotive and cars against and over her as aforesaid, plaintiff was greatly and permanently injured in her body; that her head was severely wounded and injured; that she sustained great internal

injuries; that her mind and reason have been affected; that she suffered great bodily pains, incurred expenditures for doctor's bills, medicines, and nurses, in the amount of \$100, and has been permanently disabled from following any occupation in life, and deprived of the full use of her physical and mental faculties, wherefore plaintiff says she has been damaged in the sum of \$10,000, for which sum she now prays judgment, and for her costs." *Otto v. St. Louis, etc. R. Co.*, 12 Mo. App. 168.

Note.—Though this complaint contains an allegation containing the specific facts constituting the negligence which caused the damage, it is held that a general allegation specifying the act constituting the injury and alleging that it was carelessly and negligently done, is sufficient.

D. Complaint, Injuries Caused by Train Falling Through Bridge.

After making the usual prefatory allegations, the petition, in charging the injury producing negligence, states: "That while plaintiff was on such car, in the exercise of due care, in charge of such express matter as aforesaid, and being conveyed by defendant over its said line, he was at a point on a railroad bridge over Big Peno creek in Pike county, Missouri, by reason of the car in which he was riding falling through said bridge on account of the defects in, and insufficiency of said bridge, wounded and injured in the head, face, and eyes. That the said bridge where he was injured was negligently and carelessly and defectively made and maintained, and was at said time in an unsafe and dangerous condition, which said condition was known to the defendant or could have been so known by the exercise of ordinary care, and that his injuries as above set out were caused by the negligence and carelessness of defendant, its agents and servants, in constructing and maintaining such defective, insufficient, unsafe, and dangerous bridge, and in running its said train upon same when in said unsafe and dangerous condition, whereby said bridge gave way and said car in which plaintiff was being conveyed as the same passed over said bridge was caused to fall through the same to the bottom of said creek, thereby injuring plaintiff as aforesaid." *Cobb v. St. Louis & H. R. Co.*, 149 Mo. 609, 50 S. W. 894.

E. Complaint, Injuries Sustained by Sudden Start of Train.

"That on or about November 11, 1896, the defendant, at El Paso, Texas, received plaintiff into one of its cars as a passenger, and for a valuable consideration paid by plaintiff defendant undertook to safely transport plaintiff from the city of El Paso, Texas, to Marfa, in Presidio County, Texas; that on said November 11, 1896, when the defendant's train, composed of an engine, the car in which plaintiff was riding, and several other cars, in going east, reached the town of Marfa about 10 o'clock p. m., defendant's servant called out 'Marfa,' which is the usual and customary signal for all passengers who desire to stop at said town, to leave the train when it stops at the depot. That the train, on reaching the depot at Marfa, came to a full stop, and plaintiff, as soon as it stopped at the depot, that being the usual place for passengers to leave the train, arose from his seat in the car in which he was riding, and without delay proceeded to leave the train; that he went to the front end of the car in which he was riding and walked out on the platform to get off the car and leave the train. That before plaintiff had time to get off, and while he was still on the car platform, the servants and employes of defendant in charge of the train, without giving any warning, negligently caused the car on which plaintiff was riding to be suddenly and abruptly moved with such violence that plaintiff, without any fault or negligence on his part, was thereby thrown to and against the ground with such violence that he was thereby knocked insensible. That while plaintiff was on the ground in such insensible condition, the wheels of defendant's car or cars ran over plaintiff's right foot and ankle, and so mashed, crushed, and mangled the flesh and bones in said foot and ankle that, on or about November 12, 1896, the same had to be amputated just above the ankle. That by reason of said injury plaintiff has suffered great bodily pain and mental anguish, has incurred great expense for physicians, medical treatment, and medicines.

"That he has been confined to his bed ever since said November 11, 1896, and has been unable to do any labor or perform any service to support himself and family since the day of said

injury. That plaintiff is permanently disabled from laboring or pursuing any occupation or avocation to support himself and family. That at the time of said injury plaintiff was in good health, a strong and vigorous man, 32 years of age, able to earn and was earning \$2500 a year.

"That by reason of said injury his health has been destroyed, his nervous system shocked and permanently impaired, and he has been made a cripple for life. That by reason of the premises, plaintiff has been damaged in the sum of \$30,000. Plaintiff represents that said defendant was negligent in suddenly and abruptly moving said train and car at Marfa, after having stopped at the depot, without giving plaintiff sufficient time to leave the train, and was negligent in running its car wheels over plaintiff's foot and ankle after negligently causing him to be thrown to the ground with such force and violence as to knock him insensible, and without giving any warning of its intentions to move said car." *Gal., H. & S. A. R. Co. v. Scott, 18 Tex. Civ. App. 321, 44 S. W. 589.*

Note.—Not questioned in case. Reversed for admission of evidence of injury not embraced in complaint, to-wit, of unskilfulness of company's physician.

F. Complaint, Injuries Received on Jumping From Street Car, Collision Being Imminent.

1. That the said defendant, "The Columbia Electric Street Railway, Light and Power Company," is a corporation, duly incorporated under the laws of the state of South Carolina, and was such corporation at all the times hereinafter mentioned, and engaged, pursuant to their charter, as common carriers in transporting passengers over the line of its railroad in the streets and suburbs of the city of Columbia, in the state aforesaid, in cars owned and operated by defendant, by means of electric power.

2. That on the 23d day of September, 1895, at or about 7 o'clock in the evening, the said plaintiff was received by said defendant as a passenger on one of its cars, at the Gervais street crossing in Waverly, a suburb of Columbia, going from its Shandon terminus towards and into the said city, the said plaintiff paying the full fare charged for her carriage, and in-

tending to go into said city, the said defendant, in consideration of said payment, agreeing to so carry her.

3. That when the said car thereafter reached what is known as the "Heidt Siding," in the said Waverly, the said car stopped on the main line of the railway track of said defendant in such position that another of defendant's cars going in an opposite direction could pass over said siding, around the car in which plaintiff was seated as a passenger; and it was the duty of said defendant to so move its cars and arrange its switches that the passage of these two cars would be accomplished without injury or peril to any of its said passengers.

4. But the said defendant, not regarding its duties in this regard, caused the said other car to approach this plaintiff's said car with great and dangerous speed, and negligently omitted to have its switch so fixed that said other car would safely pass around this plaintiff's car; but, on the contrary, this switch was not open and the said other car kept upon the main line past the switch, and continued to approach said standing car with great and dangerous speed, to the imminent danger of a collision with the standing car and imminent peril to all the passengers therein.

5. That by reason of this apparent imminent danger to the passengers in said standing car, the plaintiff, in common with other passengers, believed that it was unsafe for her to remain in said car, and it was apparently so unsafe; and in order to free herself from such danger, she was obliged to jump from said car, and did so jump, at the only point of said car where egress to her was possible, and in so doing plaintiff was much frightened and greatly injured, her right ankle being badly sprained, so much so that she had to be carried back to her home and put to bed.

6. That by reason thereof the plaintiff was confined to her bed for three weeks, suffered pain for several months, and was prevented from attending to her labors and duties, and put to great expense for doctor's attendance, medicines and nursing in the attempt to effect a cure, and was otherwise injured, to her damage \$2,000.

Wherefore, the plaintiff demands judgment against the defendant for the sum of \$2,000 and costs. *Wade v.*

Columbia Elec. Co., 51 S. C. 296, 29 S. E. 233.

III. Defenses.

A. *Answer, Alleging Failure To Use Proper Care.*

"Further answering this defendant says that the injuries received by the plaintiff, and set forth in the petition, were received wholly and entirely because of his want of proper care and caution in looking out for his own safety, and by reason of his carelessness in coming in contact with an electric light wire which he knew, or by the exercise of ordinary care for his own safety could have known, was then and there charged with a current of electricity, making it dangerous to life for any one to come in contact with the said wire. Defendant says that by the exercise of ordinary care for his own safety, and such as circumstances and surroundings made it apparent was necessary, the said plaintiff could have avoided coming in contact with said wire, and could have escaped all injury therefrom. Defendant says that plaintiff came into contact with said wire by failing to exercise that degree of care which he knew, or ought to have known, under the circumstances was necessary to be exercised by him to avoid injury from said wire. Wherefore, having answered, defendant prays to be dismissed." *McLaughlin v. Louisville Elec. L. Co.*, 100 Ky. 173, 37 S. W. 851.

Note.—Verdict for defendant reversed because of instructions given and refused. Answer not in question.

B. *Answer, Failure To Observe the Approach of Train.*

"That, on the day of the accident set forth in the complaint, in the evening, said Thornton started from the residence of one Doctor Sellers, being the first residence fronting on the highway in the complaint mentioned, south of said railroad to the said town of Mount Jackson, most of which is on the north side of said railroad; that immediately before the accident occurred plaintiff was standing on the porch of a residence within one hundred and fifty five feet of the highway crossing at which said accident occurred; that at said point he could see west for about one quarter of a mile on the railroad and about three quarters of a mile east; that at the very moment

of starting from that point to cross the said railroad he looked west for a train of cars and saw none, and he looked east and saw one standing near said crossing apparently in the act of moving westward; that knowing there was a post west of said crossing which by its marks required the engineers of trains going east to whistle and ring the bell before passing said crossing, and by his acquaintance with the conduct of said railroad, knowing that such trains should whistle and ring, and having but one eye (he being blind in the right eye), as he passed on to said railroad he listened carefully for the whistling and the ringing of the bell on the train that might be coming from the west on said railroad, and heard none, and used the only eye he had to watch the movements of the train that stood just east of the crossing, so that he might not be injured by its movements; that said Thornton was on said day blind in his right eye, and consequently had, in order to look eastwardly, in facing northward, to turn his head eastward; that while in the act of watching, the train standing on said railroad just east of said crossing, and just as he passed upon said railroad, struck said Thornton. And the defendant further says that from the point one hundred and fifty-five feet south of railroad, where the plaintiff last looked to the west until said plaintiff reached said railroad, he had an open, unobstructed view of the track for a long distance, and could have easily seen the approaching train if he had only looked." *Thornton v. Cleveland, etc. R. Co.*, 131 Ind. 492, 31 N. E. 185.

C. Answer, Setting Up "Act of God."

"That defendant's approaches and bridge over Big Peno creek were constructed in a safe, and workmanlike manner, and were always kept in a safe, proper, and perfect condition down to the time of the accident, and that on the night of that occurrence, to-wit, May 9, 1894, a heavy, sudden, unprecedented and unexpected fall of rain took place in the immediate vicinity of said bridge, causing Peno creek to become flooded and swollen at said point to an extraordinary, unusual, dangerous, unforeseen and unexpected degree and extent, whereby one of the bents constituting a portion of the

southeastern approach to said bridge was dislodged and washed out by the flood, between said hour of midnight and two or three o'clock in the morning of May 10, 1894, leaving the rails and stringers underlying same intact, and undisturbed; that its nearest station to said bridge is located at Frankford, Mo., and it is about two and one-half miles distant and that no rain of any consequence fell at Frankford during said night, and that the train on which plaintiff was at the time of the accident was a south bound train and left Hannibal "on schedule time and passed through Frankford about on time and thereafter reached the said bridge about 7 o'clock on the morning of May 10, 1894, and passed on to said bridge and on to the rails covering the space where said bent in the approach to the bridge had been washed away, precipitating the car in which plaintiff was riding into said washed out space.

"Defendant says that it was impossible for it or any of its agents, servants or employes either in charge of said train or those to whom was intrusted the duty of keeping and maintaining such bridge and its approach in a safe condition to have foreseen the heavy and unusual rainfall and the flood incident to same which occurred the night previous to such accident and that it was impossible for defendant, its servants and employes to have provided full and sufficient safeguards against the effect of said rainfall and the violent flood caused thereby, and that it was impossible for defendant, its servants, and employes to have or acquire any knowledge of said heavy rainfall and flood prior to such accident or to have prevented same by the exercise of the utmost prudence, diligence and care on the part of defendant, its servants and employes.

"Defendant therefore says that said accident was an inevitable one, and was caused by the act of God, and the same together with its results were such occurrences which were beyond the power of human ingenuity and ability to either foresee or prevent and defendant is not liable for said accident or any consequences or results following same nor for any damage which plaintiff may have sustained in consequence of same, and now having fully answered, defendant asks to be

discharged with its costs." *Cobb v. St. Louis & H. R. Co.*, 149 Mo. 609, 614, 50 S. W. 894.

D. Answer, Claim Satisfied and Discharged.

"Defendant, for further answer, avers that after the committing and happening of the alleged and supposed grievances and acts in the complaint mentioned, and before this action, to-wit, on the said twentieth day of September, 1869, the defendant delivered to the plaintiff seventy-five dollars in coin, and paid the surgeon's bill for attendance upon the said Mary O'Riley; and in consideration of such payment to the surgeon, the plaintiffs accepted and received the sum of seventy-five dollars aforesaid, in full satisfaction and discharge of the damages or liabilities in the complaint mentioned, and all of the damages by the plaintiffs sustained by reason of the matters and things therein alleged." *O'Riley v. Wilson*, 4 Ore. 97.

E. Answer, Accord and Satisfaction for Personal Injury by Co-Defendant.

"That, after committing the supposed grievances alleged in said complaint, and after the commencement of this action, to-wit, on the 12th day of April, 1876, the defendant, the Mechanics' Institute, delivered to the plaintiff, and the plaintiff accepted and received from the defendant, the Mechanics' Institute, the sum of five hundred dollars, gold coin of the United States, in full satisfaction and discharge of the damages and cause of action alleged in said complaint." *Urton v. Price*, 57 Cal. 271.

IV. Demurrer, That Negligence Is Insufficiently Alleged.

"That the negligence complained of is not sufficiently and legally set out.

"That it does not state facts sufficient to constitute a cause of action." *Conley v. Richmond & D. R. Co.*, 109 N. C. 692, 14 S. E. 303.

V. Reply to Claim of Satisfaction and Discharge.

"That it is not true that plaintiffs, in consideration of the payment of the sum of seventy-five dollars, or any other sum, and the surgeon's fee for attendance upon plaintiff Mary O'Riley, accepted the same in full satisfaction and discharge of the damages or liabilities in the complaint mentioned and

set out, and all of the damages by the plaintiffs sustained by reason of the matters and things in said complaint alleged, and plaintiffs deny that they have ever received from any person or persons compensation or satisfaction for the injury and damages in the complaint in this action set out." *O'Riley v. Wilson*, 4 Ore. 97.

INNS AND INNKEEPERS.

- I. Declaration Against Innkeeper for Refusing To Lodge, 649
- II. Declaration for Loss of Personal Property, 650
- III. Complaint for Loss of Trunk, 650
- IV. Complaint Against Proprietor of Bath House for Loss of Pocket Book, 650
- V. Plea by Innkeeper Justifying Turning Plaintiff Out, 651
- VI. Indictment for Illegally Removing Baggage, 651

CROSS-REFERENCES:

ASSAULT AND BATTERY:

Answer, Defense of Possession of Inn.

USE AND OCCUPATION:

Complaint for Lodgings;

Complaint for Board and Lodging.

I. Declaration Against Innkeeper for Refusing To Lodge Plaintiff During the Night.

For that whereas the said defendant, before and at the time of the committing the grievance hereafter mentioned, was an innkeeper and did keep a common inn, for the accommodation of travelers, that is to say, a certain common inn, called, etc.; and whereas, whilst the said defendant was such innkeeper, and so kept the said inn as aforesaid, to-wit, on, etc., at, etc. (venue) aforesaid, the said plaintiff then and there, being a traveler, came and was received by the said defendant into the said inn, and then and there required the said defendant to suffer and permit the said plaintiff to stay and lodge at the said inn, for and during the night of the same day, and although the said plaintiff was then and there ready and willing, and then and there offered to pay the said defendant a reasonable sum of money for such lodging, yet the said defendant not regarding his duty as such innkeeper, but contriving, and wrongfully and unjustly intending to injure the said plaintiff, and to put him to great

trouble and expense, and inconvenience, did not, nor would, at the said time when he was so requested as aforesaid, or at any time afterwards, suffer or permit the said plaintiff to stay or lodge at the said inn as aforesaid, during the time aforesaid, but wholly neglected and refused so to do, whereby the said plaintiff was forced and obliged to quit the said inn, and to go and travel in the night time divers, to-wit (five) miles, in order to procure a lodging elsewhere; and upon that occasion the said plaintiff was by means of the said several premises aforesaid, put to great trouble, inconvenience, and expense of his moneys, and was and is otherwise greatly injured and damaged, to-wit, at, etc. (venue) aforesaid. 2 Chit. Pl. 668.

II. Declaration, Loss of Personal Property.

"For that whereas, according to the law and custom of the land, the innkeepers, that keep common inns to lodge and to entertain as guests, travelers, strangers and others therein who abide in the same, are bound to keep their goods and chattels, being within those inns, day and night without diminution, pilfering or loss, so that no damage or loss may happen to any such traveler or such goods for want of due care in such innkeepers or their servants, and the said plaintiff, viz.: on the fourteenth day of October, eighteen hundred and sixty-two, at Augusta, aforesaid, being entertained as a guest in the inn of the said defendant, had a certain overcoat, of the value of twenty dollars, within that inn and delivered the same to the said plaintiff, then and there to be safely kept. Nevertheless the said defendant, then and there knowing the said overcoat to be so as aforesaid, within his said inn, the same day and place, did so negligently keep said overcoat that said overcoat, for want of safe keeping thereof, by said defendant and his servants, was then in said inn wholly lost. And said defendant has not delivered to said plaintiff his said overcoat, although the said defendant was thereafterwards, viz., on the same day, thereto requested, but hitherto hath refused, and still doth refuse so to do, or make him any satisfaction for the same." *Norcross v. Norcross*, 53 Me. 163.

Note.—The allegation "being enter-

tained as a guest" though inartificial was held to sufficiently charge that defendant was an innkeeper.

III. Complaint for Loss of Trunk or Contents.

I. That at the time hereinafter mentioned, the defendant was the keeper of a common inn in the city of _____, known as "The _____ House."

II. That on the _____ day of _____, 18____, this plaintiff (or, one M. N., the infant son, or, the servant of this plaintiff), was received by the defendant into his said inn as a traveler, together with his baggage, to-wit, a trunk containing (here designate contents lost), the property of the plaintiff.

III. That the defendant and his servants so negligently and carelessly conducted themselves in regard to the same, that while he so remained at said inn, his said Trunk was taken away (or, was broken open, and said _____ was taken away) from the room of the said (guest) by some person or persons to the plaintiff unknown; and thereby the same became wholly lost to the plaintiff, to his damage _____ dollars. 1 Abb. Forms 415.

IV. Complaint Against Proprietor of Bathing House for Loss of Pocket Book.

I. That the defendant, at the time hereinafter stated, was a common innkeeper at the town of _____ in this state.

II. That on the _____ day of _____, 18____, he received and entertained this plaintiff as a guest at his inn, for hire.

III. That the inn of the defendant was upon the seashore, and in connection with it the defendant maintained bathing houses for the safe-keeping of the clothing, wardrobe, and such money and jewelry of his guests as are usually carried upon the person of guests and patrons of his inn and bathing house.

IV. That while the plaintiff was then and there his guest, the defendant undertook, for compensation paid him by the plaintiff, to keep safely in one of his said bathing houses, the clothing and such articles of jewelry and valuables as the plaintiff then had upon his person, while the plaintiff should

See "How To Use This Volume," Introduction, page v.

bathe; and that the plaintiff thereupon put into his said bathing house his clothing, his pocket-book containing money and such other property as is usually carried upon the person, of the value of ——— dollars, and left the same in the possession and charge of the defendant, both as innkeeper and as special bailee as aforesaid.

V. That while this plaintiff was bathing, his pocket-book and money were, by the negligence, carelessness, and dishonest management of the defendant and his servants, lost and stolen.

(VI. That the amount of the said money belonging to the plaintiff so lost and stolen, while the same was under the charge of the defendant, was ——— dollars and upwards, in lawful money of the United States, and current bills of solvent banks, and sundry small silver coins of trifling value; and that the plaintiff is by profession (designating a business requiring the plaintiff to carry considerable sums), and that said sum was such an amount as he might reasonably and properly carry with him with reference to his circumstances in life, and the nature of his business.)

VII. That the said inn was upon the seashore, and that facilities for bathing according to the customs of the neighborhood, and as the defendant then well knew, were considered a part of the accommodations necessary to be afforded by the innkeepers in that vicinity.

VIII. That by said negligent, careless, and dishonest dealing of the defendant and his servants, the plaintiff has sustained damage, in the sum of ——— dollars. 1 Abb. Forms 416.

V. Plea by Innkeeper Justifying Turning Plaintiff Out of Inn.

Because he says, that he the said defendant, long before and at the said time when, etc., was lawfully possessed of a certain public house, situate at, etc., aforesaid. And the said plaintiff a little before the said time when, etc., entered and came into the said house of the said defendant, and then and there made a great noise and disturbance therein, and the said plaintiff then and there behaved and conducted himself in a rude, quarrelsome, and uncivil manner towards divers persons then and there lawfully being in the said house, and thereby then and

there greatly disturbed and disquieted the said defendant and his family, and the said other persons so being in the said house, in the peaceable and quiet occupation and enjoyment thereof; whereupon the said defendant then and there requested the said plaintiff to cease making his said noise and disturbance, and to go and depart from and out of the said dwelling house, which the said plaintiff then and there wholly refused to do, whereupon the said defendant, in defense of the possession of his said dwelling house, at the said time when, etc., gently (*moliter manus imposuit*). 3 Chit. Pl. 1073.

VI. Indictment for Illegally Removing Baggage.

“Put up at a hotel, . . . did . . . procure fuel, entertainment and accommodation at the said hotel of the said Willis S. Snow, then and there the keeper of said hotel, and did, with such fraudulent intent, on said eighth day of January, 1881, remove and cause to be removed from the said hotel their baggage and effects, consisting of one valise or satchel and its contents, while there was a lien existing thereon for the proper charges due to the said Willis S. Snow from the said H. Hayes and E. Benson for board and entertainment, as aforesaid.” *State v. Benson*, 28 Minn. 424, 10 N. W. 471.

INQUEST.—See CORONER'S INQUEST; INQUIRY, WRIT OF.

INQUIRY, WRIT OF.

I. Writs of Inquiry, 652

- A. *In Ordinary Cases*, 652
- B. *In Debt on Bond*, 652
- C. *On Articles of Agreement*, 653
- D. *On Failure To Answer (Code)*, 653
- E. *Return, To Be Indorsed on Writ*, 653

CROSS-REFERENCES:

DEFAULT:

- Notice of Assessment of Plaintiff's Damages Before;
- Notice of Assessment of Damages Before Jury;
- Report of Clerk on Assessment of Damages;
- Inquisition on Default;
- Affidavit To Set Aside Regular Inquest;
- Order To Set Aside Inquest for Irregularity;

Adidavit To Set Aside Inquest as Irregular.

NUISANCE:

Writ of Inquiry as to Nuisance.

REPLEVIN:

Writ of Inquiry in Replevin, on Default for Not Pleading;

Writ of Inquiry To Assess Damages on Judgment Retorno Habendo.

SUBPOENA:

Subpoena on Writ of Inquiry Before the Sheriff;

Subpoena Ticket on Writ of Inquiry.

I. Writs of Inquiry.

A. *Writ of Inquiry in Ordinary Cases.*

The people of the state of New York, to the sheriff of the city and county of _____, greeting:

Whereas A. B., lately in our supreme court of judicature, before our justices thereof, at the (capitol in the city of Albany), (the place corresponding with the term of which the narr. is entitled), by bill, without our writ, impleaded C. D., being in custody, etc. (or, if the suit were commenced by declaration, by declaration and not by writ, impleaded C. D.). For that, etc. (here recite the declaration), to the damage of the said A. B. of _____ dollars, as he said, and thereupon he brought his suit, etc. And such proceedings were thereupon had in our supreme court, before our said justices thereof, that the said A. B. ought to recover against the said C. D., his damages on occasion of the premises; but because it is unknown to our said justices of our supreme court aforesaid, what damages the said A. B. hath sustained by means of the premises aforesaid: Therefore, we command you, that by the oath of twelve good and lawful men of your county, you diligently inquire what damages the said A. B. hath sustained, as well by means of the premises aforesaid as for his costs and charges by him about his suit in this behalf expended: And that you send to our said court, before our justices thereof, at the (city hall in the city of New York, on the first Monday of May) next (the return day), the inquisition which you shall thereupon take, under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ.

Witness, Greene C. Bronson, esquire, our chief justice, at the (capitol in the

city of Albany, the seventeenth day of January, in the year one thousand eight hundred and forty-six).

_____, _____, clerks.

_____, attorney.

Burr. App. 488, §995.

B. *Writ of Inquiry in Debt on Bond.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

Whereas A. B., lately in our supreme court of judicature, before our justices of the same court (at the city hall in the city of New York, by bill without our writ), impleaded C. D., being in custody, etc. (or as in last form), before our aforesaid justices of our said supreme court of judicature, of a plea of debt on demand, for (one thousand) dollars of good and lawful money of the United States of America, upon and by virtue of a certain writing obligatory, in the penal sum of (one thousand) dollars, bearing date the (first day of January, in the year of our Lord one thousand eight hundred and thirty-nine), and sealed with the seal of the said C. D., with a certain condition (as the said A. B. in our said court, before our aforesaid justices thereof, according to the form of the statute in such case made and provided, said), thereunder written, whereby (if there be any recital in the bond preceding its condition, say: "After reciting," etc., setting forth the recital), it was provided that if (here set forth the condition), and the said A. B. further said, that, etc. (here state the breaches). And such proceedings were thereupon had in our said supreme court of judicature, before our aforesaid justices thereof, that it was afterwards considered by the same court, that the said A. B. ought to recover against the said C. D. his debt aforesaid, together with his damages, which he had sustained, as well as on account of the detention of the same, and by reason of the breaches of the said condition, as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as appears to us of record: And the said A. B., having prayed our writ to inquire of the truth of the aforesaid breaches of the said condition of the said writing obligatory, and to assess the damages which he hath hereby sustained: Therefore, according to the form of the statute in such case made

and provided, we command you, that by the oath of twelve, etc. (as in preceding form to the end). Burr. App. 489, §996; Till. Forms 59.

C. Writ of Inquiry on Articles of Agreement.

The people of the state of New York, to the sheriff of the county of _____, greeting:

Whereas A. B., lately in our supreme court of judicature, before our justices thereof, at the (city hall in the city of New York), impleaded C. D., being in custody, etc. (or by declaration and not by writ), of a plea that he should render to him the said A. B. the sum of _____ dollars of good and lawful money of the United States of America, which he owed to and unjustly detained from him: For that whereas, by certain articles of agreement (or a certain indenture), made on, etc. (reciting the whole of the declaration); to the damage of the said A. B. of _____ dollars, as he said, and therefore he brought his suit, etc. And such proceedings were thereupon had in our said court, before our justices aforesaid, that it was afterwards considered by the same court, that the said A. B. ought to recover against the said C. D. his debt aforesaid, together with his damages, which he had sustained as well on occasion of the detention thereof, as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. is convicted, as appears to us of record: And the said A. B., having prayed our writ to inquire of the truth of the aforesaid breaches of covenant above assigned, and to assess the damages which he the said A. B. hath sustained thereby: Therefore, according to the form of the statute in such case made and provided, we command you, that by the oath of twelve, etc. (as in preceding forms to the end). Burr. App. 490, §997.

D. Writ of Inquiry on Failure To Answer (Code).

The people of the state of New York, to the sheriff of the county of _____, greeting:

Whereas, in an action brought by A. B. against Y. Z. in our supreme court, such proceedings were had, upon the personal service of the summons therein upon said Y. Z., that the said A. B. obtained an order of the said court, directing the plaintiff's damages

in the said action to be assessed by a jury, a copy of the complaint in said action being hereunto annexed, therefore we command you, that by the oath of twelve good and lawful men of your bailiwick you diligently inquire what damages the said A. B. hath sustained for and on account of the premises in the said complaint contained; and that you, with all convenient speed, return to the office of the clerk of the county of _____ the inquisition taken by you, by virtue of this writ, under your seal, and the seals of those by whose oaths you shall take that inquisition, together with this writ.

Witness, Hon. J. J., justice, at the court house, in the city of _____, in the county of _____, this _____ day of _____, 18—.

(Signature of clerk.)

(Signature of plaintiff's attorney.)

2 Abb. Forms 514.

E. Return, To Be Indorsed on Writ.

The execution of the within writ appears by the inquisition hereunto annexed.

(Date.)

(Signature of sheriff.)

2 Abb. Forms 515.

INSANE PERSONS.

I. Complaints, 654

A. *By Committee*, 654

B. *Against Committee*, 654

II. Answer, Insanity of Defendant, 654

III. Answer in Equity, 654

IV. Affidavit of Continued Lunacy, 654

V. Petition for Inquest, 654

VI. Petition for Commitment, 655

VII. Complaint to Selectmen for Examination, 655

VIII. Special Verdict on Insanity, 655

IX. Order Committing Insane Person to Hospital, 655

X. Order of Commitment of Insane Person by Court, 655

XI. Guardianship, 656

A. *Petition for Guardian*, 656

B. *Petition for Guardian Where Appointee Has Failed To Qualify*, 656

C. *Order Appointing Guardian of Insane Person*, 657

XII. Indictment for Ill-treatment of Lunatic, 657

CROSS REFERENCES:

BILLS AND ANSWERS:

Introductory Part of Bill on Behalf of Lunatic Suing by Committee;
Commencement of Answer by a Lunatic or Idiot, etc.

DIVORCE:

Complaint for Divorce on the Ground of Lunacy.

GUARDIAN AD LITEM:

Order, Guardian Assigned on Application of Infant or Non Compos.

MORTGAGES:

Jurat to Affidavit, Where Deponent Is a Lunatic.

RAPE:

Indictment, Rape on a Woman of Unsound Mind.

RESCISSION AND CANCELLATION:

Decree, Settlement by Lunatic, Since So Found, Set Aside;

I. Complaints.

A. *Complaint by Committee of Lunatic, Idiot, or Habitual Drunkard.*

(Name of court, etc.) A. B., as committee of M. N., a lunatic (or, an idiot, or, an habitual drunkard), plaintiff, against W. X. and Y. Z., defendants.

The plaintiff, complaining as the committee of M. N., a lunatic (or, an idiot, or, a person of unsound mind, or, an habitual drunkard), alleges:

I. That on the _____ day of _____, 18____, upon proceedings duly instituted in the supreme court of this state, in and for the county of _____ (or, in the case of an habitual drunkard, it may be, duly instituted in the county court of the county of _____), by an inquisition then taken and returned, said M. N. was found to be a lunatic (or, otherwise, as above), and thereupon this plaintiff was, by an order of said court, duly made by said court, on the _____ day of _____, 18____, at _____, appointed committee of said M. N.'s person and estate. 1 Abb. Forms 146.

B. *Complaint Against Committee of Lunatic, Etc.*

(Name of court, etc.) A. B. against Y. Z., as committee of M. N., a lunatic (or, an idiot, or habitual drunkard).

(After usual commencement and statement of cause of action against the lunatic, add.)

II. That afterwards (or, on the _____ day of _____, 18____, at

_____), the said Y. Z. was duly adjudged by the _____ court to be a lunatic (or, otherwise, as above).

III. That the defendant was then and there duly appointed by the said court committee of the (person and) estate of the said lunatic.

Wherefore, the plaintiff demands judgment for _____ dollars, with interest from _____, to be paid out of the estate of the said M. N., in the hands of the defendant. 1 Abb. Forms 148.

II. Answer, Insanity of Defendant.

That at the time of the making of the alleged promise (or agreement, or, of the executing of the alleged deed) the defendant was of unsound mind, and thereby incapable of making (or, executing) and of understanding the same, as the plaintiff then well knew. 2 Abb. Forms 41.

III. Answer in Equity by a Lunatic or Idiot, Etc.

The joint answer of E. F., a lunatic (or idiot or imbecile person), by T. P., his guardian ad litem, and T. P., committee of the said E. F., defendants, to the bill of complaint of A. B., the plaintiff. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2138.

IV. Affidavit of Continued Lunacy.

(Title of the cause.) (Venue.) M. D., of _____, being duly sworn, says:

I. That he is personally acquainted with A. B. above named, the plaintiff herein (or, on whose behalf this action for a divorce is brought), and has attended said A. B. for _____ months past as his (or her) physician.

II. That he saw said A. B. this day, and finds that he (or she) continues to be, as ever since the year _____, a lunatic.

(Jurat.)

(Signature.)

2 Abb. Forms 534.

V. Petition for Inquest of Insanity.

To the worshipful justices of Cumberland county court.

The petition of Lewis Robinson humbly shows, that his sister Susannah Robinson, an inhabitant of said county, is now about sixty years of age, and that from her infancy she has been subject to great bodily infirmity, caused by a stroke of the palsy, which paralyzed her right side; that from this cause and old age combined, she is now non compos mentis and in-

capable of managing her estate and business; that she has property, consisting of lands and negroes, and from her imbecility of understanding is wasting and destroying her property. Your petitioner therefore prays that a jury may be ordered to ascertain whether she is compos mentis, or capable of managing her affairs and estate.

Henry for pet'r.

Bethea v. M'Lennon, 23 N. C. 523.

VI. Petition for Commitment of Insane Person.

"Houlton, May 10, 1873.

To the selectmen of Houlton:

Daniel McCann of Houlton, complains that his brother, Charles McCann, of said Houlton, is an insane person, dangerous to the community, and prays you immediately to inquire into the condition of said Charles McCann, and to take such further steps as you may deem proper in the premises.

(Signed) Daniel McCann."

Gray v. Houlton, 65 Me. 521.

VII. Complaint to Selectmen for Examination of Insane Person.

"To the selectmen of the town of Eastport:

"M. B. of Eastport, makes complaint and says, that Elizabeth Howard is insane, and he believes it will be for her comfort and safety that she be removed to the insane hospital. Wherefore he prays that an examination into the facts may be made, and that such steps be taken as the law provides in such cases." Inhab. of Eastport v. East Machias, 35 Me. 402.

VIII. Special Verdict (return) on Insanity.

Pursuant to an order of the court of pleas and quarter sessions of Cumberland county, ordering the sheriff of said county to summon a jury of good and lawful men, to inquire into the lunatic and insane condition of the mind of Miss Susannah Robinson, we, the undersigned, after being summoned and duly sworn, and from the testimony made in the case, certify that she, the said Susannah Robinson, is lunatic, idiotic, of an insane mind, and altogether incapable of managing her affairs; that she has been in that situation from her infancy, but that the imbecility of her understanding has been increasing and more apparent for the last two years. We also ascer-

tained that she, the said Susannah, has in her possession, as owner, about 500 acres of land situated on Cape Fear in Cumberland county, and five negroes, stock and household furniture.

In testimony whereof, etc.

Signed by the jurors.

Bethea v. M'Lennon, 23 N. C. 523.

IX. Order Committing Insane Person to Hospital.

"Upon the foregoing complaint, the undersigned, selectmen of Eastport, having inquired into the condition of the above named Elizabeth Howard, who is now in this town, and after hearing the testimony necessary to understand the case, are of opinion that she is insane, and that her comfort and safety will be promoted by a residence at the insane hospital, at Augusta. We therefore order that she be forthwith removed to Augusta, and delivered to the care of the superintendent of the insane hospital, to be detained until she has become of sound mind, or be otherwise legally discharged. Given under our hands," etc. Inhab. of Eastport v. East Machias, 35 Me. 402.

X. Order of Commitment of Insane Person by Court.

"State of Michigan, County of Lenawee.

"At a session of the probate court for the county of Lenawee, holden at the probate office in the city of Adrian, on the 19th day of September, in the year one thousand eight hundred and eighty-nine.

"Present R. B. Robbins,
Judge of Probate.

"In the Matter of Mary Vetter, an Indigent Insane Person.

"This day having been assigned for hearing the petition, now on file in this court, of Margaret Scott, superintendent of the State Industrial Home for Girls, alleging that Mary Vetter, a resident of the Industrial Home for Girls, in said county, is insane, and praying that said Mary Vetter may be admitted to the Michigan Asylum for the Insane at Kalamazoo, there to be supported at the expense of the county in which it is shown she is a resident; and having duly notified the said Mary Vetter (there being no known relative of the said Mary Vetter in said county), also D. B. Morgan, prosecuting attorney for said county, and Wm. H. Knight, supervisor of the town of

Adrian, in which said Industrial Home for Girls is situate, and in which said insane person at present resides, of the time and place of hearing said petition, and having filed the certificates, taken under oath, of Drs. Abram Stephenson and Wm. E. Jewett, two legally qualified physicians, and having taken the testimony of Wm. E. Jewett and Margaret Scott, credible witnesses, and having inquired into her settlement, and having fully investigated the facts in the case, without the verdict of a jury as to the question of insanity and indigence, I, the judge of probate in and for said county, do find that said Mary Vetter is in indigent circumstances, and certify that satisfactory proof has been adduced showing the said Mary Vetter to be insane; that she has not acquired a legal settlement in said county of Lenawee, but is a resident of the county of Kalamazoo; and that her estate is insufficient to support her under the visitation of insanity.

"It is ordered that the said Mary Vetter be admitted to the Michigan Asylum for the Insane, under and according to the provisions of section 23 of Act 135, Laws of 1885, there to be supported at the expense of the county of Kalamazoo until restored to soundness of mind, if effected within two years, and until otherwise ordered.

"Richard B. Robbins,
"Judge of Probate."

Palmer v. Buck, 83 Mich. 528, 47 N. W. 355.

XI. Guardianship.

A. *Petition for Guardian for Insane.*

After giving the names of the petitioners, their residence and relations to the defendant, the petition proceeds:

"Your petitioners further represent unto said court that the said Elias B. Sherman is of the age of eighty-one years, and is feeble and infirm, and is an inhabitant of said county, residing at the village of Cassopolis, in said county and state, and is possessed of real estate and personal estate situated and being in said Cass county, and the estimated value of the personal estate, including money, bank stock and notes, is about the sum of twenty-five hundred dollars, as petitioners believe, and the estimated value of real estate is the sum of twenty thousand dollars or thereabouts, as your petitioners are informed and verily believe.

Your petitioners further represent that it is necessary that a guardian be appointed of the person and estate of the said Elias B. Sherman, for the following specific reason: Because the Elias B. Sherman, by reason of extreme old age and other causes, is now mentally incompetent to have the charge and management of his property, and has been mentally incompetent for some time past.

Your petitioners further represent that the names of the next of kin of the said Elias B. Sherman, and other persons interested in said estate, as your petitioners are informed and believe, are as follows: Mrs. Edna Celia Norton, a daughter; J. Silver Sherman, a son, both residing at Cassopolis, Michigan; Frank L. Jones and Carrol S. Jones, both grandsons, and both residing at Marcellus, in said county; Mary Blanche Goucher, residing at Clay Center, Kansas; Ellen N. Graham, residing at Cassopolis; and Florence M. Tietzort, residing at Cassopolis; the last three named aforesaid being daughters of the aforesaid John Tietzort, and granddaughters of the said Elias B. Sherman.

Your petitioners therefore pray that a day be fixed for hearing this petition, and that a citation issue, to be personally served upon said Elias B. Sherman and upon some one of his nearest relatives, not less than fourteen days before the return day thereof, requiring them to appear and show cause, if any, why a guardian should not be appointed as aforesaid after a full hearing and examination in the premises, and that Joel Cowgill, residing at Cassopolis, Mich., may be appointed guardian of the person and estate of him, the said Elias B. Sherman, according to the provisions of the statutes in such case made and provided.

Dated this 16th day of March, A. D. 1885."

Norton v. Sherman, 58 Mich. 549, 25 N. W. 510.

B. *Petition for Guardian of Insane Person Where Appointee Has Failed To Qualify.*

"To the honorable judge of the probate court for the county of Sagadahoc, next to be holden at Bath, on the first Tuesday of January, A. D. 1882.

"Joseph M. Prott respectfully represents that he is a friend of Frances J. G. Thompson of said Bath who has

been adjudged by the honorable court to be of unsound mind and incompetent to manage her own affairs, or to protect her rights, and that Orville A. Robinson who was appointed guardian of the said Frances has refused to qualify for said trust.

"Wherefore he prays that letters of guardianship may issue to Isaac P. Tibbetts, of Topsham, in said county, he being a suitable person to act as guardian aforesaid.

Joseph M. Trott."

Thompson v. Hall, 77 Me. 160.

Citation to Insane Person, Guardianship.

"State of Maine, Sagadahoc, ss.

Probate Court, January term, A. D. 1882.

On the foregoing petition, it is ordered, that the said Frances J. G. Thompson be cited to appear at a probate court to be held at Bath, within and for said county, on the first Tuesday of February, 1882, at ten o'clock in the forenoon, and show cause, if any she has, why the prayer of said petitioner should not be granted, by serving her with a true and attested copy of the foregoing petition, with this order thereon, fourteen days prior to the holding of said court.

Wm. T. Hall, Judge."

(Service was duly made and proved.)

Thompson v. Hall, 77 Me. 160.

C. *Order Appointing Guardian for Insane Person.*

"State of Maine, Sagadahoc, ss.:

Probate Court, February term, A. D. 1882.

"On the foregoing petition, it is decreed that the said Frances J. G. Thompson is of unsound mind and incompetent to manage her own affairs or to protect her rights; and it is also decreed, that Isaac P. Tibbetts, of Topsham, be appointed guardian of said Frances J. G. Thompson, and that he give the bond required by law in the sum of one thousand dollars before entering on the execution of said trust. (Seal.) W. T. Hall, Judge."

"A true copy. Attest,

Cyrus W. Longley, Register."

Thompson v. Hall, 77 Me. 160.

XII. Indictment for Ill-treatment of Lunatic.

The jurors for our lady the Queen, upon their oath present that Frederick Smith and Thomas Smith, on the 28th day of July, in the year of our Lord 1879, then having the care, or charge,

or concerned, or taking part in the custody, care or treatment of a certain lunatic, or alleged to be lunatic person called Emma Smith, did then abuse, ill-treat, and wilfully neglect such lunatic, or alleged lunatic, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity. Reg. v. Smith, 14 Cox C. C. 398.

INSURANCE.

I. Fire Policies, 658

- A. *Complaint, 658*
- B. *Complaint, Where Renewal, 658*
- C. *Complaint Correcting Alleged Mistake, 658*
- D. *On Agreement To Insure, 659*
- E. *Complaint by Purchaser of Property, 660*

II. Life Policies, 660

- A. *Complaint by Executor, 660*
- B. *Complaint by Wife, Partner or Creditor, 660*
- C. *Complaint by Assignee in Trust, 661*

III. Marine Policies, 661

- A. *Declaration, 661*
- B. *Complaint on Valued Policy, 662*
- C. *Complaint on Open Policy, 662*
- D. *Complaint on Policy on Freight, 662*
- E. *Complaint for Partial Loss and Contribution, 663*
- F. *Complaint, Averment of Loss by Collision, 663*
- G. *Averment of Waiver of Condition, 663*

IV. Defenses, 663

- A. *Denial of Policy, 663*
- B. *Denial of Loss, 663*
- C. *Denial of Plaintiff's Interest, 663*
- D. *Policy Obtained by Misrepresentation, 663*
- E. *Denial of Account of Loss, 663*
- F. *Failure To Give Notice, 663*
- G. *Fraudulent Account of Loss, 664*
- H. *Transfer Without Insurer's Consent, 664*
- I. *Extra-Hazardous Risk, 664*
- J. *Existence of Loss, 664*

V. Replication, Waiver by Defendant, 664

CROSS-REFERENCES:

BILLS AND NOTES:

Complaint on Deposit Note.

SUBROGATION:

Complaint by Fire Insurance Com-

pany To Be Subrogated to Insurer's Rights, by Statute.

I. Fire Policies.

A. Complaint by Insured on Fire Policy.

I. That the defendants are a corporation duly created by and under the laws of this state (or the state of, etc.), organized pursuant to an act of the legislature (of said state), entitled (title of the act), passed (date of passage), and the acts amending the same.

II. That on the _____ day of _____, 18—, at _____, in consideration of the payment by the plaintiff to the defendants of the premium of _____ dollars, the defendants, by their agents duly authorized thereto, made their policy of insurance in writing, a copy of which is annexed as a part of this complaint, and marked Exhibit A, and thereby insured the plaintiff against loss or damage by fire to the amount of _____ dollars upon his (dwelling house and his furniture therein), in the village of M.

III. That at the time of making said insurance (or at the time of the commencement of the risk), and from then until the fire hereinafter mentioned, the plaintiff had an interest in the property insured, as the owner (or mortgagee, or otherwise) thereof, to an amount exceeding the amount of said insurance (or exceeding the sum of _____ dollars).

IV. That on the _____ day of _____, 18—, said dwelling house and furniture were totally destroyed (or damaged, and in part destroyed) by fire, which did not happen by (the causes excepted in the policy).

V. That the plaintiff duly fulfilled all the conditions of said insurance on his part (and more than sixty days, or as otherwise required by the policy, before the commencement of this action, to-wit, on the _____ day of _____, 18—, at _____, gave to the defendants due notice and proof of the fire and loss aforesaid, and duly demanded payment of the said sum of, stating the amount of the loss, if less than the amount insured; but if greater, then the amount insured).

VI. That no part of the same has been paid, and the said sum is now due thereon from the defendants to the plaintiff. 1 Abb. Forms 297.

B. Complaint Where Insurance Was a Renewal.

(As in the preceding form, inserting after paragraph II the following):

III. That on the _____ day of _____, 18—, at _____, the defendants by their agents duly authorized thereto, in consideration of _____ dollars to them paid by this plaintiff, executed and delivered to this plaintiff their certificate of renewal of said policy, of which the following is a copy (copy of the certificate), (or a copy of which is annexed as a part of this complaint, and marked Exhibit B), and thereby renewed said insurance for the term of one year from said _____ day of, etc. 1 Abb. Forms 298.

C. Complaint by the Insured, Correcting Alleged Mistake.

I. That he was the owner of, etc., in, etc., at the time of its destruction by fire, as hereafter mentioned.

II. That on the _____ day of _____, 18—, at _____, in consideration of _____ dollars to them paid, the defendants executed to the plaintiff a policy of insurance on the said property, a copy of which is hereto annexed as part of this complaint.

III. That on the _____ day of _____, 18—, the said property was totally destroyed by fire.

IV. That the plaintiff's loss thereby amounted to more upon each part of the property separately insured than the amount of such separate insurance.

V. That on the _____ day of _____, 18—, he furnished the defendant with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

VI. That no part of the said loss has been paid.

VII. That the survey referred to in the said policy, and made a part of the same, contains, among others, the following questions and answers (copy):

VIII. That the said questions and answers were not meant or understood, by either of the parties, to be a warranty.

IX. That the plaintiff, by his answers aforesaid, did not mean, nor did the defendant understand him to represent, that there was, etc.; but the defendant then knew that no, etc.; and if the said questions and answers do

in law convey such an idea, it is through mistake only. 1 Abb. Forms 299.

D. Complaint by Assignee on Agreement To Insure, Policy Not Delivered.

I. (Incorporation of defendants may be stated, as in I, A.)

II. That on and before the _____ day of _____, 18—, the Winstead Manufacturing Company, a corporation established at, etc., by their agent applied to M. N., the duly authorized agent of the defendants, for insurance against loss or damage by fire upon a certain stock of merchandise, the property of said Winstead Manufacturing Company, consisting of scythes contained in a building of the said Winstead Manufacturing Company, occupied for storing blacking, bluing, and packing scythes, in said Winstead. And the defendants, by their said agent, on said day, agreed to become an insurer to said company on the said stock for three months from the said day, for _____ dollars, at a premium of _____, and that the said defendants would execute and deliver to the said Winstead Manufacturing Company a policy of insurance in the usual form of policies issued by them the said defendants, for the sum of _____ dollars, for the term of three months from the said day.

III. That the said Winstead Manufacturing Company then and there paid to the defendants said premium, to-wit, _____ dollars.

IV. That it was then and there agreed between the said Winstead Manufacturing Company and the said defendants, that the said insurance should be binding on the part of the defendants for the term of three months from the time of the receipt of the said premium, for the sum of _____ dollars, and the said defendants then and there, in consideration of the premises, promised and agreed to and with the said Winstead Manufacturing Company, to execute and deliver to them, in a reasonable and convenient time, a policy in the usual form of their policies, insuring the said stock of goods in the sum of _____ dollars against loss and damage by fire, the insurance to commence at the time of the receipt of the said premium, and continue for the said term of three months.

V. That the defendants, by a policy of insurance issued in their usual form

(among other things), do promise and agree (here set out legal effect of the contemplated policy, e. g.), to make good unto the insured all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property insured, within the time for which the insurance is made, the loss or damage to be estimated according to the actual cash value of the property at the time the loss shall happen; the loss to be paid within sixty days after notice and proof thereof made by the insured, and received at the defendant's office in conformity to the conditions annexed to the policy. And by one of the conditions usually annexed to such policy, it is provided that all persons insured by the defendants and sustaining loss or damage by fire, are forthwith to give notice thereof to the company, and as soon after as possible to deliver in a particular account of such loss or damage, signed with their own hands and verified by their oath or affirmation; and shall also declare on oath whether any and what other insurance has been made on the same property; what was the whole value of the subject insured; what was their interest therein, and (among other things) in what general manner the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and when and how the fire originated, so far as they know or believe; and by another condition it is stipulated, on the part of the defendants, that payment of losses shall be made in sixty days after the loss shall have been ascertained and proved, and the proof received at the office of the company.

VI. That after the insurance so made, and after the said promise to execute and deliver a policy in conformity thereto, and within the said term of three months, for which the said Winstead Manufacturing Company was so insured, to-wit, on the _____ day of _____, 18—, the said stock of merchandise in the said building mentioned and intended to be so insured, was damaged and in part destroyed (or was totally destroyed) by fire, and that the said Winstead Manufacturing Company thereby sustained loss and damage to a large amount, to-wit, to the amount of _____ dollars, and to more than the sum of

_____ dollars over and above all insurance thereon.

VII. That said Winstead Manufacturing Company duly fulfilled all the conditions of said agreement and insurance on their part (and more than sixty days, or otherwise as required by the policy, before the commencement of this action, to-wit, on the _____ day of _____, 18—, at _____, gave to the defendants due notice and proof of the loss as aforesaid, and duly demanded payment of the said sum of _____ dollars).

VIII. That no part of the same has been paid.

IX. That on the _____ day of _____, 18—, at _____, the said Winstead Manufacturing Company duly assigned to this plaintiff the said agreement and insurance, and their claim against the defendants thereon, of which the defendants had due notice. 1 Abb. Forms 300, 302.

E. Complaint on Fire Policy by Assignee, Purchaser of Property.

(As in I, A, substituting, in the averment of the policy, the name of the original insurer in place of the words, "the plaintiff," and the following instead of paragraph III):

III. That at the time of making said insurance (or at the time of the commencement of the risk), and from then until the assignment hereinafter mentioned, said (original insured) had an interest in the property insured as the owner (or mortgagee, or otherwise) thereof, to an amount exceeding the amount of said insurance (or exceeding the sum of _____ dollars).

IV. That on the _____ day of _____, 18—, with the consent of the defendants duly given in writing on said policy by their said agents, the said (original insured) duly sold, assigned and conveyed to the plaintiff his interest in the said (property insured), and in the policy of insurance (continue as in I, A, paragraphs IV, V and VI). 1 Abb. Forms 298.

II. Life Policies.

A. Complaint by Executor on Life Policy.

(I. For allegation of incorporation of defendants, see I, A.)

II. That on the _____ day of _____, 18—, at _____, in consideration of the payment by one M. N. to the defendants, of the premium of _____ dollar (annually during his

life), the defendants, by their agents duly authorized thereto, made their policy of insurance in writing, a copy of which is annexed as a part of this complaint, and marked "Exhibit A," and thereby insured the life of said M. N. in the sum of _____ dollars.

III. That on the _____ day of _____, 18—, at _____, said M. N. died, which death was not caused by (the causes excepted in the policy).

IV. That thereafter, and before this action (or on the _____ day of _____, 18—), said M. N. died, leaving a will, by which the plaintiff was appointed the sole executor thereof (or this plaintiff and C. D. were appointed executors thereof).

V. That on the _____ day of _____, 18—, said will was duly proved and admitted to probate in the office of the surrogate of the county of _____, and letters testamentary thereupon were thereafter duly issued and granted to the plaintiff, as sole executor, by the surrogate of said county; and this plaintiff thereupon duly qualified as such executor, and entered upon the discharge of the duties of his said office.

VI. That said M. N. and the plaintiff each duly fulfilled all the conditions of said insurance on his part.

VII. That no part of the same has been paid, and the said sum is now due thereon from the defendants to the plaintiff as such executor. 1 Abb. Forms 302.

Note.—In some jurisdictions it is also necessary to allege that the policy was in full force and effect at the time of the death, that the statements contained in the application were true in all respects and that the death was not caused by any of the exceptions contained in the policy.

B. Complaint by Wife, Partner, or Creditor, Insured on Life Policy.

I. (For allegation of incorporation, see I, A.)

II. That on the _____ day of _____, 18—, at _____, in consideration of the payment by the plaintiff to the defendants of the (annual) premium of _____ dollars, the defendants, by their agents duly authorized thereto, made and delivered to the plaintiff their policy of insurance upon the life of M. N., a copy of which is annexed as a part of this complaint, and marked "Exhibit A," and there-

by insured the life of said M. N. in the sum of _____ dollars, payable to the plaintiff.

III. That the plaintiff was then the wife of said C. B. (or the partner of said C. B., in the business of, etc., or a creditor of said C. B. to the amount of _____ dollars, stating facts showing his interest in the life), and as such had a valuable interest in the life of said M. N.

IV. That on the _____ day of _____, 18—, at _____, said M. N. died, which death was not caused by (the causes excepted in the policy).

V. That said M. N. and the plaintiff each duly fulfilled all the conditions of said insurance on their part.

VI. That no part of the same has been paid, and the said sum is now due thereon from the defendants to the plaintiff. 1 Abb. Forms 303.

C. Complaint on Life Policy by Assignee in Trust for Wife.

I. (For allegation of incorporation of defendants, see I, A.)

II. That on the _____ day of _____, 18—, at _____, in consideration of the payment by one M. N. to the defendants of the premium of _____ dollars (annually during his life), the defendants, by their agents duly authorized thereto, made their policy of insurance in writing, a copy of which is annexed as a part of this complaint, and marked "Exhibit A;" and thereby insured the life of said M. N. in the sum of _____ dollars.

III. That on the _____ day of _____, 18—, the said M. N. (with the written consent of the defendants, by their said agents, duly indorsed on the policy (or otherwise state such consent as is required by the terms of the policy), duly assigned said policy of insurance to this plaintiff in trust for L. N., his wife.

IV. That up to the time of the death of M. N. all premiums accrued upon said policy were duly paid.

V. That on the _____ day of _____, 18—, at _____, said M. N. died, which death was not caused by (the causes excepted in the policy).

VI. That said M. N. and the plaintiff each duly fulfilled all the conditions of said insurance on their part (and the plaintiff, more than sixty days, or as otherwise required by the policy, before the commencement of this action, to-wit, on the _____ day of

_____, 18—, at _____, gave to the defendants due notice and proof of the death of said M. N. as aforesaid, and duly demanded payment of the said sum of _____ dollars).

VII. That no part of the same has been paid, and the said sum is now due thereon from the defendants to the plaintiff. 1 Abb. Forms 304.

III. Marine Policies.

A. Declaration on Marine Policy of Insurance.

For that whereas, heretofore, to-wit, on, etc. (date of policy), at, etc. (venue), by a certain deed-poll, or policy of insurance then and there made by the said defendants, and sealed with the seal of the said defendants, and which said deed or policy of insurance, the said plaintiff now brings here into court, the date whereof is a certain day and year therein mentioned, to-wit, the same day and year aforesaid, the said plaintiff as well in his own name, etc. (set forth the policy verbatim to the end). In witness whereof, the said defendants had caused their seal to be thereunto affixed, and the sum and sums by them assured to be therein underwritten, under which said deed or policy of assurance a certain memorandum was then and there written, whereby the said defendants declared the said policy to be free from average on corn, fish, salt, etc. (set forth the usual memorandum at the foot of the policy). And also a certain other memorandum was then and there written, whereby the said defendants declared themselves to be content with that assurance for fourteen thousand dollars, on the whole ship, valued at that sum; as by the said deed or policy of assurance, and memorandum so made as aforesaid more fully appears. And thereupon the said defendants became insurers to the said plaintiff for the said sum of fourteen thousand dollars, in the said deed or policy of assurance; and the said plaintiff further says, etc. (Averments as usual that plaintiff was interested, the ship's safety, departure and damage at sea, etc., according to the facts.) Of all which said premises the said defendants afterwards, to-wit, on, etc., there had notice; by reason whereof an action hath accrued to the said plaintiff, to demand and have of and from the said defendants the said sum of fourteen thousand dollars, so insured

aforesaid, parcel of the said sum above demanded, whereby an action hath accrued to the said plaintiff to demand and have, of and from the said defendants, the said sum of _____ dollars, parcel of the said sum above demanded, to-wit, at, etc. (venue), aforesaid. (Then add money had and received, account stated, and breach in debt.) Burr. App. 284. §552; Yates' Forms 470.

B. Complaint on Valued Policy on Ship or Cargo.

I. (For allegation of incorporation, see I. A.)

II. That on the _____ day of _____, 18____, at _____, in consideration of the premium of _____ dollars, then and there paid to them by the plaintiff (or which this plaintiff then and there agreed and became liable to pay to the defendant), the defendants, by their agents duly authorized thereto, made their policy of insurance in writing, of which a copy is annexed as a part of this complaint, and marked "Exhibit A," * and thereby insured for him _____ dollars upon the ship (or upon the cargo, or certain goods, then laden, or about to be laden, upon the ship) _____, then lying in the harbor of, etc. (or as the case was), for a voyage from _____ to _____, against the perils of the seas (or the perils of fire, mentioning the perils which occasioned the loss), and other perils in the policy mentioned.

III. That on the _____ day of _____, 18____, the said ship sailed from said _____ on the voyage described in the policy, and while proceeding therein (or during said voyage and while lying in the port of, etc.), was by the perils of the seas wrecked and totally lost (or was burned and wholly destroyed by fire).

IV. That the plaintiff was, at the time of the commencement of the risk and thereafter until the said loss, the owner of said (insured property, or interested in said insured property) to an amount exceeding (the whole amount insured), to-wit, _____ dollars.

V. That the plaintiff duly fulfilled all the conditions of said policy of insurance on his part (and more than sixty days, or as otherwise required by the policy, before the commencement of this action, to-wit, on the _____ day of _____, 18____, at _____, he

gave to the defendants due notice and proof of the loss as aforesaid, and duly demanded payment of said sum of _____ dollars).

VI. That no part of the same has been paid, and there is now due from the defendants to the plaintiff thereon the sum of _____ dollars, with interest from, etc. 1 Abb. Forms 305.

C. Complaint on Open Marine Policy.

(As in preceding form, substituting in paragraph II, at the *): and thereby promised to pay to the plaintiff, within _____ days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the ship (or of the cargo, or certain goods, then laden, or about to be laden upon the ship), then at _____, during its next voyage from _____ to _____, whether by perils of the sea or of fire (mentioning the perils which occasioned the loss), or by other causes therein mentioned, not exceeding _____ dollars. 1 Abb. Forms 307.

D. Complaint on Marine Policy on Freight.

(As in III, B, substituting at the * in paragraph II): and thereby insured for him _____ dollars upon freight of certain goods then laden (or about to be laden) in the ship _____, then at _____, to be transported by the plaintiff from _____ to _____, against the perils of the seas (or the perils of fire, mentioning the perils which occasioned the loss), and other perils in the policy mentioned.

III. That on the _____ day of _____, said ship sailed from _____, on the voyage described in the policy, and while proceeding thereon (or during said voyage, and while lying in the port of, etc.), said goods, the freight whereof was insured, were lost by (the perils of the sea).

IV. That the plaintiff has not received any freight upon said goods, nor was any earned thereon by reason of (such loss of the vessel).

(Or, where the freight was paid in advance):

IV. That the plaintiff thereupon became liable to repay (and on the _____ day of _____, at _____, did repay) to the shippers of said goods the sum of _____ dollars, freight which had been advanced by them.

V and VI as in III, B. 1 Abb. Forms 308.

E. Complaint on Marine Policy for Partial Loss and Contribution To General Average.

(I and II as in preceding forms.)

III. That said ship did, on the _____ day of _____, sail on said voyage, and whilst proceeding thereon was by the perils of the seas dismasted and otherwise damaged in her hull, rigging and appurtenances; insomuch that it was necessary for the preservation of said ship and her cargo to throw over a part of said cargo, and the same was accordingly thrown over for that purpose.

IV. That by means thereof the plaintiff was obliged to expend _____ dollars in repairing said ship at _____; and, also (or and is also liable to pay) _____ dollars as a contribution to and for the loss occasioned by throwing over a part of said cargo.

V. That said ship also suffered much damage that was not repaired at _____, to-wit, to the amount of _____ dollars.

(Continue as V and VI, in III, B.)
1 Abb. Forms 309.

F. Complaint, Averment of Loss by Collision.

(Substitute for paragraph III, in preceding forms).

III. That on or about the _____ day of _____, while the said ship or vessel in said policy named (with the said goods on board), was proceeding on her said voyage, and before her arrival at her said port of destination in the said policy mentioned, another vessel, with great force and violence, was carried against and ran afoul of the said ship, and the said ship thereby was sunk and lost (with the said goods, which thereby were wholly lost to the plaintiff). 1 Abb. Forms 308.

G. Complaint, Averment of Waiver of Condition.

That afterwards (and on the _____ day of _____, at _____), the defendants, by their agents duly authorized thereto, waived the condition of the said policy by which (designating it), and released and discharged the plaintiffs from the performance thereof (or and consented that the plaintiffs should, etc., according to the facts). 1 Abb. Forms 308.

IV. Defenses.

A. Answer, Denial of Policy.

That they did not make and deliver

the policy of insurance alleged. 2 Abb. Forms 91.

B. Answer, Denial of Loss.

That the said building was not destroyed (or injured) during the term of said insurance by (state perils insured against), but said loss occurred wholly by (very briefly indicate the excepted peril). 2 Abb. Forms 91.

C. Answer, Denial of Plaintiff's Interest.

That the plaintiff did not own, and had no insurable interest in, the said goods (or the said building, house, or its contents) at the time of the happening of said loss. 2 Abb. Forms 91.

D. Answer, That Policy Was Obtained by Misrepresentations.

That the defendants were induced to subscribe the policy, and become insurers, as alleged in the complaint, by the misrepresentation made by the plaintiff to the defendants of a fact then material to be known to the defendants, and material to the risk of the said policy; that is to say, by the misrepresentation that the said vessel was loaded with hides, whereas a large portion of her cargo consisted of guano (or that the said vessel had sailed from _____ on the _____ day of _____, 18—, whereas she had not sailed from _____ on that day, but on the _____ day of _____), as the plaintiff well knew. 2 Abb. Forms 91.

E. Answer, Denial of Account of Loss.

That the said plaintiff did not, within _____ days, which was the time limited in the conditions annexed to the said policy, nor within a reasonable time after the said loss, make out or deliver a particular account of such loss and damage, signed by or on behalf of the plaintiff, and verified by his oath or affirmation; but neglected to do so for the space of _____ months after said loss. 2 Abb. Forms 92.

F. Answer, Failure To Give Notice of Loss.

I. (Allege provision of policy, similarly to IV, H.)

II. That the plaintiff did not before this action give any notice of the loss of the said goods by fire, for which he seeks recovery in this action; nor furnish any statement of the loss of the said goods. 2 Abb. Forms 93.

G. Answer, That Plaintiff Gave in a Fraudulent Account of Loss.

That after the alleged loss and damage, and before action, the plaintiff made and delivered to the defendants a false and fraudulent account of the alleged loss and damage, as and for such account as is mentioned in the conditions contained in (or annexed to) said policy, in which said account he represented and stated that insured goods and property of the plaintiff to the amount of _____ dollars had been burnt and destroyed by the said fire, and that his loss and damage by the said fire were to the said amount of _____ dollars, with intent to induce the defendants to pay to him said amount; whereas insured goods and property of the plaintiff had not been burnt or destroyed by said fire to that amount, and his said loss and damage were not to that amount, as the plaintiff then well knew. 2 Abb. Forms 93.

H. Answer, Transfer Without Insurer's Consent.

I. That it is among other things provided by said insurance policy that in case of any transfer or termination of the interest of the insured, either by sale or otherwise of the property insured without the consent of the company, the policy should from thenceforth be void.

II. That after the making of said policy, and before the loss alleged, the interest of the said (insured) in said (things insured) was terminated and transferred, and the title thereto vested in said plaintiff without the consent of the defendants, whereby the policy became, and was, void at the time of said loss. 2 Abb. Forms 93.

I. Answer, Extra-Hazardous Risk.

I. (Allege provision of policy, similarly to IV, H.)

II. That after the making of the said policy, and before the loss alleged, the plaintiff received into his said store a large quantity of goods known and described as extra-hazardous, to-wit, _____, well knowing that such reception was a violation of the conditions in the said policy contained; and at the time of the said fire, the said plaintiff had in said store a large quantity of such extra-hazardous goods. 2 Abb. Forms 94.

J. Answer, Existence of Liens.

I. (Allege provision of policy, similarly to IV, H.)

II. That at the time of making said policy, the said interest of (the insured) was not free from all liens and claims that might be prosecuted against the said (thing insured); but, on the contrary, the same was subject to a chattel mortgage, which was unknown to the defendants at the time of issuing said policy, which mortgage was dated on the _____ day of _____, and given by said plaintiff to one M. N. to secure _____ dollars. 2 Abb. Forms 94.

V. Replication, Waiver by Defendant of Conditions in Policy.

And the plaintiff says that by reason of anything in the plea No. 2 alleged, he ought not to be barred from having and maintaining his aforesaid action against the said defendant, because he says that after the said policy of insurance was issued, and before the period of six months from the date of loss and damage by fire had expired, viz: On the 11th day of February, 1885, the said defendant, by its own endorsement in writing upon said policy, waived the clause or provision of said policy in said plea referred to and set forth, and suspended the operation thereof as follows, viz:

'Winchester, Va., February 11, 1885

'The provision in this policy limiting the time within which suit may be brought against this company under it, is hereby waived for thirty days from this date.

'Virginia Fire and Marine Insurance Company,

'By W. L. Cowardin, Pres't.'

"And this he is ready to verify. Wherefore he prays, judgment," etc. *Virginia F. & M. Ins. Co. v. Aiken*, 82 Va. 424.

INTERPLEADER.

I. Bills of Interpleader, 665

- A. *Purchaser Against Different Persons Claiming Payment*, 665
- B. *Modern English Form*, 665
- C. *Prayer That Defendants Interplead*, 666
- D. *By Executor in Nature of Interpleader*, 666

II. Affidavits, 668

- A. *Affidavit Annexed to Bill*, 668
- B. *By Secretary of Company*, 668

III. Orders, 668

- A. *For Injunction on Payment Into Court*, 668

- B. *For Injunction on Undertaking as to Subject-Matter*, 668

IV. Decrees, 668

- A. *To Interplead*, 668
B. *Action Stayed, Inquiry*, 669

V. Under Code, 669

- A. *Complaint*, 669
B. *Oath Denying Collusion*, 669
C. *Order for Judgment and Reference*, 669

VI. By Motion, 670

- A. *Affidavit in Action for Recovery of Money*, 670
B. *Affidavit in Action for Specific Property*, 670
C. *Notice of Motion*, 670
D. *Orders*, 671

1. *For Interpleader*, 671
2. *For Delivery of Property and for Receiver*, 671

CROSS-REFERENCES:

DEMURRER:

- Demurrer to Bill of Interpleader, No Affidavit, Want of Equity;
Demurrer to Bill of Interpleader for Want of Claim of Right in Defendant.

INJUNCTIONS:

- Injunction Against Proceedings at Law in Case of Interpleader.

I. Bills of Interpleader.

- A. *Statements in Bill by Purchaser Against Different Persons Claiming Payment.*

Bill states that on the _____ day of _____, the plaintiff purchased of the defendant, Salter, a cargo of coal, then on board of a vessel, at ten dollars per chaldron, amounting to 1125 dollars, payable in a note at thirty days. The coal was delivered to the plaintiff, who paid Salter one hundred dollars on account. That the defendants, P. & S. Schermerhorn, afterwards issued an attachment against W. W., as an absent debtor, and the defendants F. & B. caused another attachment to be issued against W. W., as an absconding debtor, and warrants were issued, in the usual form, to the sheriff of _____, who gave notice to the plaintiff not to pay over to any person, except the sheriff, any property or money of W. W., and the plaintiff was informed by the sheriff, and the attorneys of the defendants P. & S. S., and F. & B., that the coal so purchased by him was the property of W. W., for whom the defendant Salter was only an agent, and that the

plaintiff would be held liable, if he paid the residue of the money to Salter. That the plaintiff applied to the defendants for leave to pay the money to Salter, without responsibility; and he, also, applied to Salter, to relieve or secure him against the operation of the attachment, and any further responsibility, which they respectively refused to do, and that Salter had commenced a suit at law against the plaintiff to recover the money. The plaintiff averred that he was always ready and willing to pay the money, if he could do so safely, and offered to pay it into court. He prayed for an injunction to restrain the suit at law, and for relief generally. The bill was accompanied with the usual affidavit, denying any collusion and indemnity, etc. Upon the plaintiff's paying the money into court, an injunction was granted. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2030; Richards v. Salter, 6 Johns. Ch. (N. Y.) 445.

- B. *Bill of Interpleader (Modern English Form).*

(The bill set forth a bond of the plaintiffs, who were partners together in trade, for payment of £18,000, to M. J., when she was unmarried; the marriage of the defendant H. J. and M. J., his wife, and the issue of the marriage, viz., the three infant defendants; a settlement made previously to their marriage, by which the bond, together with the principal money and interest thereby secured, was assigned to the defendants, T. B., S. B., and R. J., upon certain trusts for the benefit of the said M. J., her said husband, and their issue, "but the plaintiffs are not acquainted with the particulars of the said settlement, and crave leave to refer thereto.")

The said T. B., S. B., and R. J. claim to be entitled under the said settlement to receive the principal money and interest secured by the said bond.

The plaintiffs have lately discovered that the said bond or obligation is now in custody or possession of the defendant A. B., and he claims to be entitled thereto and the principal money and interest thereby secured.

On or about, etc., a notice in writing was served upon the plaintiffs, by the solicitor of the last-named defendant, which is in the words following, etc. (Claiming the money.)

(Statement of applications to the plaintiffs by the defendant A. B., and

of threats to prosecute an action or suit, and that he has actually sued out a writ in the court of ——— in the names of the said H. J. and M. J., his wife, against the plaintiffs.)

The other defendants T. B., S. B., and R. J., also threaten and intend to commence and prosecute some proceedings at law or in equity against the plaintiffs, on the recovery of the amount due from the plaintiffs upon the said bond. Plaintiffs submit that the said defendants ought to interplead between themselves, the plaintiffs being ready and hereby offering to pay the same to such of the defendants as this honorable court may determine to be entitled thereto.

The said last-named defendants ought to set forth the particulars of their respective claims to the moneys due upon the said bond or obligation, and how to make out the same.

Prayer.

1. That the defendants may answer the premises, and that the defendants may be decreed to interplead and settle and adjust between themselves their right or claims to or in the money due or payable under the said bond or obligation, the plaintiffs being ready and willing, and hereby offering to pay the moneys due and payable under the same to such of the said defendants as this honorable court may determine to be entitled thereto.

2. That the said defendant A. B. may be restrained by the order and injunction of this honorable court from prosecuting the said action so commenced by him as aforesaid against the plaintiffs; and that all the said defendants may be respectively restrained by the order and injunction of this honorable court from prosecuting or commencing any other action or actions or legal proceeding or proceedings against the plaintiffs, or any or either of them, for the recovery of the moneys due or to become due or payable under the said bond or obligation, or any part thereof, or otherwise concerning the matters aforesaid.

3. (For general relief.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2027.

C. Bill of Interpleader, Prayer That Defendants Interplead.

And that the said several defendants may be decreed to interplead touching their said several claims, and that plaintiff may be at liberty to pay the

several sums now justly and fairly due from him for the rent of the said messuage or tenement and premises into the bank, in the name and the privity of the accountant-general (or of the clerk), of this honorable court, in trust for the benefit of the persons or person entitled thereto, subject to the further order of this court, after deducting thereout in the first place, the aforesaid sum of ———, to be allowed unto plaintiff for repairs pursuant to the said agreement, together with all sums of money expended and advanced by the plaintiff for land-tax and other necessary outgoings in respect of the said premises. And that plaintiff may be at liberty to quit the possession of the said premises, and that possession thereof may be delivered up to such person or persons as this honorable court shall direct or appoint. And that plaintiff may have a satisfaction or allowance made out unto him out of the rent of the said premises for the several articles hereinbefore and in the first agreement particularly mentioned, which have been provided by plaintiff at his own expense for the said premises. And that in the meantime the said defendants, S. O. and T. C., may be restrained by the order or injunction of this honorable court from all further proceedings in the aforesaid action of ejectment brought against plaintiff, and that they and all the said other defendants may be in like manner restrained from making any distresses or distress upon the said messuage or tenement and premises, and from commencing or prosecuting any action or actions at law against plaintiff to recover the rent of the said premises, or to turn plaintiff out of possession thereof, or otherwise from proceeding at law against the plaintiff touching any one of the matters aforesaid. And that all proper and necessary directions may be given for the purposes aforesaid. (And for further relief.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2031.

D. Bill by Executor, in Nature of Interpleader To Obtain Instructions of Court.

To the honorable the justices of the supreme judicial court, sitting in equity.

W. T. A., of B., in the county of S., esquire, brings his complaint against S. B., of said B., widow, and J. G. B., of said B., single woman, and W. W. S.,

of said B., and Hester V. A., of M., in the state of New Jersey, wife of Henry V. A., physician, and said Henry and C. W., of the city and state of N. Y., and the said H. V. A., as trustee of said C.

And the plaintiff shows that on the twenty-sixth day of March, A. D. 1860, T. W., of said B., esquire, made his last will and testament; that T. W. departed this life on the thirtieth day of said March; that on the thirtieth day of April, of the same year, the said will was admitted to probate, and letters testamentary issued to the plaintiff, the executor therein named.

2. That among other provisions of said last will and testament are these following, etc., as by reference to a certified copy of said will in court to be produced will more fully appear.

3. That the real estate devised to the plaintiff, upon the trusts in said will recited, was, at the time of the decease of said T. W., subject to a mortgage for the sum of fifty-six hundred dollars and interest.

4. That the testator purchased said real estate of one S. R., and that it was conveyed to him by deed of said S. R., bearing date the second day of May, eighteen hundred and fifty-seven; that the consideration stated in said deed, and, as the plaintiff is informed and believes, the true consideration for the conveyance, was the sum of eighty-five hundred dollars; that after the description of the metes and bounds of the land in the said deed conveyed, the conveyance is "declared to be subject to a mortgage of fifty-six hundred dollars and interest, and also subject to the taxes for 1857, said mortgage forming part of the consideration; that said mortgage is excepted from and taken out of the covenants of said deed, as by reference to a copy of said deed in court to be produced will more fully appear.

5. That the mortgage referred to in said deed was given by said R. and one L. B. L. to J. V. K., to secure the promissory note of said L., for said sum of fifty-six hundred dollars.

6. That after the conveyance of said estate to the testator, the testator paid the interest upon said mortgage as it became due to the said J. V. K., the holder thereof; that the testator, as the plaintiff is informed and believes, was desirous of taking up the mortgage and

substituting his own note therefor, and offered to the said J. V. K., the holder of the mortgage, so to do; but the said J. V. K. expressed a preference to let the matter remain as it then stood.

7. That the said S. B. and J. G. B. claim that said mortgage debt is to be paid from the personal assets in the hands of the plaintiff, as executor.

8. That the said W. W. S. and others, residuary legatees, claim that the said real estate is devised to the plaintiff in trust for said S. B. and J. G. B., subject to the incumbrance of said mortgage and that the plaintiff has no authority under said will to pay said mortgage debt.

9. And the plaintiff has no interest in the matter in controversy between the several defendants, but is advised that he cannot safely proceed in the matter without the direction and judgment of this court sitting in equity, having no adequate remedy at law. Wherefore the plaintiff prays that the said several defendants may be decreed to interplead and state their several claims upon the plaintiff in the execution of his said trust as executor; so that the court may adjudge whether a sufficient sum shall be taken from the assets of the estate in the hands of the plaintiff, to pay said mortgage debt and the interest thereon; or whether the same shall be paid to the defendants claiming under the residuary clause of said will.

To the end, therefore, that the said defendants may answer the premises, and that they may be decreed to interplead together; and that it may be ascertained by a decree of this honorable court whether said mortgage debt shall be paid by the plaintiff from the assets of the testator in the hands of the plaintiff as executor; and that the plaintiff may have other needed relief in the premises;

May it please your honors to issue your writ of subpoena, directed to the several defendants, commanding them, and every of them, at a day certain, to appear before your honors, and then and there to answer all and singular the premises, and to stand to and abide such order and decree therein, as to your honors shall seem meet.

(Jurat.)

W. T. A.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2036-2038; *Andrews v. Bishop*, 5 Allen (Mass.) 490.

II. Affidavits.

A. *Affidavit To Be Annexed to Bill of Interpleader (a).*

I, _____, the above named plaintiff, make oath and say, that the bill in this suit (or the bill hereunto annexed) is not filed by me in collusion with any or either of the defendants in the said bill named, but such bill is filed by me of my own accord for relief in this honorable court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2175.

Affidavit to Bill of Interpleader (b).

The said J. C. maketh oath and saith, that he has exhibited his bill of interpleader against the defendants in this cause without any fraud or collusion between him and the said defendants, or any or either of them; and that the said J. C. hath not exhibited his said bill at the request of the said defendants, or any or either of them, and that he is not indemnified by the said defendants or by any or either of them, and saith that he hath exhibited his said bill with no other intent but to avoid being sued or molested by the said defendants, who are proceeding, or threaten to proceed, at law against him for the recovery of the rent of the said _____, in the bill mentioned. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2029.

B. *Affidavit of Secretary to Public Company To Be Annexed to Bill of Interpleader.*

I, H. D., of, etc., make oath and say, that I am secretary of the _____ insurance company, and that I do not, and to the best of my knowledge and belief the said insurance company do not, nor do or does any members or member thereof, collude with either of the defendants named in the bill hereunto annexed, but such bill is filed by me, on behalf of the said company, of my own accord for relief in this honorable court (or, if the company is plaintiff say, "but such bill is filed by the said company of its own accord, for relief," etc.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2030.

III. Orders.

A. *Order for Injunction in Interpleader on Payment Into Court.*

It is ordered that the plaintiffs W. and B. be at liberty to pay the sum of \$_____ insured on the life of H., into the bank, with the privy, etc., to the credit of this cause; and thereupon it is ordered that an injunction

be awarded to restrain the defendants F. and M., his wife, from proceeding in the action at law commenced by them against the plaintiffs, as in the bill mentioned; and to restrain the said defendants from commencing or preventing any action or actions, suit or suits, or other proceedings against the plaintiffs, or either of them, to recover the money insured by the policies in the bill mentioned. Direction for investment when paid in. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2327; 2 Seton Dec. (Eng. ed. 1862) 962.

B. *Order for Injunction on Undertaking as to Subject-Matter.*

(Plaintiffs sold resin to Ws, but retained possession at Ws' request; Ws resold to B., who before delivery became bankrupt. Actions were brought against the plaintiffs by Ws, and by C., etc., B.'s assignees. Blann was assignee under trust deed for the creditors of Ws.)

And the plaintiffs (by their counsel), undertaking not to part with the _____ tons of resin mentioned in the plaintiff's bill, until the further order of this court, and also undertaking to give a notice of motion that the said _____ tons of resin may be sold and the proceeds thereof paid into court, it is ordered that an injunction be awarded to restrain the defendants Ws and C. from prosecuting the actions at law commenced by them respectively against the plaintiffs, for or in respect of the _____ tons of resin in the bill mentioned, and also to restrain the said defendants, together with the defendant Blann, from commencing or prosecuting any further or other action or suit against the plaintiffs, for or in respect of the said _____ tons of resin; until, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2328; 2 Seton Dec. (Eng. ed. 1862) 962.

IV. Decrees.

A. *Decree To Interplead.*

This court doth order that the parties interplead; and for that purpose it is ordered that the defendants W., etc., proceed in the action of, etc., brought by them against the plaintiffs (as in the bill mentioned), with liberty for the defendants C., etc., the assignees of B., to defend such action. Direction to tax the plaintiffs' costs of suit, and also of the said action, and of the action brought by the defendants C., etc., against the plaintiffs, so far as they

have proceeded; and to raise and pay such costs from proceeds of sale of the resin paid into court. Adjourn, etc., until after trial. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2329; 2 Seton Dec. (Eng. ed. 1862) 964.

B. *Decree, Action Stayed as to Policy Money; Inquiry Who Entitled.*

(By consent.) Plaintiff to be at liberty to retain the sum of \$——— for his costs of the action at law in the bill mentioned, and of this cause, out of the sum of \$———, the amount due upon the policy in the bill mentioned. And it is ordered that the plaintiff M., on or before, etc., pay the sum of \$———, being the residue of the said sum of \$———, after such retainer, into the bank, etc., to the credit of the cause. Directions to invest; injunction to stay the defendant T. from prosecuting the action at law commenced by her against the plaintiff, and to stay her and the other defendants from commencing or prosecuting any other action against the plaintiff or the insurance company in respect of any money due on the policy. And it is ordered, that all further proceedings in this cause be stayed as regards the plaintiff; and as between the defendants that an inquiry may be made who is entitled to the said sum of \$———. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2329; *Macintyre v. Thomson*, 2 Seton Dec. (Eng. ed. 1862) 964.

V. Under Code.

A. *Complaint, Interpleader.*

I. That before the making of the claims hereafter mentioned one M. N. deposited with the plaintiff (describe the property) for (safe keeping).

II. That the defendant W. X. claims the same (under an alleged assignment thereof to him from the said M. N.)

III. That the defendant Y. Z. also claims the same (under an order of the said M. N., transferring the same to him).

IV. That the plaintiff is ignorant of the respective rights of the defendants.

V. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the court shall direct.

VI. That this action is not brought by collusion with either of the defendants.

Wherefore, the plaintiff demands judgment:

1. That the defendants be restrained,

by injunction, from taking any proceedings against the plaintiff in relation thereto.

2. That they be required to interplead together concerning their claims to the said property.

3. That some person be authorized to receive the said property pending such litigation.

4. That upon delivering the same to such (person) the plaintiff be discharged from all liability to either of the defendants in relation thereto.

5. And that the plaintiff's costs be paid out of the same. 1 Abb. Forms 567.

B. *Oath Denying Collusion, To Annex to Complaint of Interpleader.*

That he does not bring this action by the consent, knowledge, privity, or combination of any or either of the defendants in this action, but only of his own free will, for relief in this court. 2 Abb. Forms 328.

C. *Interpleader, Order for Judgment and Reference.*

(Recitals of proceedings as in other cases, continuing):

Thereupon it is ordered and adjudged, that the said complaint (or bill of interpleader) is properly brought by the plaintiffs in this action; that the plaintiffs be paid their costs of this action, to be taxed by deducting the same from out of the fund in the complaint mentioned, and ——— dollars as an additional allowance; and that the plaintiffs thereupon, within thirty days next hereafter, pay into court, and deposit the amount of the residue of said fund, principal and interest to the time of such payment, with the clerk of this court, for the benefit of such of the defendants as shall be found to be entitled thereto; and that the plaintiffs so paying said amount into court, and depositing the same with the clerk of this court, be dismissed from the further prosecution of this action, and thereupon be released, acquitted, and discharged from all claims or liability to either or any of the defendants in this action, for, upon, or by reason of said fund, on the payment thereof into court as aforesaid.

And it is further ordered, adjudged, and decreed, that the said defendants do interplead, settle, and adjust their several claims, demands and matters in controversy in this action, as between themselves.

(And for that purpose, it is further ordered and adjudged, that it be, and is hereby referred to R. E., esq., counsellor at law, of ———, as sole referee, to hear and determine the same, fourteen days' notice of such hearing to be first given to the respective defendants, or their attorneys, with power to require said several defendants to present, try, and determine their several and respective claims to said fund in controversy before him, in such manner and under such regulations as he may deem just and proper.

That the said referee, among other things, examine, ascertain, and determine which of said defendants is entitled to the said fund so deposited with the clerk of this court; and if he shall be of the opinion that any one or more of the said defendants is, or are, equitably entitled to have a share in the same, that said referee also ascertain and determine what portion of said fund belongs to each; and that said referee do find, decide, and report thereon with all convenient speed. 2 Abb. Forms 557.

VI. By Motion.

A. *Affidavit in Action for Recovery of Money.*

Y. Z., being duly sworn says:

I. That he is president of the defendants above named, who are a banking corporation, duly incorporated by and under the laws of this state.

II. That the above entitled action has been commenced, and is now actually pending, in this court against the above named defendants on a contract; and that the said defendants have not yet answered therein and their time to do so does not expire until the ——— day of ——— next.

III. That said action is brought to recover the sum of ——— dollars, deposited with the said defendants on or about the ——— day of ———, 18——, by one M. N.; and that the plaintiff claims to be entitled to said moneys so deposited, under an assignment thereof to him by the said M. N.

IV. That on the ——— day of ———, 18——, one O. P. gave to said defendants notice that he had been appointed receiver of all the property of the said M. N., and demanded of said defendants that they pay the said deposit to him; which demand was made without any collusion with these defendants. And this deponent further

says, that the defendants are not acquainted with the respective merits of said claims, and do not know to which of said parties they can safely pay said money; but hereby offer to pay the same into court, upon being discharged from liability to either of them, in order that said several claimants may interplead, and settle their claims between themselves. 2 Abb. Forms 238.

B. *Affidavit, in Action for Specific Property.*

Y. Z., being duly sworn, says:

I. That he is the defendant in the above entitled action.

II. That the complaint herein was served on ———, and no answer has yet been served or filed.

III. That the property which is claimed by the complaint herein was consigned to deponent by one M. N., of ———, subject to his order.

IV. That the same property is claimed by one O. P., of ———, under a written order of the said M. N., dated ———, and directing its delivery to him as the alleged purchaser thereof; while the plaintiff herein claims under a general assignment of all the property of the said M. N., to him, executed by the said M. N. on the same day.

V. That the defendant is ignorant of the rights of the respective claimants, and is not acting in collusion with either of them.

VI. That the defendant is ready and willing to deliver the said property to such person as the court may direct, upon being discharged from liability to either of the said claimants. 2 Abb. Forms 240.

C. *Notice of Motion for Interpleader.*

Take notice, that on the affidavit herewith served, and on the complaint herein, the defendant will move the court, at a special term to be held at ———, on the ——— day of ———, 18——, at ——— o'clock in the ——— noon, or as soon thereafter as counsel can be heard, to substitute O. P., of ———, in his place, as defendant herein, and to discharge this defendant from liability to either the plaintiff or the said O. P. concerning the agreement (or otherwise designate the contract) mentioned in the complaint, upon this defendant's paying into court the sum of ——— dollars, the amount claimed in the summons herein (or, if the action is for

specific property say, concerning the property mentioned in the complaint, upon said defendant's transferring the same to such person as the court may direct); or for such other relief as may be just (and for the costs of this motion). 2 Abb. Forms 238.

D. Orders.

1. Order for Interpleader.

Ordered, that on payment by the defendant to the clerk of the county of _____, of the amount claimed in the summons herein, principal and interest, less ten dollars costs of this motion, within five days from the entry of this order, O. P. be substituted as defendant in this action in place of Y. Z., the defendant above named, and that said Y. Z. thereupon be discharged from liability to either the plaintiff above named or said O. P. And it is further ordered, that if the said O. P. does not appear and defend this action within twenty days after service upon him of a copy of this order, together with a copy of the complaint herein, the plaintiff may apply ex parte for an order that the money so deposited be paid over to him. 2 Abb. Forms 241.

2. Order of Interpleader, Delivery of Specific Property, and Appointing Receiver Therefor.

Ordered, I. That the defendant deliver the property mentioned in the complaint herein to R. S., esq., of _____, who is hereby appointed receiver thereof.

II. That O. P., of _____, be substituted as defendant in this action, in place of the above named Y. Z.; who shall, upon delivery of the said property to the said receiver, be discharged from all liability therefor, either to the plaintiff or to the said O. P.

III. That the said receiver hold the said property, subject to the further direction of this court. (If any special authority is needed as for the collection of incomes, or the sale of the property, insert it here.)

IV. That within _____ days after entry (or, notice) of this order, the plaintiff serve a summons and a copy of his complaint, amended as he may see fit (with a copy of this order), upon the said O. P.; and that the said O. P. answer such complaint within _____ days thereafter.

V. That if the plaintiff neglect to serve his summons and complaint and

this order as herein directed, the defendant Y. Z. may apply to the court for an order dismissing the action, and that the said property be delivered by the receiver to the said defendant Y. Z.; and if the said O. P. neglect to answer such complaint, if served as herein directed, the plaintiff may apply on notice, for an order that said property be delivered by the receiver to the plaintiff.

VI. That _____ dollars costs be allowed to the said Y. Z., to be deducted by him out of the fund (or, to be paid by the plaintiff, and allowed to him in case of his final recovery of judgment). 2 Abb. Forms 242.

INTERSTATE COMMERCE COMMISSION.

I. Complaints, 671

- A. *Against Single Carrier*, 671
- B. *Against Joint or Connecting Carriers*, 672
- C. *Notice to Complainant*, 672

II. Answer, 672

- A. *Notice to Answer*, 672
- B. *Answer*, 672
- C. *Acknowledgment of Answer*, 673

III. Hearing, 673

- A. *Notice by Carrier*, 673
- B. *Notice of Hearing*, 673

IV. Notice of Taking Depositions, 673

V. Subpoena, 673

I. Complaints.

- A. *Complaint Against a Single Carrier*.

Interstate Commerce Commission.

A. B.

against

The _____ Railroad Company.

The petition of the above named complainant respectfully shows:

I. That (here let complainant state his occupation and place of business).

II. That the defendant above named is a common carrier engaged in the transportation of passengers and property by railroad between points in the state of _____ and points in the state of _____, and as such common carrier is subject to the Act to Regulate Commerce.

III. That (here state concisely the matters intended to be complained of. Continue numbering each succeeding paragraph as in Nos. I, II and III).

Wherefore the petitioner prays that the defendant may be required to answer the charges herein, and that after

due hearing and investigation an order be made commanding the defendant to cease and desist from said violations of the Act to Regulate Commerce, and for such other and further order as the commission may deem necessary in the premises. (If reparation for any wrong or injury be desired, the petitioner should state the nature and extent of the reparation he deems proper).

Dated at _____, _____,
18—, _____ A. B.,

(Complainant's signature.)

State of _____,

County of _____, ss.:

A. B., being duly sworn, says that he is the complainant in this proceeding, and that the matters set forth in the foregoing petition are true as he verily believes. A. B.

Subscribed and sworn to before me this _____ day of _____, 18—.

C. D.,

Justice of the peace.

(Or other officer authorized to administer oaths.) 2 Int. Com. Rep. App. IV, p. 53.

B. Complaint Against Joint or Connecting Carriers.

Interstate Commerce Commission.

A. B.

against

The _____ Railroad Company.

(Here set out in full the titles of the several carriers complained against.)

The petition of the above named complainant respectfully shows:

I. That (here let complainant state his occupation and place of business).

II. That the defendants above named are common carriers, and, under a common control, management, or arrangement, for continuous carriage or shipment, are engaged in the transportation of passengers and property wholly by railroad (or partly by railroad and partly by water, as the case may be) between _____, in the state of _____, and _____, in the state of _____, and as such common carriers are subject to the Act to Regulate Commerce.

(Then proceed as in form No. 1, I, A.) 2 Int. Com. Rep. App. IV, p. 53.

C. Notice to Complainant.

The Interstate Commerce Commission.
Washington, D. C., _____, 188—.

_____, _____,
_____:

Your petition against the _____ company, under section 13 of the Act to Regulate Commerce, approved February 4, 1887, and amended March 2, 1889, is received and placed on file.

A statement of the charges made has been forwarded to the carrier for satisfaction or answer within twenty days.

For the commission: _____,

Secretary.

2 Int. Com. Rep. App. IV, p. 53.

II. Answer.

A. Notice To Answer.

The Interstate Commerce Commission.
Washington, D. C., _____, 188—.
To the _____,

Enclosed please find a copy of a _____ petition filed against your company, embracing a statement of charges made by _____ under section 13 of the Act to Regulate Commerce, approved February 4, 1887, and amended March 2, 1889.

You are hereby called upon to satisfy the complaint or to answer the same, in writing, within twenty days from this date.

For the commission: _____,

Secretary.

2 Int. Com. Rep. App. IV, p. 53.

B. Answer.

Interstate Commerce Commission.

A. B.

against

The _____ Railroad Company.

The above named defendant, for answer to the complaint in this proceeding, respectfully states:

I. That (here follow the usual admissions, denials and averments. Continue numbering each succeeding paragraph.)

Wherefore the defendant prays that the complaint in this proceeding be dismissed.

The _____ Railroad Company.

By E. F.,

(Title of officer.)

State of _____,

County of _____, ss.:

E. F., being duly sworn, says that he is the _____ of the _____ railroad company, defendant in this proceeding, and that the foregoing answer is true as he verily believes.

E. F.

Subscribed and sworn to before me
this _____ day of _____, 18—.

C. D.,

Justice of the peace.

(Or other officer authorized to administer oaths.) 2 Int. Com. Rep. App. IV, p. 54.

C. *Acknowledgment of Answer.*

Interstate Commerce Commission.

Washington, _____, 188—.

_____,
_____,
_____.

The commission acknowledges the receipt of an answer made by the _____ Rail— company to the complaint filed against said company by _____, and the same has been filed.

For the commission:

Very respectfully,

_____,
Secretary.

2 Int. Com. Rep. App. IV, p. 54.

III. Hearing.

A. *Notice by Carrier Under Rule V.*
Interstate Commerce Commission.

A. B.

against

The _____ Railroad Company.

Notice is hereby given under Rule V of the Rules of Practice in proceedings before the commission that a hearing is desired in this proceeding upon the facts as stated in the complaint.

The _____ Railroad Company,

By E. F.,

(Title of officer.)

2 Int. Com. Rep. App. IV, p. 54.

B. *Notice of Hearing.*

Interstate Commerce Commission.

Washington, _____, 188—.

_____,
_____,
_____.

The case of _____ against the _____ rail— company _____ is assigned for hearing _____, 188—, a. m., at _____.

For the commission:

_____,
Secretary.

2 Int. Com. Rep. App. IV, p. 54.

IV. Notice of Taking Depositions Under Rule XII.

Interstate Commerce Commission.

A. B.

against

The _____ Railroad Company.

You are hereby notified that G. H. will be examined before C. D., a _____ (title of officer or magistrate), at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, as a witness for the above named complainant (or defendant, as the case may be), according to the act of congress in such case made and provided, and the rules of practice of the Interstate Commerce Commission; at which time and place you are notified to be present and take part in the examination of the said witness.

Dated _____, 18—.

I. J.

(Signature of complainant or defendant, or of counsel.)

To A. B., the above named complainant (or the _____ railroad company, the above named defendant; or to K. L., counsel for the above named complainant or defendant). 2 Int. Com. Rep. App. IV, p. 54.

V. Subpoena.

Interstate Commerce Commission.

To _____,
_____;

You are hereby required to appear before _____ in the matter of a complaint of _____ against _____, as a witness on the part of _____, on the _____ day of _____, 188—, at _____ o'clock at _____, and bring with you then and there _____.

Dated _____.

(Seal.) _____,

Commissioner.

_____,
_____,
Attorney for _____.

(Notice.—Witness fees for attendance under this subpoena are to be paid by the party at whose instance the witness is summoned, and every copy of this summons for the witness must contain a copy of this notice.) 2 Int. Com. Rep. App. IV, p. 54.

INTERVENTION.

I. Petitions, 674

A. *Petition by Landlord To Be Made Defendant in Ejectment.* 674

B. *Petition by Owner of Goods Seized on Attachment.* 674

C. *Petition for Intervention by Execution Creditor.* 675

- II. Affidavit by Owner of Chattels To Be Made a Party, 676
- III. Notice of Motion by Owner of Chattels To Be Made a Party, 676
- IV. Order Bringing in Third Person as Party Defendant, 676
- V. Order Permitting Intervention With Conditions, 676

CROSS-REFERENCE:

PARTITION:

- Petition To Be Admitted as Defendant in Partition;
- Order To Admit Petitioner as Defendant in Partition;

I. Petitions.

A. *Petition by Landlord To Be Made Defendant in Ejectment.*

In the matter of the petition of C. D. to be made a party defendant in an action pending in this court between A. B., plaintiff, and Y. Z., defendant.

To the supreme court held in and for the county of _____:

The petition of your petitioner, C. D., shows to this court:

I. That an action is now pending in this court by A. B., plaintiff, against Y. Z., defendant, for the recovery of the possession of certain real property, situated in _____, and known as number _____, _____ street, and more particularly described in the complaint in said action; which action the petitioner is informed and believes (is at issue, but) has not proceeded to judgment.

II. That said Y. Z. occupies said premises as tenant of your petitioner, and not otherwise. That your petitioner claims in good faith to be the owner in fee simple of said premises (here may briefly indicate source of title, *e. g.*, thus), having purchased the same at a sale by the sheriff of _____, upon a judgment and execution duly issued thereon against the property of one M. N., who as your petitioner is informed and believes, was the owner in fee simple of said premises at the time of said sale.

Wherefore, your petitioner prays that he may be made a party defendant in said action, and may be allowed to defend the same, and that he may have such other relief as may be just. (Verification.) 2 Abb. Forms 235.

B. *Petition by Owner, Goods Seized on Attachment.*

"To the judge of the circuit court of Greenville county:

"The petition and claim of the Pennsylvania Steel Company of Philadelphia, in the State of Pennsylvania, respectfully shows:

"1. That the Pennsylvania Steel Company is a corporation duly organized under the laws of the State of Pennsylvania.

"2. That the Pennsylvania Steel Company prior to the fifth day of June, 1888, contracted with the Georgia Construction and Investment Company, defendant in the above entitled suit, to sell to said company a lot of steel rails for construction of a railroad, at a price and on terms of sale agreed upon between them.

"3. That on the fifth day of June, 1888, the Pennsylvania Steel Company, in pursuance of said contract of sale, caused to be shipped from the city of Philadelphia, in the state of Pennsylvania, via the Port Royal and Augusta Railroad, thirteen hundred and four steel rails, weighing three hundred and twenty-five gross tons, to be transported by the Port Royal and Augusta Railroad Company and its connecting lines to Greenville, in the State of South Carolina, and there to be delivered to the said Georgia Construction and Investment Company.

"4. That likewise, in pursuance of said contract of sale, the said Pennsylvania Steel Company on the 15th day of June, 1888, caused to be shipped from the city of Philadelphia, in the State of Pennsylvania, via the Port Royal and Augusta Railroad, twenty-seven hundred and six steel rails, weighing six hundred and seventy-five 29-224 tons, to be transported by the Port Royal and Augusta Railroad and its connecting lines to Greenville, in the State of South Carolina, and there to be delivered to the said Georgia Construction and Investment Company.

"5. That at the times hereinafter mentioned there was and still is due to the Pennsylvania Steel Company by the said Georgia Construction and Investment Company, for and on account of the purchase money of the said steel rails so shipped under said contract of sale, the sum of sixteen thousand and five hundred dollars.

"6. That a portion of said steel rails, viz.: 271 at Laurens depot, in the County of Greenville, being still in the course of transportation and be-

fore delivery to the said Georgia Construction and Investment Company, the vendees under said contract of sale, were levied upon under a warrant of attachment issued by the clerk of the court of Greenville County in the above entitled suit, under which warrant the sheriff of Greenville County on the _____ day of _____, 1888, returned as attached the said 271 rails at said point above named. That the remainder of said rails so levied upon under said warrant by the sheriff of Greenville County, viz.: 70 at McBee's depot lot, in the County of Greenville, 330 near Reedy River Church, in the County of Greenville, and 107 near Carter's Shop, in the County of Greenville, were at the time of said levy in the possession of the said Georgia and Construction and Investment Company, but were held by the said Georgia Construction and Investment Company, subject to the order of your petitioner, the Pennsylvania Steel Company, and as the property of the said Pennsylvania Steel Company until paid for.

"7. That subsequent to the making of the said contract of sale and before delivery of the said rails to the said Georgia Construction and Investment Company, and before the issuing of the notices hereinafter mentioned, the said Georgia Construction and Investment Company became and still is insolvent and unable to pay the said sum of \$16,500 so due by it to the Pennsylvania Steel Company.

"8. That the said Port Royal and Augusta Railroad Company and its connecting lines, in whose custody and under whose control said rails were at the time undelivered, were duly notified by the said Pennsylvania Steel Company not to deliver the rails so shipped under said contract of said sale, and said notices were given before the delivery of said rails to the said Georgia Construction and Investment Company.

"Wherefore your petitioner claims the said steel rails mentioned in paragraph 6 hereof as its property, and prays that the same may be so adjudged, and that the sheriff of Greenville County may be ordered to deliver the same to your petitioner, and for such other and further relief as may be just, together with the costs of this proceeding." Central R. Co.

v. Georgia Const. & Inv. Co., 32 S. C. 319, 11 S. E. 192.

Note.—Not directly in question, but sufficiency necessary to decision.

C. Petition for Intervention by Execution Creditor, Suit Against Levying Officer.

"Comes now E. M. Ensfield & Co., and shows to the court that they recovered a judgment in the circuit court of the United States, district of Nebraska, against Warren D. and A. S. Howard, doing business as Howard Bros., for the sum of \$695 and costs, in an action pending in said court wherein E. M. Ensfield & Co. was plaintiff and said Howard Bros. was defendant; that an execution was duly issued upon said judgment and delivered to Brad B. Slaughter, marshal of said court, and one of the defendants herein; that said execution was duly levied upon a stock of general merchandise and certain notes and book accounts as property of said Howard Bros. by said marshal, through his duly appointed deputy, R. Q. Stewart, defendant herein; that said property was advertised and sold according to law by said marshal and his deputy; said property so levied upon and sold is the same property for the alleged conversion of which plaintiff herein seeks to recover from defendants herein; that the plaintiff to this action claims to have been owner of said property at the time of said levy and sale which your petitioner alleges is untrue, and says that said property at the time of said levy and sale was the property of said Howard Bros.; that the claim of said W. S. Howard to the ownership of said property is made in pursuance of a conspiracy and confederation between him and said Howard Bros., to hinder, cheat, and defraud the creditors of said Howard Bros., and particularly your petitioners. Your petitioners caused said levy and sale to be made as aforesaid, and have obligated themselves to indemnify and save harmless the said marshal from all damages and liabilities such marshal might incur by reason of the making of such levy and sale. Said Howard Bros. being insolvent, your petitioner has an interest in the controversy in this case, adverse to the plaintiff, and as judgment creditor under said execution,

and is the real party in interest in the defense of this case.

"Wherefore your petitioners pray that they may be made parties defendant in this case and be permitted to defend the same, and that an order be made to that effect, and that they be given a reasonable time in which to plead." *Howard v. Stewart*, 34 Neb. 765, 52 N. W. 714.

Note.—Not directly in controversy, but its sufficiency necessary to decision.

II. Affidavit by Owner of Chattels on Motion To Be Made Party.

C. D. being duly sworn, says:

I. That the above entitled action is brought for the recovery of the possession of certain personal property, to-wit (one hundred barrels of flour); which action has not, as deponent is informed and believes, proceeded to judgment.

II. That the defendant received the said (flour) from this deponent for storage, and this deponent is the sole owner thereof.

III. That the claim of the plaintiff in this action is made adversely to deponent's title, and deponent desires to litigate the question directly with him. 2 Abb. Forms 236.

III. Notice of Motion by Owner of Chattels To Be Made Party.

(Title as in I; or if the motion is on affidavit alone, entitle in the cause.)

Please take notice, that on the annexed petition (or, affidavit), and on the pleadings in this action, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, for an order, under §122 of the Code of Procedure, directing C. D., the petitioner above named, to be made a party defendant in the action now pending in this court between A. B., plaintiff, and Y. Z., defendant, and for such other relief as may be just. 2 Abb. Forms 236.

IV. Order Bringing in Third Person as Party Defendant.

On reading and filing the petition (or, affidavit) of C. D., dated the _____ day of _____, 18____ (and proof of due service of notice of this motion), and on motion of O. P. for said C. D., and after hearing Q. R. (or, no one appearing) in opposition:

Ordered, that C. D. be made a party defendant herein, and that the summons and complaint be amended accordingly (and that plaintiff have leave to amend them in other respects as he may be advised); and that on said C. D. causing a notice of appearance for himself herein to be given to plaintiff's attorney within _____ days from the entry of this order, a copy of the complaint as amended be served upon his attorney within twenty days thereafter, and the cause thereupon proceed in like manner as if said C. D. had been originally made a party defendant herein. 2 Abb. Forms 236.

V. Order Permitting Intervention With Conditions.

"It is hereby ordered that said petitioners have leave, and leave is hereby granted to them, to intervene in this suit for their own interests, and the interests of those whom they represent, and to that end to appear in the suit within three days, as defendants, in the same manner and with like effect as if they were named in the original and supplemental bills as defendants having or claiming an interest: Provided, that said petitioners all appear by the same solicitor or solicitors. This order to be without prejudice to proceedings already had; but this is not to be construed as depriving the petitioners of leave to apply for a rehearing or review of any order heretofore made, upon due notice to the parties interested." *Ex parte Jordan*, 94 U. S. 248, 24 L. ed. 123.

INTOXICATING LIQUORS.

- I. Indictment for Selling Liquors Without License, 677
- II. Complaint, Selling Contrary to Law, 678
- III. Indictment for Selling Less Than Permitted Quantity, 678
- IV. Information, Selling Liquor To Be Drunk on Premises, 678
- V. Indictment for Giving Away on False Prescription, 678
- VI. Information, Maintaining a Nuisance by Selling Liquor, 679
- VII. Affidavit, Selling Liquor to Minor, 679
- VIII. Indictment, Selling Liquor on Sunday, 679

IX. Indictment, Selling Liquor on Election Day, 679

X. Complaint, Being Open at Prohibited Hour, 680

XI. Complaint To Recover a Penalty, 680

XII. Complaint To Recover a Penalty for School Fund, 680

CROSS-REFERENCES:

ILLEGALITY, HOW PLEADED:

Answer, Note for Liquors Sold Without License.

PENALTIES, FORFEITURES AND FINES:

Complaint for Selling Liquors Without License; Alleging Both Sales in Small Quantities and Sales To Drink on the Premises;

Complaint for Selling Liquors on Sunday or Election Day;

Complaint by Wife or Husband Against Dealer in Intoxicating Liquors for Illegally Selling to Plaintiff's Husband or Wife.

I. Indictment for Selling Liquors Without License (a).

State of New York, County of Livingston, ss:

The jurors of the People of the State of New York, in and for the body of the county of Livingston aforesaid, upon their oath aforesaid, present, that John Cramer, late of the town of North Dansville, in the county aforesaid, on the tenth day of March, in the year of our Lord one thousand eight hundred and sixty, at the town and in the county of Livingston aforesaid, did sell and cause to be sold strong and spirituous liquors and wines in quantities less than five gallons at a time, to divers citizens of this State, and to divers persons to the jurors aforesaid unknown, and did then and there deliver and cause to be delivered, in pursuance of such sale to the said divers citizens of this State, and to the said divers persons to the jurors aforesaid unknown, the said strong and spirituous liquors and wines in quantities less than five gallons at a time, to-wit: One pint of alcohol, one pint of wine, one pint of gin, one pint of brandy, one pint of rum, one pint of whisky, one pint of spirits, one pint of ale, one pint of strong beer, one pint of cordial, one pint of porter, one pint of distilled liquor, and one pint of mixed liquors, without having a license therefor granted as provided in the act of the legislature of the State of New York, entitled "An

act to suppress intemperance and to regulate the sale of intoxicating liquors," passed April 16, 1857, and without any lawful authority, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said John Cramer, on the tenth day of March, in the year aforesaid, at the town of North Dansville, in the county aforesaid, did sell and cause to be sold strong and spirituous liquors and wines to divers citizens of this State, and to divers persons to the jurors aforesaid unknown, and did then and there deliver and cause to be delivered, in pursuance of such sale, to the said divers citizens of this State, and to the said divers persons to the jurors aforesaid unknown, the said strong and spirituous liquors and wines, to-wit: One pint of alcohol, one pint of wine, one pint of gin, one pint of brandy, one pint of rum, one pint of whisky, one pint of spirits, one pint of ale, one pint of strong beer, one pint of cordial, one pint of porter, one pint of distilled liquor, and one pint of mixed liquors, to be drank in the house and shop of him, the said John Cramer, there situate, and in the out-house, yard and garden appertaining thereto, and did then and there suffer and permit the said liquors and wines so sold by him and under his directions and authority, to be drank in his house and shop, and in the out-house, yard and garden thereto belonging, without having obtained a license therefor as an inn, tavern, or hotel keeper, and without being in any manner thereunto authorized by law, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

G. Bulkley, District Attorney.

People v. Cramer, 5 Park. Crim. (N. Y.) 171.

Indictment for Selling Liquors Without License (b).

"John Doe Bodeckar, whose true Christian name is to the prosecuting attorney unknown, in King county, state of Washington, on the 4th day of July, 1894, unlawfully and wilfully did sell and dispose of, for and in consideration of money, intoxicating malt

liquor, to-wit: beer, commonly known and designated as lager beer, to a person and persons whose name is to the prosecuting attorney unknown, said malt liquor then and there being an intoxicating liquor and not then and there sold upon the written prescription of any reputable physician or for medical, mechanical or scientific purposes but for the purpose of beverage only, said intoxicating liquor as aforesaid then and there not sold within the corporate limits of any city, town or village or within one mile of the corporate limits of any city, town or village, or within one mile of the corporate limits of the same, he, the said John Doe Bodeckar, whose true Christian name is unknown to the prosecuting attorney as aforesaid, not then and there having a license issued by the proper authorities to sell intoxicating liquors in King county, state of Washington." *State v. Bodeckar*, 11 Wash. 417, 39 Pac. 645.

II. Affidavit (Complaint) Selling Contrary to Law.

That on, etc., at the county of Harrison and state of Indiana, James Welsh did then and there unlawfully sell to one Andrew J. Glaze, at and for the price of 5 cents, a less quantity than a quart of beer at a time, to-wit: one glass of beer containing a half pint, he the said James Welsh not then and there having a license to sell intoxicating liquors in a less quantity than a quart at a time, in force at the time, according to the laws of said state, contrary to the form of the statute in such cases made and provided, etc. *Welsh v. State*, 126 Ind. 71, 25 N. E. 883, 9 L. R. A. 664.

III. Indictment, Selling Less Than Permitted Quantity.

M. Tamler and Jos. Polly are accused by the grand jury of the county of Multnomah, state of Oregon, by this indictment, of the crime of selling spirituous liquors in this state in less quantities than one gallon, without having first obtained a license from the county court of the county of Multnomah for that purpose, committed as follows: That said M. Tamler and Jos. Polly on the fifth day of July, A. D. 1889, in the county of Multnomah and state of Oregon, did unlawfully and wilfully sell spirituous liquors in this state, namely, whiskey, in less quantities than one gallon, to-wit: about

one gill of whiskey to one Timothy Maloy for ten cents; the said M. Tamler and Jos. Polly not having first then and there obtained a license from the county court of Multnomah county for the purpose, namely, for the purpose of selling that quantity of liquor, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Oregon. Dated at Portland in the county aforesaid, this 15th day of July, 1889. *State v. Tamler & Polly*, 19 Ore. 528, 25 Pac. 71.

IV. Information for Illegally Selling Liquor To Be Drunk on Premises.

"State of Illinois, Bureau county, ss. In the county court of Bureau county. Of the August term, in the year of our Lord, one thousand eight hundred and seventy-two.

Be it remembered, that Charles C. Warren, county attorney for the county of Bureau and State of Illinois, and who prosecutes in this behalf in the name and by the authority of the people of the State of Illinois, in his own proper person, comes now here into court, and, in the name and by the authority of the people aforesaid, gives the court to be informed and understand that Baltis Myers, on the 1st day of July, A. D. 1872, at and within the county of Bureau and State of Illinois, and without him, the said Baltis Myers, having first obtained a license to keep a grocery, a certain quantity of intoxicating liquor did sell, to be drank in, upon and about the building or premises where sold, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Illinois." *Myers v. People*, 67 Ill. 503.

V. Indictment for Giving Away on False Prescription.

"State of West Virginia, Wayne county, to-wit: The grand jurors of the State of West Virginia in and for the body of the county of Wayne, impaneled and sworn in the circuit court of said county, and now attending said court upon their oaths, present that Alvin Watts, a practicing physician, in said county, on the 1st day of January, 1896, for the purpose of aiding one Fitzhue Stephens, a licensed druggist doing business as such in said county, in violating chapter 32 of the

Code of West Virginia, in the unlawful sale of spirituous liquors, did unlawfully give one G. W. Fry a written prescription for spirituous liquors, specifying therein the said G. W. Fry as the person to whom said liquors were to be furnished by said Fitzhugh Stephens, druggist, together with the kind and quantity of liquors to be so furnished, and did in said prescription falsely, knowingly, and unlawfully state that said spirituous liquors so prescribed were absolutely necessary as a medicine, and not to be used as a beverage; he, the said Alvis Watts, then and there well knowing that said spirituous liquors so prescribed for the said G. W. Fry were not absolutely necessary as a medicine for the said G. W. Fry, and were to be used by him as a beverage, against the peace and dignity of the State." *State v. Watts*, 43 W. Va. 182, 27 S. E. 302.

Note.—The court in the opinion suggests this language instead of that of the indictment: "That Alvis Watts, a physician, did, on the 1st day of January, 1896, in the county aforesaid, unlawfully, for the purpose," etc., or "that Alvis Watts, a physician, on the 1st day of January, 1896, did, in the county aforesaid, unlawfully, for the purpose," etc.

VI. Information, Maintaining Nuisance by Selling Liquor.

"In the name and by the authority of the State of Kansas, I, Theodore Laing, county attorney in and for the county of Cloud, in said state, who prosecute for and in behalf of said state, in all courts sitting in and for said county of Cloud, and duly empowered to inform of offenses committed within said county, come now here and give the court to understand and be informed, that Camille Teissedre, on, to-wit, the first day of June, A. D. 1881, and on divers other days and times between that date and the day of the filing of this information in said county of Cloud, did keep the place known and described as the west room of Bartlett & Crump's brick block, situated on lot one of block five in the city of Clyde, in said Cloud county; and in said place the said Camille Teissedre, as well as divers other persons, with the knowledge and consent of the said Camille Teissedre, then and on said other days and times unlawfully did sell, barter, give away,

and keep for sale, barter and use, intoxicating liquors, in violation of the act of the legislature of the state of Kansas, approved February 19, 1881, entitled 'An act to prohibit the manufacture and sale of intoxicating liquors, except for medical, scientific and mechanical purposes, and to regulate the manufacture and sale thereof for such excepted purposes,' to the common nuisance of the people of said state of Kansas, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Kansas." *State v. Teissedre*, 30 Kan. 210, 476, 2 Pac. 108, 650.

VII. Affidavit, Selling Liquor to Minor.

"George King, being duly sworn according to law, upon his oath says that, on the 26th day of December, 1879, at the county of Wabash, in the State of Indiana, one Schuyler Hamilton did then and there unlawfully sell one gill of intoxicating liquor, to-wit, gin, for the sum of ten cents in money, the same being less than a quart, to one Orlando C. King, who was then and there under twenty-one years of age, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Indiana." *State v. Hamilton*, 75 Ind. 238.

VIII. Indictment, Selling Liquor on Sunday.

"That one Valentine Effinger, late of the county aforesaid, at the county aforesaid, on the ——— day of June, A. D. 1886, that day being then and there the first day of the week, commonly called Sunday (said Valentine Effinger being then and there a dram-shop-keeper, having license as such) did unlawfully then and there sell and dispose of, upon and about his premises, to one Elbert Stone, then and there being, certain intoxicating liquor, to-wit, one-half pint of beer for ten cents, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state." *State v. Effinger*, 44 Mo. App. 81.

IX. Indictment, Selling on Election Day.

"In the name and behalf of the citizens of Georgia, charge and accuse T. Newman, of the county and State aforesaid, with the offense of misde-

meaner; for that the said T. Newman, on the sixth day of June in the year 1896, in the county aforesaid, did then and there unlawfully and with force and arms then and there sell, give and furnish spirituous, intoxicating and malt liquors to various persons, a primary election being then and there held on said day to elect candidates for the democratic party of said county for the various county offices of said county." *Newman v. State*, 101 Ga. 534, 28 S. E. 1005.

X. Complaint, Being Open at Prohibited Hour.

"On the 22d day of July, A. D. 1882, at the village of Clare, in the county aforesaid (the said 22d day of July, A. D. 1882, being a week day), Burton Husted, Charles Peters and Frank Parish (he, the said Burton Husted, not being a person whose business it is and was at that time to deal in drugs and medicines), did not close at the hour of nine o'clock on said 22d day of July, A. D. 1882, a certain saloon in the village of Clare, in said county, which said saloon he, the said Burton Husted, was then and there the proprietor and keeper, the said saloon being then and there a place in said village where malt, spirituous, and intoxicating liquors were sold at retail. But that the said Burton Husted kept the said saloon open on the said 22d day of July, A. D. 1882, until twenty minutes past eleven o'clock in the afternoon of said day, contrary and in violation of Act 259 of the Session Laws of 1881.

"And the said Charles Peters and Frank Parish being then and there clerks, servants and agents of the said Burton Husted, and they as such clerks, servants and agents of said Burton Husted, not being persons whose principal business it is and was at that time to deal in drugs and medicines, either for themselves or for their principal, Burton Husted, did not close at the hour of nine o'clock on the 22d day of July, A. D. 1882, a certain saloon in the village of Clare, in said county, which said saloon one Burton Husted was then and there the proprietor and keeper, the said saloon being then and there a place in said village where malt, spirituous, and intoxicating liquors were sold at retail. But that the said Charles Peters and Frank Parish kept the said saloon

open on the said 22d day of July, A. D. 1882, until twenty minutes past eleven o'clock in the afternoon of said day, contrary and in violation of Act No. 259 of the Session Laws of 1881. *People v. Husted*, 52 Mich. 624, 18 N. W. 388.

Note.—Held that the use of afternoon instead of night did not render complaint bad.

XI. Complaint, Recovery of Penalty. State of Illinois, Hancock county. ss.

Thomas C. Sharp, town attorney, complainants of James Booth, that, to-wit, between the 1st day of October, 1870, and the 23d day of January, 1871, at the county aforesaid, and within the town of Carthage, said James Booth did sell, barter, exchange and give away in a less quantity than one gallon, brandy, also whiskey, also rum, also gin, also other alcoholic and distilled spirituous liquors, etc., in violation of an ordinance of said town of Carthage, entitled, 'An ordinance to suppress and prohibit the selling, bartering, exchanging and giving away of vinous, malt, fermented and intoxicating liquors by unlicensed persons.

Thos. C. Sharp."

Booth v. Town of Carthage, 67 Ill. 102.

XII. Complaint To Recover a Penalty for School Fund.

"Your petitioner, William Jamison, for the use of the school fund of Van Buren county, Iowa, claims of the above named defendant, Ed. F. Burton, the sum of one hundred dollars, as a penalty for the violation of section 1539 of the Code of Iowa, and for cause of such claim he avers that he is a citizen of Van Buren county, Iowa; that on or about the 29th day of April, 1875, and between the 10th day of April, 1875, and the 30th day of April, 1875, the said defendant sold and gave away to one Horace Jamison, he then and there being a minor, certain intoxicating liquor, known as beer, in the city of Keosauqua, in said county, contrary to the statute in such case made and provided. Wherefore he prays judgment for the sum of one hundred dollars and costs of suit for the use of the school fund aforesaid." *Jamison v. Burton*, 43 Iowa 282.

Note.—Held not necessary to allege seller knew purchaser was a minor.

INTOXICATION.—See **PUBLIC DRUNKENNESS.**

INVENTIONS.—See **PATENTS.**

ISSUES IN PLEADING AND PRACTICE.

I. Tender of Issue, 681

- A. *By Defendant*, 681
- B. *Plaintiff*, 681
- C. *On Record*, 681

II. Joinder of Issue, 681

- A. *Similiter and Replication*, 681
- B. *Rejoinder, Similiter*, 681
- C. *Surrebutter and Similiter*, 681

III. Joinder in Demurrer, 681

- A. *To Plea in Abatement*, 681
- B. *To Replication to Plea in Abatement*, 681
- C. *To Declaration or Replication*, 682
- D. *To Plea*, 682
- E. *To Plea to Cognizance*, 682

IV. In Equity, 682

- A. *Notice of Motion for Issue at Law*, 682
- B. *Order in Chancery for Issue and Reference To Settle*, 682
- C. *Order in Chancery for Issue Settled by Court*, 683
- D. *Order for an Issue*, 683
 - 1. *In General*, 683
 - 2. *As to Amount of Damages*, 684
 - 3. *As to Fraud*, 684
 - 4. *As to Right of Way*, 684
 - 5. *As to Validity of Bond*, 684
 - 6. *As to Clause in Will*, 684
 - 7. *As to Sanity, and Validity of Deed*, 684
- E. *Order for Directions After Issues Awarded*, 684
- F. *Form of Verdict Indorsed on Record*, 685
- G. *Order After Trial of Issue*, 685
- H. *Order After Issue as to Clause in Will*, 685

V. Feigned Issues at Law, 685

- A. *Order*, 685
- B. *Issue*, 685

CROSS-REFERENCE:

PLEAS:

Common Traverse.

I. Tender of Issue.

- A. *Tender of Issue by Defendant.*

And of this the said defendant puts himself upon the country. Steph. Pl. 230.

- B. *Tender of Issue by Plaintiff.*

And this the said defendant prays may be inquired of by the country. Steph. Pl. 231.

- C. *Tender of Issue on Record.*

And this the said plaintiff (or defendant) is ready to verify when, where

and in such manner as the court shall order, direct or appoint. Steph. Pl. 232.

II. Joinder of Issue.

- A. *Similiter and Replication.*

And the said plaintiff, as to the plea of the said defendant, by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

And the said plaintiff, as to the plea of the said defendant, by him secondly above pleaded, says that, etc. (Continuing the replication in the usual form.) Burr. App. 387, §712; Archb. Pl. 244.

- B. *Rejoinder, Similiter.*

And the said defendant, as to the said replication of the said plaintiff to the said (second) plea of him, the said defendant, and which the said plaintiff hath prayed may be inquired of by the country, doth the like. Burr. App. 393, §725.

- C. *Surrebutter and Similiter.*

And the said plaintiff as to the said (rebutter) of the said defendant, and whereof he hath put himself upon the country, doth the like. Burr. App. 394, §729; 3 Chit. Pl. 1236.

III. Joinder in Demurrer.

- A. *Joinder in Demurrer to a Plea in Abatement.*

And the said defendant saith, that the said plea of the said defendant, and the matters therein contained are sufficient in law to quash the said bill (or declaration), and which said plea and the matters therein contained, the said defendant is ready to verify and prove as the court here shall direct, etc.; wherefore, inasmuch as the said plaintiff hath not denied, nor in any manner answered the said plea, the said defendant, as before, prays judgment of the said (bill and) declaration, and that the same may be quashed, etc. Burr. App. 401, §744; 3 Chit. Pl. 1267.

- B. *Joinder in Demurrer to Replication to Plea in Abatement.*

And the said plaintiff saith, that his said replication to the said plea of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law for him, the said plaintiff, to maintain his aforesaid bill (or declaration), which said replication, and the matters therein contained, the said plaintiff is ready to verify and

prove, as the court here shall direct and award; wherefore inasmuch as the said defendant hath not answered the said replication, nor hitherto in any manner denied the same, the said plaintiff as before, prays judgment, etc., and that his bill (or declaration) may be adjudged good, and that the said defendant may further answer thereto, etc. Burr. App. 402, §747; Archb. Pl. 349, ed. 1824.

C. Joinder in Demurrer to a Declaration or Replication.

And the said plaintiff saith, that the said declaration (or first count of the said declaration, or replication), and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for him, the said plaintiff, to have and maintain his aforesaid action thereof against the said defendant, and the said plaintiff is ready to verify and prove the same, as the court here shall direct and award; wherefore, inasmuch as the said defendant hath not answered the said declaration (or first count, or replication), nor hitherto in any manner denied the same, the said plaintiff prays judgment, and his damages by reason of the not performing of the said several promises and undertakings in the said declaration mentioned to be adjudged to him, etc. Burr. App. 401, §743; 3 Chit. Pl. 1267.

D. Joinder in Demurrer to Pleas (in Assumpsit, Debt, Covenant, or Case).

And the said defendant saith, that his said plea by him (secondly) above pleaded and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiff from having or maintaining his aforesaid action thereof against him the said defendant; and the said defendant is ready to verify and prove the same when, where and in such manner as the said court here shall direct and award; wherefore, inasmuch as the said plaintiff hath not answered the said plea, nor hitherto in any manner denied the same, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him, the said defendant, etc. Burr. App. 402, §745; 3 Chit. Pl. 1267.

E. Joinder in Demurrer to Plea in Bar to Cognizance (Replevin).

And the said plaintiff saith, that the said plea in bar of him, the said plaintiff, to the said cognizance of the said defendant, and the matters in the said plea in bar contained, are sufficient in law to bar the said defendant, from having a return of the said (cattle), and which said plea in bar, and the matters therein contained, the said plaintiff, is ready to verify and prove as the court here shall direct and award; and because the said defendant hath not answered the said plea in bar, nor in any manner denied the same, the said plaintiff, as before, prays judgment and his damages on occasion of the taking and unjustly detaining of the said (cattle) to be adjudged to him, etc. Burr. App. 402, §746; 3 Chit. Pl. 1268.

IV. In Equity.

A. Notice of Motion for Issue at Law.

Take notice, etc., etc., that issues at law may be awarded in this cause for the trial, by jury, of the matters in controversy therein. Dated, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2153.

B. Order in Chancery for Feigned Issue and for Reference To Settle Form.

At a court of chancery held for the state of New York, at the town of _____, on the _____ day of _____, one thousand eight hundred _____. Present, _____, chancellor. S. S. v. J. J., and others.

On reading and filing the affidavit, etc. (as in IV, C), it is ordered, that an issue be, and the same is hereby awarded in this cause, between the complainant and the defendant J. J., to try the matters of fact in dispute between them by a jury; that the said issue be tried in the superior court of the city of New York; upon which trial either party may read the sworn answer of the said J. J. in this cause, and may examine the defendant P. P. as a witness, in case it shall appear to the court before which the trial is had, that he is not interested in the event of this suit, in favor of the party calling him as witness. And it is further ordered, that it be referred to J. R., one of the taxing masters of this court, to settle the form of the issue or issues to be tried, in the manner di-

rected by the ——— rule of this court. Burr. App. 542, §1070b.

C. Order in Chancery for Feigned Issue Where Issue Is Settled by Court.

(Caption as in preceding form.)

On reading and filing the affidavit of B. R. W., esquire, solicitor for the complainant, showing that his cause is at issue upon a replication to the answers of the defendants P. S. and J. S., and is in readiness to take testimony therein, the bill having been taken as confessed against the defendant P. M., and the cause standing for hearing upon bill and answer as to the defendant J. D., and on reading and filing a notice on the part of the defendant P. S., for an issue or issues in this cause to be tried by a jury, and an affidavit of the due service of such notice upon the solicitor for the complainant, and upon the solicitor for the defendant J. S., and on hearing A. T., esquire, of counsel for the defendant P. S. and B. R. W., esquire, as counsel for the complainant, on the said motion, no one appearing on the part of the defendant J. S., it is ordered, that issues be, and they are hereby awarded in this cause, between the complainant and the defendants P. S. and J. S., to try the matters of fact in dispute between them by a jury. It is further ordered, that the said issues be tried at the circuit court, in and for the county of Rensselaer, and that upon the trial of the said issues, the defendant P. M., may be examined as a witness for either party, in case it shall appear to the court before which the trial is had, that he is not interested in the event of this suit in favor of the party calling him as a witness; that the issues between the complainant and the defendant P. S. be, 1st. Whether the said P. S. executed the bond and mortgage mentioned in the complainant's bill; 2. Whether the complainant executed the release of the said bond and mortgage, as stated in the answer of the defendant P. S.; and that the complainant hold the affirmative upon the first question, and the defendant P. S., the affirmative upon the second question; the issue between the complainant and that the defendant J. S. be, whether the release of the farm of the said defendant from the lien of the mortgage mentioned in the complainant's bill, was obtained by the said J. S. fraudulently, as alleged in

the bill? and that the complainant be considered as holding the affirmative of the last mentioned issue upon the trial thereof. It is further ordered, that upon the trial of the issues between the complainant and the defendant P. S., either party may read the sworn answer of the said P. S. Burr. App. 541, §1070a.

D. Order for an Issue at Law in Equity.

1. Order for an Issue in General (a).

"And now, upon motion of the parties and due examination of the pleadings, the court doth think fit and proper (and doth order) that the matters in dispute in this cause be tried and determined by a jury upon the following issues to be joined, viz." "And it is further ordered, that the said issues stand for trial at the ——— next to be held in the county of ———, on the, etc., and that upon the trial of said issues, the answer of the defendant and the plaintiff's bill, and the depositions now on file may be read, and that either party may offer any competent evidence under the directions of the presiding judge. And all further directions are reserved until after the trial of said issue." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2333.

Order for an Issue in General (b).

And now on motion of the defendant and after hearing of the parties, it is ordered that an issue be framed by the parties for the purpose of submitting to a jury the following question: was any and how much of the consideration of the deed of May 10, 1862, given by James Perkins to Elizabeth A. Perkins, paid from the property of William J. Perkins. And it is further ordered that said issue stand for trial at the term next to be held in the county of Lincoln; that the plaintiff here shall be the plaintiff in the trial at law; and that the parties at such trial may read in evidence such and so much as is material, and none other, of the depositions taken before the publication of the testimony on February 19, 1872, excepting the depositions of such deponents as are actually in attendance at said trial, together with such other depositions as may be taken by either on or before April 1, next, including the oral testimony of any witnesses, which shall be competent, the verdict to be cer-

tified to the chief justice of the court. And all further directions are reserved until after the trial of said issue. *Call v. Perkins*, 65 Me. 439.

2. *Order for an Issue, as to Amount of Damages.*

"Inasmuch as it does not satisfactorily appear to the court, that any agreement has been made by and between the parties, as to the amount of such damages and compensation (in dispute), to the end that the same may be satisfactorily ascertained, it is further ordered, adjudged, and decreed, that an issue be made up between the parties, to ascertain by the verdict of a jury, etc., the amount of such damages and compensation." Directions as to the court and term; form of the issue; restrictions on plaintiff in the trial; admissions to be made by defendant; allowances by the jury; "and that all further directions be reserved until the said issue shall be tried, and the postea returned to this court." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2331; *Phillips v. Thompson*, 1 Johns. Ch. (N. Y.) 152.

3. *Order for an Issue as to Fraud.*

And now, on motion of the plaintiff, and after hearing the parties, the court doth think fit and proper, and doth order, that the matters of fraud alleged in the bill, and in dispute in this cause, be tried and determined by a jury on the following issue to be joined, viz., etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2332.

4. *Order for Issues as to Right of Way.*

For issues: "1. As to right of way through a place called 'George yard;' 2. If there be any such such right, whether it extends over the whole; 3. If not, what is the extent, length, breadth, and direction of it; 4. Whether any such right has been obstructed or disturbed by the defendants, or any of them, and if so, in what manner and to what extent; 5. Whether there is any public right (other than a right of way) over the whole; 6. Whether such right, if any, has been obstructed or disturbed by the defendants, etc." Direction for special circumstances to be indorsed on the postea. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2334; 2 Seton Dec. (Eng. ed. 1862) 988.

5. *Order for Issue as to Validity of Bond.*

This court being desirous of having the following questions of fact decided by a jury, that is to say: 1. Whether

the bond and warrant of attorney was obtained from the plaintiff by means of any fraudulent (or unfair) representations by the obligees, or any of them; 2. Whether the same was obtained by any untrue representation; 3. Whether the same was obtained by any fraudulent (or unfair) concealment or suppression of the obligees, or either of them; 4. Whether the bond, etc., was given to secure any debt or liability, other than the whole or part of the balance due from P. to the firm in the pleadings mentioned. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2333; 2 Seton Dec. (Eng. ed. 1862) 985.

6. *Order for Issues as to Clause in Will.*

It is ordered that the parties proceed to a trial at law, at the ——— next to be holden, etc., on the following issues: 1. Whether H., late of, etc., deceased, did, in and by a certain paper writing dated, etc., purporting to be a codicil to the last will and testament of the said H., devise in manner and form following, that is to say, etc. (stating part not disputed); 2. Whether the said H., having in and by his will, dated, etc., from and after, etc., devised, etc., did by his said codicil devise in manner and form following, that is to say, etc. (stating part disputed)." Defendant H. to be plaintiff at law, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2333.

7. *Order for Issue as to Sanity, and Validity of Deed; Fraud.*

1. Whether M., in, etc., named, at the time of the execution of the indentures dated, etc., in etc., mentioned, was of sound mind, understanding, and capacity to execute the said deeds; 2. Whether the said deeds were obtained from the said M. by fraud or imposition. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2334.

E. *Order for Directions After Issues Awarded.*

"The plaintiff in this case having, on motion, obtained an award of issues to be tried by the jury, which are already framed and settled, and filed in the cause, it is ordered, that said issues be sent to the trial term of this court, in this county, for trial by the jury, the verdict thereon to be certified to the law term of this court. And it is further ordered, that the plaintiff here shall be regarded as the plaintiff in the trial of these issues, and that

the parties upon the trial may read the bill and answers, and any evidence legally taken to be used on the hearing in chancery, unless in cases where the attendance of any of the witnesses is actually procured; and also may offer such other and further evidence, including the testimony of the parties, as in law would be competent on the trial of such issues." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2334; *Clark v. Congregational Soc.*, 44 N. H. 382, 383.

F. Form of Verdict Indorsed on Record.

"The jury find that the said O. M. F. did sign, execute, and deliver the agreement of compromise of which a copy is annexed to the plaintiff's bill marked (B.). And the jury further find that the signature of the said O. M. F. to the aforesaid agreement of compromise was not procured, brought about and effected by fraud, imposition, and false representations on the part of the said F. L. and wife, and their agents." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2335.

G. Order on Equity Reserved After Trial of Issue.

This cause coming on (the ——— day of ———, and) this day to be heard and debated before this court, etc., in the presence of counsel learned for, etc., upon the equity reserved by the order dated, etc., the parties having, pursuant to the said order, proceeded to trial of the issue (or several issues or question or questions of fact) thereby directed, before the court of, etc., at the sittings, etc., where the jury found, etc. (state from the postea), upon opening and debate of the matter, and hearing the said order and the postea (enter any other evidence) read, and what was alleged, etc. This court, etc., doth, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2335.

H. Order After Issue as to Clause in Will.

This court doth declare, that it appears, by the finding of the jury, that the part of the codicil of the testator H., whereby he expressed himself as follows, etc., does not constitute the will of the testator; and that the part of the codicil of the testator, whereby he expressed himself as follows, etc., doth constitute the will of the testator; and that one part of the said codicil constituting, and another part thereof not constituting, the will of the testator, this court cannot order the same

to be given up; but it being consonant to equity that the parties should stand in such a situation as if the said codicil could be delivered up, the court doth declare, that so much of the said codicil as does not constitute the will of the testator is void, and that the devise to the heirs of the body of the testator, contained in his said codicil, ought not take effect; and doth decree the same accordingly; and it is ordered that the defendant S. H. be restrained from setting up any title at law to the several estates so devised to the heirs of the body of the testator, contained in the said codicil, and in question in these causes. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2336; 2 Seton Dec. (Eng. ed. 1862) 993, 994.

V. Feigned Issues at Law.

A. Order for Feigned Issue.

On motion of Mr. G. H., attorney for the defendant in the above cause, and on reading the affidavits as well on the part of the defendant in support of the motion, as on the part of the plaintiff in opposition thereto, it is ordered, that the defendant's attorney prepare the draft of a feigned issue to try the question whether the bond and warrant of attorney, on which the plaintiff's first judgment is entered, are usurious; and that the draft of such issue be served upon the plaintiff's attorney within eight days after obtaining a certified copy of this rule, who shall have leave to propose and serve amendments within six days thereafter; and if the said attorneys cannot settle the terms and form of such issue, it shall be the duty of the defendant's attorney to give eight days' notice to the plaintiff's attorney, that he will apply to one of the judges of this court at a certain time and place to be specified in such notice, to have the terms and form of said issue settled; and it is further ordered, that the said issue be tried at the next (Washington) circuit. Burr. App. 580, §1136.

B. Order for Feigned Issue Respecting Receipt of Money.

Pleas before the justices of the supreme court of judicature, etc. (placita as in an ordinary judgment record, of the term of which the issue is made up).

(Kings) county, ss.: Be it remembered, that on the ——— Monday of ———, in this same term, before the justices of the supreme court of judica-

ture of the people of the state of New York, at the _____ in the _____ of _____, comes A. B. by E. F., his attorney, and brings into the said court of the people, before the aforesaid justices thereof, now here, his certain bill against C. D. being in custody, etc., of a plea of trespass on the case upon promises; which said bill follows in these words, that is to say:

(Kings) county, ss.: A. B., by E. F., his attorney, complains of C. D. being in custody, etc., for that whereas heretofore, to-wit, on, etc. (state the time) at, etc. (state the place), a certain discourse was had and moved by and between the said A. B. and the said C. D., and in that discourse a certain question then and there arose, whether the said C. D. did on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, or at any other time, receive for the use or on account of J. K., deceased, the sum of _____ dollars, or any other and what sum of money; and thereupon heretofore, to-wit, on the said, etc. (state the time), at, etc. (state the place), aforesaid, in consideration that the said A. B. at the special instance and request of the said C. D. had then and there paid to him the said C. D. the sum of two hundred and fifty dollars, of lawful money of the United States of America, he the said C. D. undertook, and then and there faith fully promised the said A. B. to pay him the sum of two hundred and fifty dollars of like lawful money, in case the said C. D. did on the said _____ day of _____, in the year of our Lord one thousand eight hundred and _____, or at any other time, receive for the use or on the account of the said E. F., the said sum of _____ dollars, or any other sum of money whatsoever: And the said A. B. in fact saith that the said C. D. did on the said _____ day of _____, in the year of our Lord one thousand eight hundred _____ receive for the use and on the account of the said E. F., the said sum of _____ dollars, to-wit, at _____ aforesaid; whereof the said C. D., afterwards, to-wit, on the same day and year first above mentioned, there had notice: Nevertheless the said C. D., not regarding his said promise and undertaking, so by him made in manner and form aforesaid, hath not as yet paid the said sum of two hundred and fifty dollars, or any

part thereof, to the said A. B. (although often requested so to do); but he to do this hath hitherto wholly refused, and still doth refuse; to the damage of the said A. B. of _____ dollars, and therefore he brings this suit, etc.

And the said C. D., by G. H., his attorney, comes and defends the wrong and injury, when, etc., and says that the said A. B. ought not to have or maintain his aforesaid action thereof against him; because he says that though true it is, that such a discourse was had and moved by and between the said A. B. and the said C. D., and that he the said C. D. did undertake and promise, in manner and form as the said A. B. hath above in his said declaration in that behalf alleged: For plea in this behalf, the said C. D. saith that he the said C. D. did not on the said _____ day of _____, in the year of our Lord one thousand eight hundred and _____, or at any other time, receive for the use or on the account of the said E. F. the said sum of _____ dollars, or any other sum of money whatsoever, in manner and form as the said A. B. hath above in his said declaration in that behalf alleged; and of this he the said C. D. puts himself upon the country; and the said A. B. doth the like. Therefore, the issue above joined is ordered, etc. (order for trial in the usual form). Burr. App. 520, §1042; Till. Forms 168.

JEOPARDY.

I. Plea, Discharge of Jury Without Verdict, 686

II. Replication to Plea of Jeopardy, 687

I. Plea, Discharge of Jury Without Verdict.

"The State of Nebraska, plaintiff, v. Ach Smith, defendant. Plea in bar.

"Now comes Ach Smith, defendant, in his own proper person, into court here, and having heard the information read, says that the state of Nebraska ought not further to prosecute said information against him because at the February term, 1894, of the district court of Douglas county the prosecuting attorney of said county, duly authorized by law so to do, presented an information against him for the same offense with which the defendant is charged in the present information; that said defendant was

duly arraigned in said court on said information and pleaded not guilty thereto; that thereupon a jury was duly impaneled and sworn in said cause in said court, and the trial proceeded with, when said jury were discharged by the court without the consent of the defendant, and over and against his protest and objection, without agreeing on a verdict and without disagreeing or other special cause, there being no special necessity for the discharge of the said jury. Wherefore, the defendant prays judgment of the court that he may be dismissed and discharged from the premises in the present information specified." *Smith v. State*, 42 Neb. 356, 60 N. W. 585.

II. Replication to Plea of Jeopardy.

St. Lawrence Sessions. The People v. John Grant.

The people of the state of New York, by Thomas V. Russell, district attorney, for the county of St. Lawrence, come and reply to the special plea in bar of the said defendant, and say that said jury was not discharged by the court, in case of the said John; that immediately after the impaneling of the jury in said plea mentioned, and before any further proceedings were had, and before any evidence was given to the said jury, at the special instance and request of the said defendant made in open court, the said jury were allowed by the said court to separate and go without the court house. *Grant v. People*, 4 Park. Cr. (N. Y.) 527.

JOINDER OF ACTIONS.

I. Demurrer to Declaration, 687

II. Demurrer to Complaint, 687

I. Demurrer to a Declaration for Joining Counts in Trover and in Assumpsit.

(General form of special demurrer, continuing as follows): For that in and by the said declaration in the first count thereof, the said plaintiff hath declared and complained against the said defendant in a plea of trespass on the case for a certain supposed wrongful conversion and disposal of the said spaniel and setting dog therein mentioned of the said plaintiff to the use of him the said defendant, and yet in the said second and last counts of the said declaration, the said plaintiff hath declared against the said de-

fendant in the above suit in an action of assumpsit for supposed breaches of express or implied promises in not returning and re-delivering certain spaniels therein respectively mentioned, supposed to be lent and delivered by the said plaintiff to the said defendant, and not for any supposed wrongful conversion and disposal thereof; and also for that there are in the said declaration pretended causes of action, different in their natures, comprehended and included in the same declaration, to-wit, a pretended cause of action founded on a supposed wrongful conversion and disposal of a spaniel and setting-dog of the said plaintiff and pretended causes of action, grounded on promises which are incompatible with each other, and ought not to be joined in the same declaration; and also for that causes of action, founded on supposed wilful and determined wrongs and injuries, ought not, and cannot be blended and included in one and the same declaration, with causes of action founded on promises or contracts, and also, etc. 3 Chit. Pl. 1248.

II. Demurrer to Complaint for Misjoinder of Actions.

The defendant demurs to the complaint herein for the ground that it appears upon the face of the complaint:

That several causes of action have been improperly united, one being (very briefly designating it, *e. g.*, thus:) a money demand on contract, and the second a claim to recover real property and damages for withholding thereof, and the third a claim to recover damages for injuries to the person. 2 Abb. Forms 7.

JOINDER OF PARTIES.—See PARTIES.

JUDGMENT RECORDS.

I. In General, 689

A. *Record*, 689

B. *Variations*, 690

C. *Continuance Before Suggestions, Etc.*, 691

II. Abatement, 691

A. *Cassellur Billa*, 691

B. *Demurrer and Respondat Ouster*, 691

C. *Default After Respondat Ouster*, 692

D. *Demurrer to Replication Sustained*, 692

E. *Verdict for Plaintiff*, 692

- F. *Verdict for Defendant*, 692
- III. **Dismissal, Etc.**, 692
- A. *Nolle Prosequi*, 692
- B. *Nolle Prosequi to Some Counts*, 692
- C. *Nolle Prosequi to Some Defendants*, 693
- D. *Nolle Prosequi After Issue of Law*, 693
- E. *Retraint*, 693
- F. *Judgment Record on Discontinuance*, 693
- G. *Judgment Record as in Case of Nonsuit*, 693
- H. *Judgment Record on Nonsuit Ordered by Court*, 693
- IV. **Default**, 693
- A. *Non Pros.*, 693
1. *Not Declaring*, 693
2. *Not Declaring in Debt Qui Tam*, 694
3. *Not Replying*, 694
- B. *Nil Dicit*, 694
1. *Not Pleading*, 694
2. *Not Pleading by One Defendant*, 695
3. *Not Rejoining*, 695
4. *Not Pleading, Writ of Inquiry*, 695
5. *Not Pleading, Writ of Inquiry at Subsequent Term*, 696
6. *Suit on Bail Bond*, 697
7. *Recognition of Bail*, 697
- V. **Demurrers**, 697
- A. *To Declaration or Replication Overruled*, 697
- B. *To Declaration or Replication Sustained*, 697
- C. *To Plea or Rejoinder Sustained*, 697
- D. *To Plea or Rejoinder Overruled*, 697
- E. *On Frivolous Demurrer*, 697
- F. *On Demurrer After Issue of Fact*, 698
- VI. **Cognovit**, 699
- A. *In Assumpsit*, 699
- B. *In Debt*, 699
- C. *In Assumpsit as to Part*, 699
- D. *In Assumpsit, With Stipulation*, 700
- VII. **Verdict**, 700
- A. *For Plaintiff in Debt*, 700
- B. *After Decision of Issue at Law*, 700
- C. *Special Verdict*, 701
- VIII. **For Plaintiff on Inquest**, 701
- IX. **On Report of Referee**, 701
- X. **On Obstante Veredicto**, 702
- XI. **On Arrest of Judgment**, 702
- XII. **Damages**, 703
- A. *Remittitur Damna, After Verdict*, 703
- B. *After Assessment*, 703
- C. *On Election Meliora Damna*, 703
- XIII. **Replevin**, 703
- A. *For Not Pleading*, 703
- B. *Not Pleading to Aowry*, 703
- C. *On Non Cepit for Plaintiff*, 704
- D. *On Non-detinet for Plaintiff*, 704
- XIV. **Ejectment**, 704
- A. *For Plaintiff*, 704
- B. *For Plaintiff on Default*, 704
- C. *For Plaintiff Where Title Expires Before Trial*, 705
- D. *For Plaintiff on Suggestion of Damages*, 705
- XV. **On Entry of Remittitur**, 705
- XVI. **Criminal Record**, 706
- A. *Murder*, 706
- B. *Manslaughter*, 708
- C. *Sentence of Imprisonment in State's Prison*, 708
- XVII. **Enrolment of Final Decree in Equity**, 709
- CROSS-REFERENCES:
- CERTIORARI:
Judgment Record on Certiorari.
- CONTINUANCES:
Judgment Record on Continuance Before Trial;
Judgment Record, Continuance After Argument;
Judgment Record on Continuance After Trial.
- CORPORATIONS:
Judgment Record Against a Corporation (Beginning).
- DEFAULT:
Judgment Record on Default for Not Joining in Demurrer to Plea;
Judgment Record on Default for Not Pleading in Debt;
Judgment Record on Default for Not Joining in Demurrer to Declaration;
Judgment Record on Default for Not Pleading;
Judgment Record on Default for Not Pleading, on Writ of Inquiry.
- DEMURRER TO EVIDENCE:
Judgment Record on Demurrer to Evidence for Plaintiff;
Judgment Record on Demurrer to Evidence for Defendant.
- DISMISSAL, DISCONTINUANCE AND NON-SUIT:
Nolle Prosequi, as Entered at Trial;
Entry of Nolle Prosequi to a Particular Count;
Entry of Nolle Prosequi as Contained in Replication;
Entry of Nolle Prosequi to One of Several Defendants;
Judgment Record on Discontinuance;

Judgment Record on Discontinuance in Replevin, Etc.;

Record on Nonsuit;

Judgment Record on Nonsuit Ordered by the Court;

Entry of Non Pros. for Not Declaring;

Entry of Non Pros. for Not Declaring in Replevin;

Entry of Non Pros. for Not Replying.

DOWER, PROCEEDINGS TO RECOVER:

Verdict in Dower.

ERRORS, ASSIGNMENT OF:

Judgment Record, Circuit Roll on Error in Fact.

INFANTS:

Verdict for Plaintiff, Plea of Infancy in Assumpsit;

Verdict for Defendant on Several Issues, Infancy Not Necessities No Ratification.

JURIES AND JURORS:

Challenge to the Array, Entry of.

MANDAMUS:

Judgment Record on Mandamus.

NOLLE PROSEQUI:

Judgment Record on Nolle Prosequi in Criminal Case.

PARDON:

Record, Suggestion by Court on Pardon Understood To Have Been Granted.

PARTITION:

Judgment Record in Partition by Default;

Judgment Record on Verdict in Partition.

PROHIBITION:

Judgment Record on Prohibition.

QUO WARRANTO:

Judgment Record on Information in Nature of Quo Warranto.

RECOGNIZANCES:

Recognizance Roll.

REPLEADER:

Judgment Record on Repleader.

SCIRE FACIAS:

Judgment Record on Default, Scire Facias To Revive Judgment;

Judgment Record on Demurrer in Scire Facias;

Judgment Record on Issue of Fact in Scire Facias.

TENDER: Entry of Tender.

VERDICT:

Judgment Record of Verdicts.—See Verdict.

WASTE:

Judgment Record in Waste.

WITHDRAWAL OF JUROR:

Entry of Withdrawal of Juror.

WRIT OF ERROR:

Record (Error Book).

I. In General.

A. *Judgment Record on Verdict for Plaintiff in Assumpsit.*

Supreme Court. Pleas before the justices of the supreme court of judicature of the people of the state of New York, at the _____ in the city of _____, of the term of _____ (the term of which issue is joined), in the year of our Lord one thousand eight hundred and _____.

Witness, _____ esquire, chief justice.

_____, _____, clerks.

_____ county, ss.: Be it remembered, that on the _____ Monday of _____, in this same term (for variations in the memorandum, see next form), before the justices of the supreme court of judicature of the people of the state of New York, at the _____ in the city of _____, comes A. B., by E. F., his attorney, and brings into the said court, before the aforesaid justices thereof now here, his certain bill (see next form) against C. D., being in custody, etc., of a plea of trespass on the case upon promises (or as the action may be), which said bill follows in these words, that is to say:

_____ county, ss.: A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant, etc. (copy the declaration, omitting the signature).

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends, etc. (copy the plea, or pleas, and then copy the other pleadings, if any, in separate paragraphs, to the issue, in the same way).

Therefore, the issue above joined, is ordered by the supreme court, to be tried at the circuit court appointed to be held at the court house, in the town of _____ in and for the county aforesaid, on the _____ Monday of _____ next (the time and place of holding the circuit).

At which day and place last above mentioned (or afterwards, that is to say, on the day and at the place last above mentioned), before _____, esquire, one of the circuit judges of the state of New York (the judge who tried the cause), according to the form of the statute in such case made and

provided, * come as well the above named plaintiff as the above named defendant, by their respective attorneys above mentioned, * and the jurors of the jury, summoned to try the said issue, being called also come; who, to speak the truth of the matters aforesaid, being chosen, tried and sworn say, upon their oath, * that the said defendant did undertake and promise (in case, that the said defendant is guilty of the premises above laid to his charge," in trespass, "that the said defendant is guilty of the several trespasses above laid to his charge," in covenant, "that the above mentioned indenture is the deed of the said defendant, in manner and form as the said plaintiff hath above in that behalf alleged; and as to the breaches by the said plaintiff above assigned," etc. (according to the variations in the postea, see "Verdicts," in this volume), in manner and form as the said plaintiff hath above complained against him; and they assess the damages of the said plaintiff, by reason of the premises, over and above his costs and charges by him about his suit in this behalf expended, to _____ dollars, and for those costs and charges, to six cents.

Therefore it is considered, that the said plaintiff do recover against the said defendant, his said damages, costs and charges, by the jurors aforesaid, in form aforesaid assessed, and also _____ dollars and _____ cents), for his said costs and charges, by the said court now here adjudged, of increase, to the said plaintiff, and with his assent, which said damages, costs and charges, in the whole, amount to _____ dollars and _____ cents).

And the said defendant in mercy, etc. Burr. App. 165, §310.

*B. Record on Verdict for Plaintiff
With Variations.*

(Placita as in preceding form.)

(City and) county (of _____), ss.: Be it remembered that heretofore, to-wit, in (October) term, now last past (the term of which the declaration is entitled), before the justices of the supreme court of judicature of the people of New York, at the (court house in the city of _____) (place corresponding with the term), came A. B. by E. F., his attorney, and brought into the said court, before the aforesaid justices thereof, then there,

according to the statute in such case made and provided, his certain declaration against C. D. and I. J., of a plea of trespass on the case upon promises (or as the action is), which said declaration follows in these words, that is to say:

(City and) county (of _____), ss.: A. B., plaintiff in this suit, by E. F., his attorney, etc. (copy the declaration, and then proceed in a new paragraph, as follows):

And now at this day, that is to say, on the (_____ Monday of _____), in this same term (the term of the issue), until which day the said defendants had leave to imparl to the said declaration, and then to answer the same, before the said justices of the supreme court of judicature aforesaid, at the _____ in the city of _____ (place corresponding with the term), come as well the said plaintiff, by his attorney aforesaid, as the said defendants, by G. H., their attorney. And the said defendants, by their said attorney, defend the wrong and injury, when, etc. (copy the plea, and other pleadings, if any, to issue, as in the last form).

And hereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the justices thereof, until the (_____ Monday of _____), of the term of _____, in the year of our Lord one thousand eight hundred and _____ (the term immediately preceding the circuit at which the cause is to be tried), at the _____ of the city of _____), and the same day is given to the parties aforesaid at the same place.

At which said last mentioned day, before the said justices, at the place last aforesaid, come the parties aforesaid by their respective attorneys aforesaid; and because it is suggested and proved, and manifestly appears to the court here, that the issue above joined between the parties aforesaid, ought to be tried in the county of _____, and not in the (city and) county of _____), aforesaid; therefore the issue above joined, is ordered by the said supreme court to be tried at the circuit court appointed to be held at the (court house in the town of _____), in and for the said county of _____, on the _____ Monday in _____ next.

At which day, etc. (as in last form to the end of the postea).

And because the said court of the people, before the aforesaid justices thereof, now here, are not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the justices thereof, until the _____ Monday of _____, of the term of _____, in the year of our Lord one thousand eight hundred and _____, at the (courthouse in the city of _____), and the same day is given to the parties aforesaid, at the same place, to hear the judgment of the said court thereupon.

At which said last mentioned day, before the said justices, at the place last aforesaid, come as well the said plaintiff, by his attorney aforesaid, as the said defendant C. D., by his attorney aforesaid; and the said defendant I. J. comes not. And hereupon the said plaintiff suggests to the court now here, and gives the said court to understand and be informed, that after the last continuance of the plea aforesaid (or after the finding of the verdict aforesaid), and before this day, to-wit, on, etc., the said defendant I. J. died, to-wit, at, etc. (the time and place of death), and the said defendant C. D. survived him; which allegation the said defendant C. D. doth not deny, but admits the same to be true; therefore let all further proceedings in this cause against the defendant I. J. be stayed: whereupon the said plaintiff prays judgment against the said defendant C. D. of and upon the premises. Therefore, etc. Burr. App. 166, §311.

C. Continuance Before Suggestion, or Special Entry on the Record.

And hereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the justices thereof, until the _____ Monday of _____ of the term of _____, in the year of our Lord one thousand eight hundred and _____, at the _____ of the city of _____; and the same day is given to the parties aforesaid at the same place. At which said last mentioned day, before the said justices, at the place last aforesaid, come the parties aforesaid, by their respective attorneys aforesaid. And hereupon (proceed to enter the suggestion, or make

the entry required). Burr. App. 86, §165.

II. Abatement.

A. Judgment Record on Cassetur Bill.

And hereupon the said plaintiff, inasmuch as he cannot deny the several matters by the said defendant above pleaded, prays judgment, and that the said bill (or writ, or declaration) of him, the said plaintiff, may be quashed, to the intent that he may exhibit a better bill (or sue out a better writ, or file a better declaration) against the said defendant. Therefore, etc. Till. Forms 213; Burr. App. 148, §282.

B. Judgment Record on Demurrer, Plea in Abatement and Respondent Ouster.

At which day, before the justices aforesaid, at the _____ in the city of _____, come the parties aforesaid, by their attorneys aforesaid; whereupon, all and singular the premises aforesaid being seen by the court now here, and fully understood, and mature deliberation being thereupon had, for that it appears to the said court now here that the said plea of the said defendant, and the matters therein contained, are not sufficient in law to quash the said bill (or writ, or declaration) of the said plaintiff: Therefore it is considered that the said defendant do further answer (or answer over) the said plaintiff to his bill (or writ) and declaration (or to his declaration) aforesaid. And thereupon a further day is given by the said court now here, to the parties aforesaid, before the justices aforesaid, at the _____ in the city of _____, until the _____ Monday of _____ next (first day of next term); that is to say, for the said defendant to answer over to the said declaration of the said plaintiff against him, etc. The same day is given to the said plaintiff there, etc.

(If the defendant pleads over, the record proceeds as follows):

At which day, before the justices aforesaid, at the _____ in the city of _____, come as well the said plaintiff, as the said defendant, by their respective attorneys aforesaid. And the said defendant, by his said attorney, defends the wrong and injury when, etc. (here follows the plea). Burr. App. 156, §298; Till. Forms 202; Yates' Forms 48, 780.

C. Judgment Record on Default After Pleading in Abatement and Respondent Ouster.

(Copy the judgment record on respondent ouster, 11, B, and then continue as follows):

At which day, before the justices aforesaid, at the _____ in the city of _____, comes the said plaintiff by his attorney aforesaid; and the said defendant, although solemnly demanded, comes not, nor does he further answer to the declaration aforesaid of the said plaintiff thereof against him, etc., nor say anything in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein wholly undefended against the said defendant.

Wherefore the said plaintiff ought to recover against the said defendant his damages (or debt and damages), by reason of the premises. (The rest of the record is the same as on default in not pleading, and will therefore conclude as in IV, B, 5, or according to the case.) Burr. App. 151, §289; Yates' Forms 48.

D. Judgment Record on Demurrer to Replication to Plea in Abatement, Sustained.

(As in V, A, to the *, then as follows): it appears to the said court here that the said plea by the said defendant above, in manner and form aforesaid, pleaded in abatement, and the matters therein contained, are sufficient in law to quash the said bill (or writ, or declaration) of the said plaintiff. Burr. App. 160, §305.

E. Judgment Record on Verdict in Abatement for Plaintiff.

(Placita, memorandum and pleadings as in I, A, order for trial, as in I, A; then enter the postea as in I, A, negativing the matter pleaded in abatement, and assessing the plaintiff's damages, and conclude with judgment in the usual form on verdict; see I, A.) Burr. App. 172, §318.

F. Judgment Record Where Verdict Has Been Given for Defendant on Plea of Misnomer.

(As in I, A, to the last *, and then thus): that the said C. D. was not, at the time of exhibiting the said bill (or filing the said declaration), by the said plaintiff in this behalf (or at the time of the commencement of this

suit), nor hath he at any time hitherto been called or known by the name of B. D. in manner and form as the said plaintiff hath above alleged. Burr. App. 172, §319.

III. Dismissal, Etc.

A. Judgment Record on Nolle Prosequi.

(The record being brought down to the proper period [usually to the end of the pleadings], continue as follows):

And hereupon the said plaintiff, inasmuch as he cannot deny the matters by the said defendant above pleaded, now freely here in court confesses that he will not further prosecute his suit against the said defendant. Therefore, etc. Burr. App. 147, §279; 2 P. & Du. Pr. 763.

B. Judgment Record on Nolle Prosequi to Some Counts.

(If entered before issue, the nolle prosequi will be contained in the proper pleading, and will therefore appear with it on the record.)

(If entered after issue and before trial, it will appear after the pleadings in this form):

And hereupon the said plaintiff freely here in court confesses that he will not further prosecute his suit against the said defendant, in respect of the promises and undertakings (or premises), in the said (sixth and last) counts of the said declaration mentioned. Therefore as to the said promises and undertakings (or premises) in the said (sixth and last) counts of the said declaration mentioned, let the said defendant be acquitted, and go thereof without day, etc. (Here follows the order for trial.)

(If entered at the trial, the nolle prosequi will appear in the same form as above, at the beginning of the postea, thus):

Afterwards, to-wit, at the day and place last above mentioned, before _____, esquire, one of the circuit judges of the state of New York, according to the form of the statute in such case made and provided, come the parties aforesaid, by their attorneys aforesaid, etc. (copying the postea). And hereupon the said plaintiff freely here in court confesses, etc. (to the end of the nolle prosequi, and then proceed with the postea). And the jurors of the jury, etc. (to the end of the record). Burr. App. 147, §280; Till. Forms 213.

C. Judgment Record on Nolle Prosequi to Some Defendants.

(If entered before issue, the nolle prosequi will appear on the record in the pleading where it belongs.) (After issue, the nolle prosequi is entered as follows): And hereupon the said plaintiff freely here in court confesses that he will not further prosecute his suit against the said defendant L. M. Therefore let the said defendant L. M. be acquitted of the premises in the said declaration mentioned, and go thereof without day, etc.

Therefore the issue above joined between the said plaintiff and the said defendant C. D. is ordered, etc. (order for trial). Burr. App. 147, §281.

D. Judgment Record on Nolle Prosequi After Issue of Law.

(As in VII, B.)

And hereupon the said plaintiff freely here in court confesses that he will not further prosecute his suit against the said defendant in respect of the said issue above joined between the said parties, whereon the said parties have put themselves upon the country. Therefore as to the said issue, and as to the said premises in the said (second) count of the said declaration mentioned (the count or counts on which the issue in fact was taken), whereon the said parties have put themselves upon the country, let the said defendant be acquitted, and go thereof without day, etc.

Therefore, etc. (judgment on the issue in law). Burr. App. 148, §281a.

E. Retraxit, Entry of.

(After appearance of the parties in the postea, add the following): And hereupon the said plaintiff, in his own proper person, comes into the court now here, and confesses that he will no further prosecute his action aforesaid against the said defendant, and prays his retraxit thereof may be entered of record. And it is granted, etc. Burr. App. 96, §183; Yates' Forms 343.

F. Judgment Record on Discontinuance.

(The record being brought down to the period of discontinuance, proceed as follows):

Afterwards, to-wit, on the _____ Monday of _____, in the term of _____, in the year one thousand eight hundred and _____ (the term of entering judgment), before the justices aforesaid, at the _____ in the

city of _____, comes the said defendant, by his attorney aforesaid, and the said plaintiff does not further prosecute his said suit against the said defendant, but voluntarily permits the same to be discontinued.

Therefore, etc. Burr. App. 145, §277.

G. Judgment Record as in Case of Nonsuit.

(As in I, A, to the end of the order for trial, and then as follows):

And now at this day, to-wit, on the _____ Tuesday of _____, in the year of our Lord one thousand eight hundred and _____ (the special term at which judgment is given), before the justices aforesaid, at the _____ in the city of _____, comes the said defendant by his attorney aforesaid, and the said plaintiff, although solemnly demanded, comes not. And it appearing to the said court, before the aforesaid justices thereof now here, that the said plaintiff has neglected to bring the issue above joined, on to be tried, according to the course and practice of the said court:

Therefore, etc. Burr. App. 149, §283.

H. Judgment Record on Nonsuit Ordered by Court.

(As in I, A, to the end of the order for trial, and then as follows):

At which day and place, before _____, esquire, one of the circuit judges of the state of _____, according to the form of the statute in such case made and provided, come as well the said plaintiff as the said defendant, by their respective attorneys aforesaid; and the jurors of the jury, summoned to try the said issue, being called, also come, who, to speak the truth of the matters aforesaid, being chosen, tried and sworn, evidence was thereupon given to them by the said plaintiff, which being insufficient to maintain the said issue on his part, and the said plaintiff being thereupon solemnly called, to produce further evidence to support and maintain his said action, the said plaintiff comes not, but makes default, nor does he further prosecute his suit against the said defendant.

Therefore, etc. Burr. App. 150, §287

IV. Default.

A. Non Pros.

1. Judgment Record on Non Pros. for Not Declaring.

And the said C. D., at the same day, duly appeared by G. H., his attorney

(and put in special bail) at the suit of the said A. B. (according to the form of the statute in such case made and provided). And the said A. B. has not yet declared against the said C. D. in the said court, before the aforesaid justices thereof, as he ought to have done, according to the rules and practice of the said court; but has therein wholly made default.

Therefore it is considered, etc. Burr. App. 132, §260.

2. *Judgment Record on Default, Non Pros. for Not Declaring in Debt Qui Tam.*

A. B., who brought a writ of the people of the state of New York, as well for the said people as for himself, against C. D., of a plea of debt on statute (referring to the statute, as in the writ), hath not prosecuted his writ aforesaid.

Therefore it is considered that the said A. B. take nothing by his said writ, but that he be in mercy, etc. And it is further considered, etc. Burr. App. 133, §260a; Till. Forms 209.

3. *Judgment Record on Non Pros. for Not Replying.*

And hereupon the said defendant prays that the said plaintiff may reply to the plea of him, the said defendant, above pleaded: Whereupon a day is given to the court here, to the said plaintiff, before the justices aforesaid, until the _____ day of _____, in this same term (the day on which the judgment is entered), at the _____ in the city of _____; that is to say, for him, the said plaintiff, to reply to the plea aforesaid. The same day is given to the said defendant, at the same place.

At which day, before the justices aforesaid, at the _____ aforesaid, comes the said defendant, by his attorney aforesaid, and the said plaintiff, although solemnly called, comes not; nor has he replied to the aforesaid plea of the said defendant, nor does he further prosecute his said suit against the said defendant, but therein makes default. Burr. App. 142, §270.

B. Nil Dicit.

1. *Judgment Record on Default for Not Pleading in Assumpsit.*

(Placita as in I, A.)

Be it remembered that on the _____ Monday of _____ in this same term (or heretofore, to-wit, on

the third Monday of October, in October term now last past, before the justices of the supreme court of judicature of the people of the state of New York, at the _____ in the city of _____, comes (or came), A. B., by E. F., his attorney, and brings (or brought) into the said court, before the aforesaid justices thereof, now here (or then there), his certain declaration against C. D., according to the form of the statute in such case made and provided, of a plea of (trespass on the case upon promises), which said declaration follows in these words, to-wit:

A. B., plaintiff in this suit, by E. F., his attorney, etc. (copy the declaration to the words, "brings suit," inclusive, and also the note or bill, if any be endorsed on it).

(If the default were of a term subsequent to that of the declaration, insert an imparlance, as in IV, B, 5, otherwise, proceed thus):

And the said defendant in his proper person (or by G. H., his attorney), comes and defends the wrong and injury when, etc., and says nothing in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein undefended against the said defendant: Wherefore the said plaintiff ought to recover against the said defendant, his damages, on occasion of the premises.

And hereupon the said plaintiff suggests to the court now here, and gives the said court to understand and be informed, that the said declaration was filed in the office of _____, esquire, one of the clerks of this court, and that a copy of said declaration, and a notice requiring the defendant to plead thereto according to the practice of this court, were personally served on the said defendant, pursuant to the statute in such case made and provided. And hereupon the said plaintiff prays judgment, and his damages by him sustained by occasion of the non-performance of the said promises and undertakings in the said declaration mentioned, to be adjudged to him, etc. And because it is suggested and proved, and manifestly appears to the said court now here, that the said plaintiff has sustained damages on occasion of the premises to _____ dollars, besides his costs and charges by him about his suit in this behalf expended:

Therefore, etc. Burr. App. 139, §267.

See "How To Use This Volume," Introduction, page v.

2. *Judgment Record on Default for Not Pleading by One Defendant.*

And the said I. N. and I. S., defendants in this suit (the pleading defendants), by G. H., their attorney, come and defend the wrong and injury when, etc. (copying the plea).

And the said defendant C. D. (the defaulting defendant), in his proper person (or by G. H., his attorney), comes and defends the wrong and injury, when, etc., and says nothing in bar or preclusion of the said action of the said plaintiff: whereby the said plaintiff remains therein undefended against the said defendant C. D.: whereby, and by force of the statute in such case made and provided, the said action of the said plaintiff is severed. Wherefore the said plaintiff ought to recover against the said defendant C. D., his damages on occasion of the premises. And hereupon the said plaintiff prays judgment against the said C. D., and his damages by him sustained on occasion of the non-performance of the said promises and undertakings in the said declaration mentioned, to be adjudged to him, etc.

And hereupon the said plaintiff suggests to the court now here (enter suggestion of filing and service of the declaration, as in last form).

And because it is suggested and proved, and manifestly appears to the said court now here, that the said plaintiff has sustained damages on occasion of the premises to _____ dollars, besides his costs and charges by him about his suit in this behalf expended:

Therefore, etc. Burr. App. 140, §267a.

Note.—This by reason of statute. General rule is defaulting defendant abides result at trial.

3. *Judgment Record on Default for Not Rejoining.*

And hereupon the said plaintiff prays that the said defendant may rejoin to the replication of the said plaintiff by him above pleaded: whereupon a day is given to the said defendant, before the justices aforesaid, at the _____ in the city of _____, on the _____ day of _____ next (the day of entering judgment), that is to say, for the said defendant to rejoin to the replication aforesaid. The same day is given to the said plaintiff there, etc.

At which day, before the justices

aforesaid, at the _____ aforesaid, comes the said plaintiff, by his attorney aforesaid, and the said defendant, although solemnly demanded, comes not, but makes default: nor hath he in any wise rejoined to the aforesaid replication of the said plaintiff, nor said anything in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein undefended against the said defendant. Wherefore the said plaintiff ought to recover against the said defendant his damages (or debt and damages), by occasion of the premises. Burr. App. 143, §271.

4. *Judgment Record on Default for Not Pleading in Debt, on Writ of Inquiry, Debt on Bond.*

(Impar lance, if necessary, as in IV, B, 5, to the words, "defends the wrong and injury when, etc.," and then proceed as follows): and says nothing in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein undefended against the said defendant; wherefore the said plaintiff ought to recover against the said defendant his said debt and his damages on account of the detention thereof, and by reason of the aforesaid breaches of the said condition of the said writing obligatory above assigned, together with his costs and charges by him about his suit in this behalf expended.

But because it is unknown to the said court now here what damages the said plaintiff has sustained by reason of the premises, the sheriff of the said (city and) county of _____ (the venue), is commanded that by the oaths of twelve good and lawful men of his county he diligently inquire what damages the said plaintiff has sustained, as well by reason of the aforesaid breaches above assigned as for his costs and charges by him about his suit in this behalf expended; and that he send the inquisition which he shall thereupon take to the said justices of the supreme court of judicature aforesaid, at the _____ in the city of _____, on the _____ Monday of _____ next, under his seal, and the seals of those by whose oaths he shall take that inquisition, together with the writ to him thereupon directed: the same day is given to the said plaintiff at the same place.

At which day, before the justices

aforesaid, at the _____ of the city of _____, comes the said plaintiff, by his attorney aforesaid, and the sheriff, to-wit, W. J., esquire, sheriff of the (city and) county of _____, now here returns a certain inquisition, indented, taken before him, at the _____ of the city of _____, in his said county, on the _____ day of _____ last, by the oaths of twelve good and lawful men of his county; by which it is found that the said defendant did not, etc. (state the finding of the jury), and that the said plaintiff has sustained damages, by reason of the aforesaid breaches of the said condition of the said writing obligatory, to _____ dollars, over and above his costs and charges, by him about his suit in this behalf expended; and for those costs and charges to six cents. Burr. App. 137, §266.

5. *Judgment Record on Default for Not Pleading, on Writ of Inquiry at Subsequent Term.*

Be it remembered that, heretofore, to-wit, on the _____ Monday of _____, in _____ term, now last past, before the justices of the supreme court of judicature of the people of the state of New York, at the (courthouse in the city of _____), came A. B., by E. F., his attorney, and brought into the said court, before the aforesaid justices thereof then and there, his certain bill against C. D., being in custody, etc., of a plea of trespass on the case upon promises (or as the action is), which said bill follows in these words, that is to say: (City and county of _____), ss.: (Here copy declaration to the end, omitting the signature, and proceed on a new line as follows):

And now at this day, that is to say, on the first Monday of _____, in this same term of _____ (the term of which the judgment is entered), until which day the said defendant had leave to imparl to the said bill (or declaration), and then to answer the same, etc., before the said justices of the supreme court of judicature aforesaid, at the _____ in the city of _____, come as well the said plaintiff, by his attorney aforesaid, as the said defendant, in his proper person (or by G. H., his attorney). And the said defendant defends the wrong and injury when, etc., and says nothing in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein undefended

against the said defendant: Wherefore the said plaintiff ought to recover against the said defendant his damages, on occasion of the premises.* And hereupon the said plaintiff prays judgment, and his damages by him sustained on occasion of the non-performance of the said promises and undertakings, in the said declaration mentioned, to be adjudged to him, etc. And because it is suggested and proved, and manifestly appears to the said court now here, that the said plaintiff hath sustained damages on occasion of the premises, to _____ dollars and _____ cents besides his costs and charges by him about his suit in this behalf expended: Therefore, etc.

(In case of unliquidated demand, continue from *): But because it is unknown to the said court, before the aforesaid justices thereof now here, what damages the said plaintiff has sustained by means of the premises, the sheriff of the said city and county of _____ (the venue in the action) is commanded that, by the oaths of twelve good and lawful men of his county, he diligently inquire what damages the said plaintiff has sustained, as well by means of the premises as for his costs and charges by him about his suit in this behalf expended; and that he send the inquisition which he shall thereupon take to the justices of the said supreme court of judicature, at the _____ in the city of _____, on the _____ day of _____ next (the return of the writ), under his seal, and the seals of those by whose oaths he shall take that inquisition, together with the writ to him thereupon directed: the same day is given to the said plaintiff, at the same place.

At which day, before the justices aforesaid, at the _____ in the city of _____, comes the said plaintiff, by his attorney aforesaid; and the sheriff, to-wit, _____, esquire, sheriff of the said (city and) county of _____, now here, returns a certain inquisition indented, taken before him at the _____ of the city of _____, in his said county, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, by the oaths of twelve good and lawful men of his county; by which it is found that the said plaintiff has sustained damages by means of the premises, to _____ dollars and _____ cents, over and above his

costs and charges by him about his suit in this behalf expended, and for those costs and charges to six cents.

Therefore, etc. Burr. App. 135, 136, §§262, 263, 264.

6. Judgment Record on Default in Suit on Bail-Bond.

(Placita of the term of judgment.) (Memorandum as in IV, B, 5, or IV, B, 1, according to the case.) (Declaration.) And the said defendants in their proper persons (or by G. H., their attorney), come and defend the wrong and injury when, etc., and say nothing in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein undefended against the said defendants.

Therefore, etc. Burr. App. 184, §338.

7. Judgment Record on Default in Recognizance of Bail.

(Placita in the usual form, of the term of the judgment.)

(Memorandum as in IV, B, 5, or IV, B, 1, according to the case.) (Declaration.)

(Imparalance, if necessary, as in IV, B, 5.)

And the said I. N. and I. S., defendants in this suit (by G. H., their attorney), come and defend the wrong and injury when, etc., and say nothing in bar or preclusion of the aforesaid action of the said plaintiff: Whereby the said plaintiff remains therein undefended against the said defendants.

Therefore, etc. Burr. App. 189, §344.

V. Demurrers.

A. Demurrer to Declaration or Replication Overruled.

(Copy the demurrer book to the end, and then continue the record as follows):

And because the said court of the people, before the aforesaid justices thereof now here, are not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the justices thereof, until the ——— Monday of ——— of the term of ———, in the year of our Lord one thousand eight hundred and ——— (the term when the demurrer was argued), at the ——— in the city of ———. And the same day is given to the parties aforesaid, at the same place, to hear the judgment of the said court thereupon.

At which day, before the justices aforesaid, at the ——— in the city of ———, come as well the said plaintiff as the said defendant, by their respective attorneys aforesaid. Whereupon, all and singular the premises aforesaid being seen, and by the said court here fully understood, and mature deliberation being thereupon had,* it appears to the said court here that the declaration (or first count of the declaration, or replication) aforesaid, and the matters therein contained, are sufficient in law for the said plaintiff to have and maintain his aforesaid action thereof against the said defendant.

Therefore it is considered, etc. Burr. App. 157, §299; 2 P. & Du. Pr. 755.

B. Judgment Record on Demurrer to Declaration or Replication, Sustained.

(The record is, in all respects, the same as in V, A, to the *, after which proceed thus): it appears to the said court here that the declaration (or first count of the declaration, or replication) aforesaid, and the matters therein contained, are not sufficient in law for the said plaintiff to have and maintain his aforesaid action thereof against the said defendant.

Therefore, etc. Burr. App. 159, §302.

C. Judgment Record on Demurrer to Plea or Rejoinder Sustained.

(As in V, A, to the *, and then as follows): it appears to the said court here that the said plea (or rejoinder) by the said defendant above pleaded, and the matters therein contained, are not sufficient in law to bar or preclude the said plaintiff from having or maintaining his aforesaid action thereof against the said defendant.

Therefore, etc. Burr. App. 158, §301.

D. Record on Demurrer to Plea or Rejoinder Overruled.

(As in V, A, to the *, and then as follows): it appears to the said court here that the said plea (or rejoinder) by the said defendant above pleaded, and the matters therein contained, are sufficient in law to bar and preclude the said plaintiff from having and maintaining his aforesaid action thereof against the said defendant.

Therefore, etc. Burr. App. 159, §303.

E. Judgment Record on Frivolous Demurrer.

And because the said court, before the aforesaid justices thereof now here, are not yet advised what judgment to

give of and upon the premises, therefore the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the justices thereof, until the _____ Monday of _____ of the term of _____, in the year of our Lord one thousand eight hundred and _____, at the _____ in the city of _____ (the term when judgment is given); and the same day is given to the parties aforesaid, at the same place.*

At which said last mentioned day, before the said justices, at the place last aforesaid, comes the said plaintiff, by his attorney aforesaid, and the said defendant, although solemnly demanded, comes not, but makes default. (If in any action where the damages are assessed by the clerk, proceed as in IV, B, 5, from the words, "wherefore the said plaintiff ought to recover, etc.," to the end. If a writ of inquiry was issued, as in IV, B, 5.) Burr. App. 156, §297.

*F. Judgment Record on Demurrer
Decided for Plaintiff, After an
Issue of Fact Tried.*

(Placita.)

(Be it remembered that, on, etc.)

(Declaration.)

(Plea, general issue, to all the counts but the first.)

(Demurrer to the first count.)

(Joinder in demurrer; after which proceed as follows):

But because the said court, before the aforesaid justices thereof now here, are not yet advised what judgment to give of and upon the premises, whereon the parties aforesaid have put themselves upon the judgment of the court, a day is given to the parties aforesaid, before the justices of this same court, at the _____ in the city of _____, on the _____ Monday of _____ next (the term following the circuit at which the issue in fact is to be tried), to hear judgment thereon; for that the said court, before the aforesaid justices thereof now here, are not yet advised thereof, etc. And because it is unknown to the said court here whether or not the said defendant will be convicted of the premises, whereof the said parties have put themselves upon the judgment of the court; and because it is convenient and necessary that there be but one taxation of damages in this suit: Therefore it is ordered

by the said court that the issue above joined, to be tried by the country, be tried at the circuit court appointed to be held at the _____ in the town of _____, in and for the county of _____ aforesaid, on the (first day of _____) next; and it is further ordered that the jury who shall try the said issue, also inquire of, and assess the damages, which the said plaintiff hath sustained by occasion of the premises, whereon the said parties have put themselves upon the judgment of the court, if judgment shall happen to be given for the said plaintiff.

And now at this day, to-wit, on the _____ Monday of _____, in the year of our Lord one thousand eight hundred and _____, before the justices aforesaid, at the _____ in the city of _____ aforesaid, comes the said plaintiff, by his attorney aforesaid and _____, esquire, one of the circuit judges of the state of New York, before whom the said issue was tried, hath sent hither his record had before him, in these words, to-wit: Afterwards, that is to say, on the _____ day of _____ aforesaid, at the _____ in the town of _____ aforesaid, before _____, esquire, one of the circuit judges of the state of New York, according to the form of the statute in such case made and provided, come as well the said plaintiff as the said defendant, by their respective attorneys aforesaid: and the jurors of the jury summoned to try the said issue, being called, also come; who, to speak the truth of the matters aforesaid, being chosen, tried and sworn, say upon their oath, as to the issue above joined between the said parties to be tried by the country; that (the said defendant did undertake and promise, in manner and form as the said plaintiff hath above in the said second and subsequent counts of his said declaration complained against him); and they assess the damages of the said plaintiff, by reason of (the not performing the promises and undertakings in the said counts mentioned), over and above his costs and charges, by him about his suit in this behalf expended (to _____ dollars), and for those costs and charges, to _____ cents. And as to the issue above joined between the said parties, whereon they have put themselves upon the judgment of the court, the jurors aforesaid, upon their oath aforesaid, say that if it shall

happen that judgment shall be thereupon given for the said plaintiff, then they assess the damages of the said plaintiff, by him sustained by reason (of the not performing the promises and undertakings in the first count of the said declaration above mentioned), over and above his costs and charges, by him about his suit in this behalf expended, to _____ dollars, and for the costs and charges last aforesaid, to six cents. (If the issue in law is decided of this term, judgment is here entered; but if not, continue the record as follows): But because it is unknown to the said court here whether or not the said defendant will be convicted of the premises aforesaid, whereof the parties aforesaid have put themselves upon the judgment of the court, therefore let the giving of judgment in this behalf against the said defendant be stayed, until the issue aforesaid, whereon the said parties have put themselves upon the judgment of the court, shall have been adjudged and determined.

And because the said court, before the aforesaid justices thereof now here, are not yet advised what judgment to give of and upon the premises, whereof the parties aforesaid have put themselves upon the judgment of the court, a further day is given to the said parties before the justices aforesaid, at the (courthouse in the city of _____, on the _____ Monday of _____, next, to hear judgment thereupon, for that the said court are not yet advised thereof, etc.

At which day, before the justices aforesaid, at the (courthouse in the city of _____, come the parties aforesaid, by their respective attorneys aforesaid. And hereupon all and singular the premises aforesaid, whereon the said parties have put themselves upon the judgment of the court, being seen, and by the court now here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the (first) count of the declaration aforesaid, and the matters therein contained, are sufficient in law, for the said plaintiff to have and maintain his aforesaid action against the said defendant.

Therefore, etc. Burr. App. 160, §307; 2 P. & Du. Pr. 729, 741, 747, 748.

VI. Cognovit.

A. Judgment Record on Cognovit in Assumpsit.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says that he cannot deny the action of the said plaintiff, nor but that he the said defendant did undertake and promise, in manner and form as the said plaintiff hath above thereof* complained against him, nor but that the said plaintiff hath sustained damages on occasion of the not performing of the said several promises and undertakings, in the said declaration mentioned, over and above his costs and charges by him about his suit in this behalf expended, to _____ dollars and _____ cents. Burr. App. 71, §141.

B. Judgment Record on Cognovit in Debt.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury when, etc., and says that he cannot deny the action of the said plaintiff, nor but that the said writing obligatory is the deed of him, the said defendant, nor but that he owes to the said plaintiff the sum of _____ dollars above demanded, in manner and form as the said plaintiff hath above thereof complained against him. (If the cognovit be of part of the cause of action, vary the form thus: "and says that he cannot deny the action of the said plaintiff, nor but that he, the said defendant, does owe to the said plaintiff the sum of _____ dollars, parcel of the said sum of _____ dollars above demanded.") Burr. App. 72, §144.

C. Judgment Record on Cognovit in Assumpsit as to Part of Cause of Action.

(As in VI, A, to the *, and then thus): In the (second and third) counts of his said declaration, complained against him; nor but that the said plaintiff hath sustained damages on occasion of the not performing of the said several promises and undertakings in the said (second and third) counts of the said declaration mentioned, over and above his costs, etc. (as in VI, A, to the end; or add at the end, after the sum confessed, "parcel of the said sum of [the damages claimed by the plaintiff] above demanded"). Burr. App. 72, §142.

D. Judgment Record on Cognovit in Assumpsit With Stipulation.

(At the foot of the ordinary form, subjoin the following): The above cognovit is given on condition that judgment shall not be entered thereon (or that execution shall not be issued on the judgment to be entered thereon), before the _____ day of _____ next. And I hereby stipulate that if default shall be made in the payment of the said (the debt or sum confessed), together with the said costs, on the said _____ day of _____, the plaintiff shall be at liberty to enter up judgment therefor, and forthwith to sue out execution thereupon (or otherwise, as the terms may be). Burr. App. 72, §1413.

VII. Verdict.

A. Judgment Record for Plaintiff in Debt.

(As in I, A, to the last *, after which proceed as follows): that the above mentioned writing obligatory is the deed of the said defendant, as the said plaintiff hath above in that behalf alleged; and they assess the damages of the said plaintiff, on occasion of the detaining the aforesaid debt, over and above his costs and charges by him about his suit in this behalf expended, to six cents, and for those costs and charges to six cents. Burr. App. 168, §312.

B. Record on Verdict After Decision of Issue at Law.

But because the court now here are not yet advised what judgment to give of and upon the premises, whereof the parties aforesaid have put themselves upon the judgment of the court, a day is given to the parties aforesaid, before the justices of this same court, at the _____ in the city of _____, on the _____ Monday of _____ next (the next term after issue), to hear judgment thereon, for that the said court now here, before the aforesaid justices thereof, are not yet advised thereof, etc.

And it is further ordered by the said court that the said issue above joined between the said parties, to be tried by the country, be tried at the circuit court, appointed to be held at the (courthouse in the town of _____), in and for the county of _____ aforesaid, on the _____ day of _____ next (next circuit after issue).

And now at this day, to-wit, on the _____ Monday of _____, in the year of our Lord one thousand eight hundred and _____, before the justices aforesaid, at the _____ in the city of _____ aforesaid, come as well the said plaintiff as the said defendant, by their respective attorneys aforesaid. And hereupon all and singular the premises aforesaid, whereon the said parties have put themselves upon the judgment of the court, being seen, and by the court now here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the (first) count of the declaration aforesaid, and the matters therein contained, are sufficient in law for the said plaintiff to have and maintain his aforesaid action against the said defendant: wherefore the said plaintiff ought to recover against the said defendant his damages by reason of the premises in the said first count of the said declaration mentioned.**

But because it is unknown to the said court here what damages the said plaintiff hath sustained by reason thereof, and because it is convenient and necessary that there be but one taxation of damages in this suit, therefore let the giving of judgment in this behalf against the said defendant be stayed, until the said issue above joined between the said parties, whereon the said parties have put themselves upon the country, shall have been tried and determined. And because the said issue above joined between the said parties, to be tried by the country, was not tried at the said circuit court, held at the time and place hereinbefore mentioned, therefore the process thereof, between the parties aforesaid, is continued until the circuit court, appointed to be held at, etc., on, etc. (as in the order for trial). And it is further ordered that the jury who shall try the said issue also inquire of, and assess the damages which the said plaintiff hath sustained by occasion of the premises, whereon the said parties have put themselves upon the judgment of the said court.

At which day, etc. (enter the postea as in I, A, to the last *, and then proceed as follows): as to the issue within joined between the said parties, to be tried by the country, that the said defendant did undertake and promise, in manner and form as the said plaintiff hath in the said (second and sub-

sequent) counts of his said declaration above complained against him: and they assess the damages of the said plaintiff, by reason of not performing of the promises and undertakings in the said counts mentioned, over and above his costs and charges by him about his suit in this behalf expended, to _____ dollars, and for those costs and charges to six cents. And the jurors aforesaid, upon their oaths aforesaid, also say that they assess the damages of the said plaintiff, by him sustained by reason of the not performing the promise and undertaking in the said first count of the said declaration, over and above his costs and charges by him about his suit in this behalf expended, to _____ dollars, and for his costs and charges last aforesaid to six cents.

Therefore, etc. Burr. App. 176, §326; 2 P. & Du. Pr. 742.

C. Judgment Record on Special Verdict (Argument in First Instance).

(As in I, A, to the end of the order for trial, then enter the postea and special verdict [see X, Verdict, in this volume]; then, if necessary, add a continuance [see Continuances] to the term of giving judgment, and conclude as follows):

At which day, before the justices aforesaid, at the _____ in the city of _____, come the parties aforesaid, by their respective attorneys aforesaid: Whereupon, all and singular the premises aforesaid being seen, and by the said court here fully understood, and mature deliberation being thereupon had, it appears to the said court here that, etc. (stating the affirmative or negative of the issue, according to the decision).

Therefore, etc. Burr. App. 179, §331.

VIII. Judgment Record for Plaintiff on Inquest.

(The record is the same as on verdict, I, A, except that in entering the postea you substitute for the part between the first and second *, the following clause): comes the above named plaintiff, by his attorney above mentioned, and the above named defendant, although solemnly required, comes not, but makes default. Therefore let the jurors of the jury be taken against him by his default. And the jurors of the jury, summoned, etc. (as in I, A, to the end, varying the entries if

necessary, as in I, B, III, A, and III, C, in Verdicts). Burr. App. 169, §314.

IX. Judgment Record on Report of Referee.

(To issue; and then, if the reference were of the same term with the issue, continue as follows):

And hereupon the said plaintiff gives the said court now here to understand and be informed that the trial of the issue (or issues) in this cause will require the examination of a long account on the part of him, the said plaintiff (and of the said defendant); and the said plaintiff, according to the statute in such case made and provided, prays the said court now here, by a rule in that behalf made, to refer this cause to referees (not being less than three persons), to be nominated by the said court now here, to finally hear and determine the matters in controversy in this cause. And because the said defendant does not deny the allegation aforesaid, but admits the same to be true, therefore, in pursuance of and according to the aforesaid statute, let it be, by rule for that purpose to be duly entered, referred to K. L., of the (city of _____, counsellor-at-law), and M. N. and O. P., of the (same place, merchants) as referees, to hear and examine the matters in controversy between the said plaintiff and defendant; and let the said referees, upon pain of contempt, report thereon to the said court, before the aforesaid justices thereof, at the _____ in the city of _____, on the _____ Monday of _____ next. The same day is given to the parties aforesaid at the same place.

At which day, before the justices aforesaid, at the _____ in the city of _____, come the parties aforesaid, by their respective attorneys aforesaid;* and the referees above mentioned, to-wit, K. L., M. N. and O. P., to whom it was referred to hear and examine the matters in controversy between the said plaintiff, and the said defendant, and to report thereupon, now report that they find there is due from the said defendant to the said plaintiff the sum of _____ dollars and _____ cents, besides his costs and charges, by him about his suit in this behalf expended.*

Therefore it is considered that the said report do stand confirmed; and it

is further considered, etc. (enter judgment).

(If the rule for reference were made at a term subsequent to that of the issue, after entering the pleadings to issue, continue as follows): And hereupon the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, before the justices thereof, until the _____ Tuesday of _____, in the year of our Lord one thousand eight hundred and _____, at the _____ in the city of _____; and the same day is given to the parties aforesaid, at the same place.

At which said last mentioned day, before the justices aforesaid, at the place last aforesaid, come the parties aforesaid, by their respective attorneys aforesaid: And hereupon the said plaintiff gives the said court now here to understand, etc. (proceeding as in V, F, to the end).

(If the report were not made at the term specified in the record, a continuance should be entered, commencing at the first * in V, F, as follows): and the referees above named have not made their report in and upon the matters in controversy to them referred, neither have they done anything therein. And thereupon a further day is given to the referees aforesaid, before the justices aforesaid, at the _____ in the city of _____, on the _____ Monday of _____ next, to report in and upon the matters in controversy, referred to them as aforesaid. The same day is given to the parties aforesaid, at the same place. At which day, etc. (proceed as in V, F).

(If judgment be not rendered on the coming in of the report, insert a continuance as follows): And because the said court of the people, before the said justices thereof now here, are not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid of the plea aforesaid, in this same court, before the justices thereof, until the _____ Monday of _____ of the term of _____, in the year of our Lord one thousand eight hundred and _____ (the term of which judgment is entered), at the (courthouse in the city of _____), and the same day is given to the parties aforesaid, at the same place, to hear the judgment of the said court thereupon.

At which said last mentioned day, before the said justices at the place last aforesaid, come the parties aforesaid, by their respective attorneys aforesaid; and thereupon, all and singular the premises being seen, and by the said court here fully understood, and mature deliberation being thereupon had, it is considered that the said report do stand confirmed, etc. (enter judgment). Burr. App. 162, §308.

X. Judgment Record on Non Obstante Verdicto.

(The record being brought down to the term of giving judgment, including the postea, continue as follows):

And now at this day, to-wit, on the _____ Monday of _____, in the term of _____, in the year one thousand eight hundred and _____, before the justices aforesaid, at the _____ in the city of _____, come the parties aforesaid, by their attorneys aforesaid: And hereupon, all and singular the premises being seen, and by the court now here fully understood, and mature deliberation being thereupon had, it seems to the said court now here that (the plea aforesaid of the said defendant, and the matters therein contained, are not sufficient in the law to bar or preclude the said plaintiff from having or maintaining his aforesaid action thereof against him, the said defendant), the verdict aforesaid of the jurors aforesaid in form aforesaid given, to the contrary thereof in any wise notwithstanding. Wherefore the said plaintiff ought to recover, etc. (if in assumpsit, here enter interlocutory, and then final judgment, or enter award of writ of inquiry, and judgment thereon, as in I, A. If in debt, the judgment will be final). Burr. App. 180, §333; Yates' Forms 792, 343.

XI. Judgment Record on Arrest of Judgment.

(The record being brought down to the term in which the judgment was arrested, continue as follows):

And now at this day, to-wit, on the _____ Monday of _____, in the term of _____, in the year one thousand eight hundred and _____, before the justices aforesaid, at the _____ in the city of _____, come the parties aforesaid, by their attorneys aforesaid: And hereupon, all and singular the premises being seen, and by the court now here fully under-

stood, and mature deliberation being thereupon had, it seems to the court now here that no judgment can be rendered on the verdict (or inquisition) aforesaid; inasmuch as the declaration (or replication) of the said plaintiff, and the matters therein contained, are manifestly insufficient in the law for him, the said plaintiff, to have or maintain his action aforesaid thereof against him, the said defendant. Therefore the judgment on the said verdict is hereby arrested and stayed; and it is also considered that the said defendant do go thereof without day, etc. Burr. App. 180, §332; Yates' Forms 166.

XII. Damages.

A. *Entry of Remittitur Damna After Verdict.*

(After the entry of the verdict, proceed thus):

And hereupon the said plaintiff freely here in court remits to the said defendant _____ dollars, part and parcel of the damages aforesaid, by the jurors aforesaid in form aforesaid found, and prays judgment for (his said debt and for) the residue of the damages aforesaid by the jurors aforesaid in form aforesaid found, together with his costs and charges by him about this suit in this behalf expended, etc. Burr. App. 82, §156; Yates' Forms 785.

B. *Entry of Remittitur Damna After Assessment of Damages.*

And hereupon the said plaintiff freely here in court remits to the said defendant the sum of _____ dollars (the excess), part and parcel of the damages, costs and charges aforesaid, by the said inquisition in form aforesaid found; and prays judgment for the residue of those damages, costs and charges, together with his further costs and charges by him about his suit in that behalf expended, etc. Burr. App. 82, §156a; Till. Forms 189.

C. *Record on Election Meliora Damna.*

(As in ordinary records on verdict, to the words, "say upon their oaths," in the postea, and then as follows): that the said several defendants are guilty, etc. (as in the usual form in trespass); and they assess the damages of the said plaintiff by reason of the premises, over and above his costs, etc. (as in the usual form), against the said defendant C. D. at _____ dollars, against the said defendant I. J. at _____ dollars, against the said defendant K. L. at _____ dollars,

and against the said defendant M. N. at _____ dollars; and for those costs and charges to six cents.

And hereupon the said plaintiff now here, before the aforesaid justices, elects to recover against the said defendants _____ dollars, the damages aforesaid, by the jurors aforesaid found against the said defendant M. N., as his better damages, besides his costs; and the said plaintiff freely here in court remits to the said defendants the said sums of _____ dollars, _____ dollars and _____ dollars, by the jurors aforesaid found against the said defendants C. D., I. J., and K. L., respectively.

Therefore, etc. Burr. App. 183, §337; Yates' Forms 165.

XIII. Replevin.

A. *Judgment Record on Default for Not Pleading in Replevin.*

(Placita [of the term of the judgment] as in last form.)

_____ county, ss.: C. D. was summoned to answer A. B. of a plea wherefore, etc. (here copy the declaration, and then proceed as follows):

And the said C. D. (by G. H., his attorney) comes and defends the wrong and injury when, etc., and says nothing in bar or preclusion of the said action of the said plaintiff; whereby the said plaintiff remains therein undefended against the said defendant: wherefore the said plaintiff ought to recover against the said defendant his damages on occasion of the taking and unjust detention of the goods and chattels aforesaid.

But because it is unknown to the said court now here what damages the said plaintiff hath sustained, etc. (here enter award of writ of inquiry in the usual form, then enter the return of the writ, and the inquisition assessing the damages [and also the value of the goods], and conclude with judgment). Burr. App. 140, §268; Till. Forms 225.

B. *Judgment Record on Default of Plaintiff to Plead to Avowry in Replevin.*

C. D. was summoned to answer unto A. B. of a plea wherefore he took, etc. (copy the declaration).

And the said C. D., by G. H., his attorney, comes and defends the wrong and injury when, etc., and well avows the taking, etc. (copy the avowry or cognizance).

And upon this the said C. D. prays that the said A. B. may plead in bar of the said avowry (or cognizance), and thereupon a day is given to the said A. B., before the justices of the supreme court of judicature aforesaid, at, etc., on, etc., that is to say, for him, the said A. B., to plead in bar of the said avowry (or cognizance), the same day is given to the said C. D., etc. At which day, before the said justices of the supreme court of judicature aforesaid, at, etc., comes the said C. D., by his attorney aforesaid, and offers himself against the said A. B. in the plea aforesaid; but the said A. B., although solemnly called, comes not, but makes default, nor hath he pleaded in bar of the said avowry (or cognizance), nor doth he further prosecute his writ against the said C. D.

Therefore, etc. Burr. App. 141, §269; Till. Forms 226; Yates' Forms 566.

C. Judgment Record on Non Cepit for Plaintiff.

(As in I, A, as far as the last *, and then as follows): that the said defendant did take the goods and chattels in the declaration of the said plaintiff mentioned and set forth; and they assess the damages which the said plaintiff hath sustained, by reason of the said unlawful taking above mentioned, over and above his costs and charges by him about his suit in this behalf expended, to _____ dollars, and for those costs and charges to six cents. (And they assess the value of the said goods and chattels to _____ dollars.)

Therefore, etc. Burr. App. 170, §316.

D. Judgment Record on Non-detinet for Plaintiff.

(As in I, A, as far as the last *, and then as follows): that the said defendant doth detain the goods and chattels in the declaration of the said plaintiff mentioned and set forth; and they assess the damages which the said plaintiff hath sustained by reason of the said unjust detention above mentioned, over and above his costs and charges by him about his suit in this behalf expended, to _____ dollars, and for those costs and charges to _____ cents. And they assess the value of the goods and chattels in the said declaration specified to _____ dollars. Burr. App. 171, §317.

XIV. Ejectment.

A. Judgment Record in Ejectment, Verdict for Plaintiff.

(Placita as in I, A, of the term of which issue is joined.)

_____ county, ss.: Be 'it remembered that on the _____ day of _____, in this same term, before the justices of the supreme court of judicature of the people of the state of New York, at the _____ in the city of _____, comes A. B., by E. F., his attorney, and brings into the said court, before the aforesaid justices thereof now here, his certain bill against C. D. in a plea of ejectment; which said bill follows in these words, that is to say:

(City and) county (of _____), ss.: A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, of a plea of trespass and ejectment: For that whereas, etc. (here copy the declaration to the end, and then copy the plea as follows):

And the said C. D., by G. H., his attorney, comes and says that he is not guilty of unlawfully withholding the premises claimed by the said A. B. as alleged in his said declaration. And of this he, the said C. D., puts himself upon the country. And the said A. B. doth the like. Therefore the issue above joined is ordered by the said supreme court to be tried at the circuit court, etc. (order for trial in the usual form; see I, A).

Afterwards, that is to say, etc. (here enter the postea as in Verdict, IX, A, and conclude with the entry of judgment). Burr. App. 527, §1049.

B. Judgment Record in Ejectment for Plaintiff on Default.

As in last form to the end of the declaration, and then as follows:

And now, at this day, that is to say, on the _____ Monday of _____ in this same term, until, which day the said defendant had leave to imparl to the said bill, and then to answer the same, etc., before the said justices of the supreme court of judicature aforesaid, at the _____ in the city of New York), comes the said plaintiff by his attorney aforesaid, and the said defendant, although solemnly demanded, comes not, but makes default; whereby the said plaintiff remains therein undefended against the said defendant; wherefore the said plaintiff ought to recover against the said defendant the

possession of the premises in the said declaration of the said plaintiff described; together with his costs and charges by him about his suit in this behalf expended. Therefore, etc. Burr. App. 528, §1050.

C. Judgment Record in Ejectment for Plaintiff on Verdict Where His Title Expires Before Trial.

(As in XIV, A, to the end of the order for trial, then enter the postea, as in Verdict, IX, A, and conclude with award of judgment.) Burr. App. 529, §1051.

D. Judgment Record in Ejectment for Plaintiff on Suggestion of Damages.

(This is merely a continuation of the original judgment record in ejectment, XIV, A, as follows):

And now at this day, to-wit, on the _____ Monday of _____, in the year, etc., before the said justices of the supreme court of judicature aforesaid (or, within mentioned, if the entries be on a separate paper attached to the original record), at the (court house in the city of Rochester), comes the said (or within named) plaintiff, by E. F., his attorney, and according to the form of the statute in such case made and provided, suggests to the said court, and gives the said court, before the aforesaid justices thereof, now here, to understand and be informed, that the said plaintiff claims from the said (or within named), defendant, the sum of _____ dollars, in which sum the said defendant is indebted to him, the said plaintiff, for the use and occupation of the premises in the above (or within) written judgment described, from the _____ day of _____, in the year, etc., until the _____ day of _____, in the year, etc., during all which time the said defendant enjoyed the mesne profits thereof; and the value of which profits amounts to the said sum of (one thousand) dollars, above claimed. And being so indebted as aforesaid, the said defendant, in consideration thereof, afterwards, to-wit, on the _____ day of _____, in the year, etc. (some day after the recovery of the judgment), at, etc., undertook, and then and there faithfully promised the said plaintiff to pay him, the said plaintiff, the said sum of _____ dollars, when he, the said defendant, should be thereunto afterwards requested. Yet the said defendant, although often requested, etc.,

hath not yet paid the said sum of (one thousand) dollars, or any part thereof, to the said plaintiff, but so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff of the said sum of _____ dollars, above claimed, etc.

And the said defendant, by G. H., his attorney, comes and defends, etc. (copy the plea and other pleadings, if any, to issue).

Therefore the issue above joined is ordered by the said supreme court to be tried, etc. (usual order for trial).

Afterwards, that is to say, etc. (here enter the postea in the usual form, to the words "being chosen, tried and sworn," and then proceed as follows): say upon their oath that the said defendant did undertake and promise in manner and form as the said plaintiff hath above suggested against him; and they assess the damages of the said plaintiff on occasion of the premises, besides his costs and charges by him about his suit in this behalf expended, to _____ dollars, and for those costs and charges to six cents. Therefore, etc. Burr. App. 529, §1052.

XV. Record of Entry of Remittitur from Supreme Court (Affirmance).

Pleas before the justices of the supreme court of judicature of the people of the state of New York, at the _____ in the city of _____, of the term of _____ (the term in which the writ of error was sued out), in the year of our Lord one thousand eight hundred and _____.

Witness, etc. (as in usual form).

Afterwards, to-wit, on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ at the _____, in the city of _____ (or as the case may be), a transcript of the record and proceedings aforesaid, between the parties aforesaid, with all things concerning the same, by means of a certain writ of the people of the state of New York, for correcting errors, prosecuted by the said C. D. against the said A. B., of and upon the premises, by the supreme court of judicature of the said people, before the justices thereof, now here, was transmitted before the president of the senate, senators and chancellor of the state of New York, in the court for the trial of impeachments and the correction of errors, ac-

cording to the form of the statute in such case made and provided. And the said C. D. appearing in the court aforesaid for the trial of impeachments and the correction of errors, assigned certain matters for error in the record and proceedings aforesaid, and in giving the judgment (or final determination) aforesaid, for reversing the said judgment; to which the said A. B., also appearing in the said court for the trial of impeachments and the correction of errors, pleaded that there was no error either in the record and proceedings aforesaid, or in giving the judgment (or final determination) aforesaid; and afterwards, to-wit, on the ——— day of ———, in the year of our Lord one thousand eight hundred and ——— (the day when the decision of the court of errors was made), as well the record and proceedings aforesaid, and the judgment (or final determination) aforesaid, in form aforesaid, given, as also the matters by the said C. D. for error assigned, being by the said court for the trial of impeachments and the correction of errors, diligently examined and fully understood, it seemed to the same court * that there was no error either in the record and proceedings aforesaid, or in giving the judgment (or final determination) aforesaid; therefore it was then and there considered by the said court for the trial of impeachments and the correction of errors, that the judgment aforesaid should be in all things affirmed, and stand in its full force, strength and effect, the matters aforesaid above for error assigned and alleged in any wise notwithstanding; & it was then and there further considered by the same court, that the said A. B. should recover against the said C. D. ——— dollars by the same court there adjudged to the said A. B., at his request, according to the form of the statute in such case made and provided, for his damages, costs and charges which he had sustained and expended on occasion of the delay of execution of the judgment (or final determination) aforesaid, on pretense of prosecuting the said writ of error; and thereupon, as well the record aforesaid, as the proceedings of the president of the senate, senators and chancellor in the court for the trial of impeachments and the correction of errors aforesaid, before them had in the premises, were by the said president, sen-

ators and chancellor, remitted into the supreme court of judicature of the people of the state of New York, before the justices thereof, according to the form of the statute in such case made and provided, and now remain in the said supreme court of judicature, before the justices thereof, etc. Burr. App. 188, §342; 2 Humph. Prec. 1186.

XVI. Criminal Record.

A. *Record of Indictment and Conviction of Murder.*

Warwickshire, to-wit: Be it remembered, that at the general session of the lord the king of oyer and terminer holden at Warwick, in and for the said county of Warwick, on Friday, the twelfth day of March, in the second year of the reign of the lord George the Third, now king of Great Britain, before Sir Michael Foster, knight, one of the justices of the said lord the king assigned to hold pleas before the king himself, Sir Edward Clive, knight, one of the justices of the said lord the king, of his court of common bench, and others their fellows, justices of the said lord the king, assigned by letters-patent of the said lord the king, under his great seal of Great Britain, made to them the aforesaid justices and others, and any two or more of them (whereof one of them, the said Sir Michael Foster and Sir Edward Clive, the said lord the king would have to be one), to inquire (by the oath of good and lawful men of the county aforesaid, by whom the truth of the matter might be the better known, and by other ways, methods, and means, whereby they could or might the better know, as well within liberties as without) more fully the truth of all treasons, misprisions of treason, insurrections, rebellions, counterfeittings, clippings, washings, false coinings, and other falsities of the moneys of Great Britain, and of other kingdoms or dominions whatsoever; and of all murders, felonies, manslaughters, killings, burglaries, rapes of women, unlawful meetings and conventicles, unlawful uttering of words, unlawful assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenances, oppressions, champerties, deceits, and all other misdeeds, offenses, and injuries whatsoever, and also the

accessories of the same, within the county aforesaid, as well within liberties as without, by whomsoever and howsoever done, had, perpetrated, and committed, and by whom, to whom, when, how, and in what manner; and of all other articles and circumstances in the said letters-patent of the said lord the king specified; the premises and every or any of them howsoever concerning; and for this time to hear and determine the said treasons and other the premises, according to the law and custom of the realm of England; and also keepers of the peace and justices of the said lord the king, assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed within the county aforesaid, by the oath of Sir James Thomson, baronet, Charles Roper, Henry Dawes, Peter Wilson, Samuel Rogers, John Dawson, James Phillips, John Mayo, Richard Savage, William Bell, James Morris, Laurence Hall, and Charles Carter, esquires, good and lawful men of the county aforesaid, then and there impaneled, sworn, and charged to inquire for the said lord the king and for the body of the said county, it is presented: That Peter Hunt, late of the parish of Lighthorne, in the said county, gentleman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the fifth day of March in the said second year of the reign of the said lord the king, at the parish of Lighthorne aforesaid, with force and arms, in and upon one Samuel Collins, in the peace of God and of the said lord the king then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Peter Hunt, with a certain drawn sword, made of iron and steel, of the value of five shillings, which he the said Peter Hunt in his right hand then and there had and held, him the said Samuel Collins, in and upon the left side of the belly of him the said Samuel Collins, then and there feloniously, wilfully, and of his malice aforethought, did strike, thrust, stab, and penetrate; giving unto the said Samuel Collins, then and there, with the sword drawn as aforesaid, in and upon the left side of the belly of him the said Samuel Collins, one mortal wound, of the breadth of one inch and the depth of nine inches; of which said mortal wound he the said Samuel

Collins, at the parish of Lighthorne aforesaid, in the said county of Warwick, from the said fifth day of March in the year aforesaid, until the seventh day of the same month in the same year, did languish, and languishing did live; on which said seventh day of March in the year aforesaid, the said Samuel Collins, at the parish of Lighthorne aforesaid, in the county aforesaid, of the said mortal wound did die; and so the jurors aforesaid, upon their oath aforesaid, do say that the said Peter Hunt him the said Samuel Collins, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the peace of the said lord the now king, his crown, and dignity. Whereupon the sheriff of the county aforesaid is commanded that he omit not for any liberty in his bailiwick, but that he take the said Peter Hunt, if he may be found in his bailiwick, and him safely keep, to answer to the felony and murder whereof he stands indicted. Which said indictment the said justices of the lord the king above named, afterwards, to-wit, at the delivery of the gaol of the said lord the king, holden at Warwick in and for the county aforesaid, on Friday, the sixth day of August, in the said second year of the reign of the said lord the king, before the right honorable William lord Mansfield, chief justice of the said lord the king, assigned to hold pleas before the king himself, Sir Sidney Stafford Smythe, knight, one of the barons of the exchequer of the said lord the king, and others their fellows, justices of the said lord the king, assigned to deliver his said gaol of the county aforesaid of the prisoners therein being, by their proper hands do deliver here in court of record in form of the law to be determined. And afterwards, to-wit, at the same delivery of the gaol of the said lord the king of his county aforesaid, on the said Friday, the sixth day of August, in the said second year of the reign of the said lord the king, before the said justices of the lord the king last above named and others their fellows aforesaid, here cometh the said Peter Hunt, under the custody of William Browne, esquire, sheriff of the county aforesaid (in whose custody in the gaol of the county aforesaid, for the cause aforesaid, he had been before committed), being brought to the bar here

in his proper person by the said sheriff, to whom he is here also committed. And forthwith being demanded concerning the premises in the said indictment above specified and charged upon him, how he will acquit himself thereof; he saith that he is not guilty thereof; and thereof for good and evil he puts himself upon the country. And John Blencowe, esquire, clerk of the assizes for the county aforesaid, who prosecutes for the said lord the king in this behalf, doth the like. Therefore let a jury thereupon here immediately come before the said justices of the lord the king last above mentioned, and others their fellows aforesaid, of free and lawful men of the neighborhood of the said parish of Lighthorne, in the county of Warwick aforesaid, by whom the truth of the matter may be better known, and who are not of kin to the said Peter Hunt, to recognize upon their oath whether the said Peter Hunt be guilty of the felony and murder in the indictment aforesaid above specified, or not guilty; because as well the said John Blencowe, who prosecutes for the said lord the king in this behalf, as the said Peter Hunt, have put themselves upon the same jury. And the jurors of the said jury by the said sheriff for this purpose impaneled and returned, to-wit, David Williams, John Smith, Thomas Horne, Charles Nokes, Richard May, Walter Duke, Matthew Lion, James White, William Bates, Oliver Green, Bartholomew Nash, and Henry Long, being called, come; who, being elected, tried, and sworn to speak the truth of and concerning the premises, upon their oath say, that the said Peter Hunt is guilty of the felony and murder aforesaid, on him above charged in the form aforesaid, as by the indictment aforesaid is above supposed against him; and that the said Peter Hunt at the time of committing the said felony and murder, or at any time since to this time, hath not nor hath any goods or chattels, lands or tenements, in the said county of Warwick, or elsewhere, to the knowledge of the said jurors. And upon this it is forthwith demanded of the said Peter Hunt, if he hath or knoweth anything to say wherefore the said justices here ought not upon the premises and verdict aforesaid to proceed to judgment and execution against him; who nothing further sayeth, unless as he before had said. Whereupon, all and singular the prem-

ises being seen, and by the said justices here fully understood, it is considered by the court here, that the said Peter Hunt be taken to the gaol of the said lord the king of the said county of Warwick from whence he came, and from thence to the place of execution on Monday now next ensuing, being the ninth day of this instant August, and there be hanged by the neck until he be dead; and that afterwards his body be dissected and anatomized. 4 Bl. Com. (App.) §1.

B. *Conviction of Manslaughter.*

Upon their oath say that the said Peter Hunt is not guilty of the murder aforesaid, above charged upon him; but that the said Peter Hunt is guilty of the felonious slaying of the aforesaid Samuel Collins; and that he had not nor hath any goods or chattels, lands or tenements, at the time of the felony and manslaughter aforesaid, or ever afterwards to this time to the knowledge of the said jurors. And immediately it is demanded of the said Peter Hunt if he hath or knoweth anything to say wherefore the said justices here ought not upon the premises and verdict aforesaid to proceed to judgment and execution against him; who saith that he is a clerk, and prayeth the benefit of clergy to be allowed him in this behalf. Whereupon, all and singular the premises being seen, and by the said justices here fully understood, it is considered by the court here that the said Peter Hunt be burned in his left hand and delivered. And immediately he is burned in the left hand, and is delivered, according to the form of the statute. 4 Bl. Com. (App.) §2.

C. *Judgment Record, Sentence of Imprisonment in State Prison.*

"Randolph county circuit court, September Term, A. D. 1863. The People of the State of Illinois v. William Schirmer. September 17th, 1863.

"And now on this day comes the people by Watts, O'Melveny, Johnson and J. B. Underwood, and the defendant by Snyder and Barnum, and the defendant having been furnished with a copy of the indictment and list of the regular panel of the jurors, etc., the defendant is arraigned and enters the plea of not guilty; whereupon the trial commences, and the regular panel of the jury being exhausted, the sheriff of said county is ordered to summon

from the bystanders six jurors, etc., which is done, and the names of the so summoned jurors given to defendant's attorney. Whereupon came the jurors of the jury selected in this cause, to-wit: . . . twelve good and lawful men, who, being elected, tried and duly sworn a true verdict to render in said cause, etc. And the said jury, after hearing the evidence and arguments of counsel in said cause, and after retiring to consider of their verdict, returned into court the following verdict, September 18th, 1863: 'We, the jury, find the defendant guilty of manslaughter, and fix the term of his confinement in the penitentiary for and during his natural life.' Whereupon, the court, being fully advised of and concerning said case, verdict, evidence, etc., doth order and adjudge that said William Schirmer be sentenced to the penitentiary of the State of Illinois, for the space and term of his natural life at hard labor, except one day of the time, which is to be solitary confinement in said penitentiary; and that the sheriff of Randolph county see that this order be executed, etc., and that said people have their costs," etc. *Schirmer v. People*, 33 Ill. 275.

XVII. Enrolment of Final Decree in Equity.

At a court of chancery held for the state of New York, at the town of _____, on the _____ day of _____ (the date being the time when the enrolment is signed).

Present _____, chancellor
(or, _____, vice chancellor of the 4th circuit).

A. B. v. C. D., E. F., J. K., and G. T.

The complainants filed their bill of complaint in this cause, which bill is hereto annexed, on the _____ day of _____, 1842, before the chancellor, against the defendants C. D., E. F., J. K., and G. T. A subpoena to appear in the said cause was thereupon issued, returnable the _____ day of _____, 1842, and was served personally, previous to the return day thereof, on all of said defendants. The defendants C. D. and J. K. appeared in said cause by their solicitor, and G. T. being an infant, appeared by S. T., his guardian ad litem duly appointed by the court. On the _____ day of _____, 1842, upon filing an affidavit of the service of the subpoena upon the defendant E. F., and

that he had not caused his appearance to be entered within the time limited by the rules of the court, an order was entered, taking the bill as confessed by the said E. F.

On the _____ day of _____, 1842, an order was entered authorizing the complainant to amend his bill in the manner specified in a notice of motion for that purpose, annexed to an affidavit of the complainant on that day presented; which affidavit is hereto annexed. In pursuance of which order, amendments to the said bill were filed, on the _____ day of _____, 1842, which are hereto annexed.

On the _____ day of _____, 1842, the defendants C. D. and J. K. filed their answer to said amended bill; which answer is hereto annexed. And on the _____ day of _____, 1842, the defendant G. T. by her said guardian ad litem, filed her answer thereto; which answer is also hereto annexed. Replications to said answers were filed on the _____ day of _____, 1842, copies whereof are hereto annexed. On the _____ day of _____, 1842, proofs were taken in said cause before T. G. Y., one of the examiners of this court, in pursuance of an order for that purpose previously entered.

On the _____ day of _____, 1843, the cause being in readiness for hearing, was brought to a hearing before the chancellor upon the pleadings and proofs, when an interlocutory decree was made and entered therein, which is in the words and figures following, to-wit: (insert interlocutory decree).

On the _____ day of _____, 1843, the cause was brought to a hearing for further directions upon the master's report in pursuance of the said interlocutory decree of the _____ day of _____, which report was filed on the _____ day of _____, 1843, and is hereto annexed; whereupon a final decree was made and entered therein, in the words and figures following, to-wit: (insert final decree).

Thereupon the costs of the complainant were taxed at \$_____. And the costs of the guardian ad litem of the defendant G. T. at \$_____.

Whereupon the said pleadings and reports, and such other papers filed in this cause as are required by the general rules of this court, together with the said taxed bill of costs, are now

attached together and hereto annexed; and the said final decree is signed and enrolled, according to the form of the statute in such case made and provided, the day and year in the caption of this enrolment mentioned.

R. H. W., chancellor.

2 Barb. Ch. Pr. 454.

Note.—Equity courts were not courts of record. Statutes have given decrees the force and effect of judgments. In enrolment of decrees it was the custom to insert the substance of pleadings.

JUDGMENTS.

I. Notice of Motion for Judgment, 713

- A. *On Frivolous Demurrer*, 713
- B. *Dismissing Action*, 713
- C. *On Failure To Reply*, 713
- D. *Non Obstante Verdicto*, 713

II. Orders for Judgment, 713

- A. *In Assumpsit, Trespass, Case or Trover*, 713
- B. *In Debt*, 713
- C. *On Verdict for Defendant*, 714
- D. *Of Respondent Ouster*, 714
- E. *Ne Recipiat*, 714
- F. *On Cognovit*, 714
- G. *On Bond and Warrant*, 714
- H. *On Relicta*, 714
- I. *With Leave To Turn Case Into Bill*, 714
- J. *Non Obstante Verdicto*, 714

III. Warrant of Attorney To Confess, 714

- A. *Without Suit*, 714
- B. *After Suit*, 715

IV. Offer of Judgment, 715

- A. *Offer*, 715
- B. *Notice of Acceptance*, 715
- C. *Affidavit To Enter*, 715
- D. *Offer To Liquidate Damages*, 715
- E. *Notice of Acceptance of Offer To Liquidate*, 715

V. Judgments at Common Law, 715

- A. *For Plaintiff in Debt*, 715
- B. *Where Breaches Assigned, and Damages*, 715
- C. *On Verdict for Plaintiff in Assumpsit, Case, Covenant, and Trespass*, 716
- D. *For Defendant in Bar, or on Demurrer*, 716
- E. *Not Pleading in Assumpsit*, 716
- F. *Not Pleading on Bond in Debt*, 716
- G. *In Ejectment for Plaintiff*, 716
- H. *In Ejectment for Plaintiff on Default*, 716
- I. *In Ejectment, Title Expires Before Trial*, 717

J. *In Ejectment on Suggestion of Damages*, 717

K. *Judgment for One Defendant, and Against Other*, 717

L. *For Defendant, Goods Replevied*, 717

M. *For Defendant, Goods Not Replevied*, 717

N. *In Replevin, Not Pleading*, 718

G. *Non Pros., Not Declaring in Replevin*, 718

P. *In Detinet in Replevin for Plaintiff*, 718

Q. *On Default of Plaintiff To Plead Avowry*, 718

R. *To Determine Claims to Real Property*, 719

S. *On Non Pros., Not Declaring*, 719

T. *On Nolle Prosequi to Some Defendants*, 719

U. *For Defendant on Plea of Misnomer*, 719

V. *On Demurrer to Declaration or Replication in Assumpsit Overruled*, 719

W. *On Cassetur Billa*, 719

X. *On Election Meliora Damna*, 719

Y. *On Plea of Abatement Sustained*, 719

Z. *On Report of Referees*, 719

VI. Judgment Under the Codes, 720

- A. *On Verdict*, 720
- B. *On Verdict Subject to Opinion*, 720
- C. *On Trial of Issues by Court*, 720
- D. *On Trial of Issues by Court, Reference After Trial and Before Judgment*, 720
- E. *Where Part of Issues by Jury and Part Without, Questions of Law Reserved*, 720
- F. *Against Executor or Administrator*, 721
- G. *In Action in the Nature of Scire Facias*, 721
- H. *In Replevin*, 721
- I. *In Ejectment*, 721
- J. *Of Perpetual Injunction*, 722
- K. *On Order Dismissing Action*, 722
- L. *For Defendant on Sustaining Demurrer*, 722
- M. *For Plaintiff on Overruling Demurrer*, 722
- N. *Dismissing Complaint for Failure To Furnish Particulars*, 722
- O. *Nonsuit at Trial*, 723
- P. *On Acceptance of Offer of Judgment*, 723

VII. Notices of Judgment, 723

- A. *Of Respondent Ouster*, 723
- B. *General Notice*, 723

See "How To Use This Volume," Introduction, page v.

VIII. Setting Aside Judgments, 723

- A. *Notice of Motion To Set Aside Final Judgment as Irregular, 723*
- B. *Notice of Motion To Set Aside Interlocutory Judgment as Irregular, 723*
- C. *Order To Set Aside Final Judgment as Irregular, 724*
- D. *Order To Set Aside Interlocutory Judgment as Irregular, 724*
- E. *Order Vacating Judgment and for Re-assessment of Damages, 724*

CROSS-REFERENCES:

AGREED CASE:
Judgment.

ANSWERS:
Answer of Former Judgment.

APPEALS:
Notice of Judgment To Limit Time;
Judgment of Affirmance;
Judgment of Reversal;
Judgment, Modification, and Affirmance as Modified;
Judgment on Order for Reversal Unless Respondent Consents to Reduction;
Judgment on Appeal by Both Parties;
Judgment on Dismissal of Appeal.

AUDITA QUERELA:
Writ Against Judgment or Execution.

CONTEMPT:
Judgment for Contempt in Presence of Court;
Judgment for Contempt in Immediate Vicinity of Court.

CREDITORS' SUITS:
Judgment in Creditor's Suits; Setting Aside Conveyance, With Leave To Proceed on Execution;
Judgment Avoiding Sale and General Assignment, Directing Sale by Sheriff;
Avoiding Sale and General Assignment, and Directing Transfer to Receiver.

DEFAULT:
Notice of Application for Judgment on Default;
Order for Interlocutory Judgment and Writ of Inquiry, Default for Not Pleading;
Order for Judgment on Default in Debt;
Order for Judgment for Default for Not Replying;
Order for Judgment on Default for Not Rejoining;
Order for Judgment for Not Surrejoining;

Order for Judgment on Default on Filing Inquisition;
Order for Judgment on Default on Filing Clerks Report;
Order for Judgment, Where Summons Was Served by Publication;
Order for Judgment, and That Writ of Inquiry Issue To Assess Damages;
Order for Judgment, and Reference To Ascertain Damages;
Order for Interlocutory or Final Judgment After Default for Not Joining in Demurrer;
Order for Judgment on Default for Defendant Not Joining in Demurrer;
Judgment by Default Where Summons Was Personally Served;
Judgment by Default, Complaint Served With Summons;
Judgment on Default of Appearance;
Judgment Where Summons Was Served by Publication;
Entry of Vacatur, Where Judgment Is Void.

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Order for Judgment on Nonsuit;
Notice of Motion for Judgment as in Case of Nonsuit;
Order for Judgment as in Case of Nonsuit;
Judgment of Dismissal on Motion of Plaintiff as to One Defendant;
Judgment, Dismissal on Nonsuit, Costs Against Surety;
Judgment of Dismissal on Compromise.

DIVORCE:

Recital in Judgment, Where Usual Reference To Take Proof Has Been Had;
Judgment for Limited Divorce;
Judgment for Absolute Divorce.
Judgment for Divorce, Question of Alimony Is Reserved and Referred.

DOWER, PROCEEDINGS TO RECOVER:

Judgment After Verdict To Recover Dower and Damages;
Judgment for Demandant for Dower, No Damages Found;
Order in Final Judgment Confirming Report of Commissioners Assigning Dower.

EMINENT DOMAIN:

Judgment on Findings, Jury Being Waived, in Condemnation Proceedings.

FRIVOLOUS AND SHAM PLEADINGS:

Notice of Motion for Judgment on Frivolous Pleadings;

Order for Judgment on Frivolous Demurrer, With Liberty To Plead;
 Order for Judgment on Frivolous Demurrer;
 Order Denying Motion for Judgment on Frivolous Demurrer;
 Order for Severance and for Judgment on Frivolous Demurrer as to One;
 Order for Judgment on Frivolous Pleading;
 Order for Judgment on Frivolous Pleading, Reserving Leave To Amend;
 Notice of Motion To Strike Out One Defense as Sham, and for Judgment on Other as Frivolous.

GARNISHMENT:

Order Setting Aside Judgment Against Garnishee;
 Judgment Condemning Fund, Service on Defendant by Publication;
 Judgment After Answer, Condemning Fund in Garnishee's Possession.

INJUNCTIONS:

Injunction Against Entering Confession of Judgment;
 Injunction Against Proceeding, With Leave To Proceed to Judgment;
 For general statements in Judgments, see Injunctions, III.

JUDGMENT RECORDS:

Record of Indictment and Conviction of Murder;
 Judgment Record, Sentence of Imprisonment in the State's Prison.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Declaration on Final Judgment;
 Declaration on Judgment for Defendant;
 Declaration on Justice's Judgment;
 Declaration on Judgment of Foreign Court;
 Complaint on Judgment, General Form;
 Complaint on Foreign Judgment of Court of General Jurisdiction;
 Complaint Upon Justice's Judgment;
 Complaint on Foreign Judgment of Inferior Tribunal;
 Complaint on Judgment by Assignee;
 Plea of Nul Tiel Record in Action on Judgment;
 Plea of Payment of Judgment;
 Plea, No Appearance in Foreign Court (a, b);
 Answer, Invalidity of Foreign Judgment;

Answer, Invalidity of Judgment Against Non-resident;
 Answer, Fraud in Recovery of Judgment.

JUDGMENTS AND DECREES, REVIVAL OF:
 Notice of Motion To Revive Dormant Judgment;
 Order Reviving Dormant Judgment;
 Notice of Motion To Vacate Order Reviving Judgment;
 Complaint for Revival of Judgment by Action.

JUDGMENTS, SATISFACTION OF:

Satisfaction Piece;
 Entry of Satisfaction of Judgment on Payment;
 Entry of Satisfaction of Judgment on Return of Fieri Facias.

MORTGAGES:

Complaint by Mortgagee Against Mortgagor and Junior Incumbrancers To Foreclose Upon Default in Interest, Insurance Paid by Mortgagee, Outstanding Judgment;
 Judgment for Foreclosure, No Defense, Whole Debt Due;
 Judgment for Foreclosure, No Defense, Part Only of Debt Due;
 Judgment for Foreclosure, No Defense, Part Only of Debt Due, But Whole Property To Be Sold;
 Recital Where Amount Is Computed by Court;
 Judgment for Deficiency Against Mere Surety;
 Judgment of Strict Foreclosure;
 Judgment for Redemption, Ordinary Form.

NUISANCE:

Judgment in Nuisance.

PARTITION:

Judgment on Confession in Partition;
 First Judgment in Partition;
 Final Judgment in Partition;
 Affidavit To Move for Judgment, or for Preliminary Reference in Partition.

PROHIBITION:

Judgment of Consultation on Prohibition;
 Judgment Record on Prohibition.

QUO WARRANTO:

Judgment Record on Information in Nature of Quo Warranto.

REFERENCES:

Order for Judgment on Report of Referee;
 Judgment on Report of Referee for Plaintiff;
 Order of Reference Preliminary to Judgment in Divorce;

Report of Referee Preliminary to Judgment for Partition.
 RESCISSION AND CANCELLATION:
 Judgment for Cancellation.

RES JUDICATA:

Replication to Plea of Judgment Recovered;
 Plea of Judgment Recovered In Assumpsit;
 Plea of Judgment Recovered In Debt;
 Replication of Nul Tiel Record to Plea of Judgment Recovered.

SET-OFF AND COUNTERCLAIM:

Plea, Set-off on Judgment;
 Judgment on Statement Admitting Counterclaim.

SHERIFFS AND CONSTABLES:

Order of the Court Imposing Fine on Sheriff for Contempt.

STIPULATIONS:

Stipulation That Judgment in One Case Stand for Judgment in Another.

TAXATION:

Judgment of Foreclosure of Lien for Back Taxes.

WRIT OF ERROR:

Order for Judgment of Affirmance;
 Order for Judgment of Affirmance in Default;
 Order for Judgment of Reversal.

I. Notice of Motion for Judgment.

A. Notice of Motion for Judgment on Frivolous Demurrer.

Sir: Please to take notice that the above entitled cause will be brought on for argument before the justices of this honorable court, at the next term of the said court, to be held at the (city hall in the city of New York), on the (first Monday of May) next, at the opening of the court on that day, or as soon thereafter as counsel can be heard, and that the said court will then and there be moved for judgment, on account of the frivolousness of the demurrer. Burr. App. 210, §413.

B. Notice of Motion for Judgment Dismissing Action.

Take notice that on affidavits of which copies are annexed, the undersigned will move the court, at a special term to be held at ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, or as soon thereafter as counsel can be heard, that the plaintiff's complaint in this action be dismissed (as against the defendant Y. Z.), with costs in favor of the said defendant; and that judg-

ment of dismissal of the action be entered accordingly, with costs; and that the plaintiff may be ordered to pay the costs of this motion, and for such other or further relief as may be just. 2 Abb. Forms 500.

C. Notice of Motion for Judgment on Failure To Reply.

Take notice that the plaintiff will apply to this court, at a special term to be held at the city hall in the city of ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, or as soon thereafter as counsel may be heard, for an order that for want of a reply or demurrer on the part of the plaintiff to the defendant's counterclaim, the said defendant have judgment against the plaintiff for ——— dollars (or pursuant to the prayer of the answer of said defendant), with costs of the action and of this motion, and for such other relief as may be just. 2 Abb. Forms 537.

D. Notice of Motion for Judgment Non Obstante Verdicto.

Sir: Please to take notice that, upon the affidavits (and case), with copies whereof you are herewith served, this honorable court will be moved, at the next term of the said court, to be held at the (academy in the city of Utica), on the (first Monday of July) next, at the opening of the court on that day, or as soon thereafter as counsel can be heard, that judgment be given for the plaintiff in this cause, notwithstanding the verdict rendered therein; which motion will be founded on the copy of the pleadings in this cause, and also on the clerk's minutes of the trial, and the affidavit, a copy of which is hereto annexed. Burr. App. 214, §431.

II. Orders for Judgment.

A. Order for Judgment on Verdict (in Assumpsit, Trespass, Case, or Trover).

On filing a copy of the pleadings and minutes of trial in this cause, and on reading the minutes, whereby it appears that the jury have assessed the plaintiff's damages at ——— dollars, with six cents costs, on motion of E. F., attorney for the plaintiff, ordered, judgment final thereon. Burr. App. 451, §891.

B. Order for Judgment on Verdict for Plaintiff in Debt.

On filing a copy of the pleadings

and minutes of trial in this cause, and on reading the minutes, whereby it appears that the jury have found a verdict for the plaintiff for ——— dollars, debt, and that they have assessed the plaintiff's damages, on occasion of the detention of the said debt to six cents, with six cents costs, on motion of E. F., attorney for the plaintiff, ordered, judgment final thereon. Burr. App. 452, §892.

C. Order for Judgment on Verdict for Defendant.

On filing a copy of the pleadings and minutes of trial in this cause, and on reading the minutes, whereby it appears that the jury have found a verdict for the defendant, on motion of G. H., attorney for the defendant, ordered, judgment final for the defendant. Burr. App. 452, §893.

D. Order for Judgment of Respondeat Ouster.

This cause having been brought to argument, and after hearing Mr. J., of counsel for the plaintiff, and Mr. R., for the defendant, ordered, judgment of respondeat ouster. Burr. App. 464, §940.

E. Order for Judgment ne Recipiatur.

The (circuit roll) in this cause not having been filed in due season, on motion of G. H., attorney for defendant, ordered, that a ne recipiatur be entered. Burr. App. 451, §888.

F. Order for Judgment on Cognovit.

On reading and filing cognovit in this cause, whereby the damages (or debt) of the plaintiff are confessed at ——— dollars and ——— cents, besides costs, on motion of E. F., attorney for the plaintiff, ordered, judgment final thereon. Burr. App. 447, §874.

G. Order for Judgment on Bond and Warrant.

E. F., attorney for plaintiff, files narr. and oyer, G. H., attorney for defendant, files common bail-piece and cognovit, whereby the debt of the plaintiff is confessed at ——— dollars and ——— cents, besides costs. On motion of E. F., attorney for the plaintiff, ordered, judgment final thereon. Burr. App. 447, §873.

H. Order for Judgment on Relicta.

On reading and filing relictia in this cause, whereby the damages (or debt) of the plaintiff are (or is) confessed at ——— dollars and ——— cents, besides costs, and on motion of E. F., attorney for the plaintiff, ordered,

judgment final thereon. Burr. App. 449, §882.

I. Order for Judgment, With Leave To Turn Case Into Bill, Etc.

This cause having come on for hearing upon the case made, subject to the opinion of the court, and on motion of M. N. for the defendant, after hearing O. P. for the plaintiff:

Ordered, that judgment be rendered for the defendant, subject to the provision in the case allowing either party to turn the case into a bill of exceptions or special verdict; the usual time for the service of such bill of exceptions, or special verdict, and amendments, and for settlement thereof, being hereby granted, to commence from the date of the entry of this order. 2 Abb. Forms 548.

J. Order for Judgment Non Obstante Verdicto.

This cause having been brought to argument, and after hearing counsel for the respective parties, on motion of Mr. F., of counsel for the plaintiff, ordered, judgment for the plaintiff, notwithstanding the verdict of the jury. Burr. App. 466, §944.

III. Warrant of Attorney To Confess.

A. Warrant of Attorney To Confess Judgment (Without Suit).

To any attorney or attorneys of the supreme court of judicature of the people of the state of New York, or of any other court of record in the United States of America, or elsewhere:

These are to authorize and desire you to appear for me, C. D., in the said supreme court, or any other court, or before any one of the justices or judges of the said court, as of any term hereafter or heretofore, and then and there to receive a declaration for me in debt, for the sum of ——— dollars (the penalty of the bond), lawful money of the United States of America, on a certain bond bearing even date herewith, in the penal sum of one thousand dollars, conditioned for the payment of the sum of ——— dollars, on demand, or upon a mutuatus for the said sum of money borrowed by me at the suit of A. B., the obligee therein named, or his representative, file common bail, and then and there confess the same action, or else to suffer judgment to pass against me by nil dicit or otherwise, and the said judgment to be thereupon forthwith, either in term

or vacation, entered against me of record, as of any term of the said court. And for so doing, this shall be your sufficient warrant. And I do hereby release, and authorize you to release the errors made in the entering up of such judgment or judgments, if any there should happen to be; and also in the form of, or in the actual issuing of any execution or executions against me upon the said judgment so confessed, at any time or times thereafter, without any revival of such judgment, or otherwise.

In witness whereof, I have hereunto set my hand and seal the first day of January, one thousand eight hundred and forty-six.

C. D. (L. S.)

Sealed and delivered in the presence of I. J.

Burr. App. 487, §992.

B. Warrant of Attorney To Confess Judgment After Suit Brought.

To any attorney of the supreme court of judicature of the people of the state of New York:

These are to authorize and desire you to appear for me C. D., in the said supreme court, as of (January) term, (the term of which the judgment may be entered up), or of any other subsequent term, and then and there receive a declaration for me in an action of debt, for ——— dollars (double the amount actually due), on a mutuetus for so much money borrowed by me of A. B., at the suit of the said A. B., or his representatives; and thereupon to confess the same action, or else to suffer a judgment to pass against me by nil dicit, etc. (as in preceding form to the end). Burr. App. 489, §993; Archb. Forms 329.

IV. Offer of Judgment.

A. Offer To Allow Judgment (Code).

The defendant (naming him, if one of several) offers to allow judgment to be taken against him (or, against the defendants herein) by the plaintiff, for (here specify the sum, property, or specific relief intended), with costs. 2 Abb. Forms 505.

B. Notice of Acceptance of Offer To Allow Judgment.

Take notice, that the plaintiff accepts the offer of the defendant, allowing him to take judgment in this action (for ——— dollars), with costs. 2 Abb. Forms 506.

C. Affidavit To Enter Judgment on Offer.

M. N., of ——— (attorney for) the plaintiff herein, being duly sworn, says:

That the annexed offer to allow judgment, made by the defendant, was served on him on the ——— day of ——— last; and that within ten days thereafter, to-wit, on the ——— day of ——— last, he served upon the defendant's attorney, at ———, a notice that plaintiff accepted the same, of which the foregoing is a copy. 2 Abb. Forms 506.

D. Offer To Liquidate Damages.

The defendant hereby offers that if he fail in his defense in this action the plaintiff's damages be assessed at the sum of ——— dollars. 2 Abb. Forms 507.

E. Notice of Acceptance of Offer To Liquidate Damages.

Take notice, that the plaintiff hereby accepts the offer of the defendant, that if he fail in his defence in this action, the damages of the plaintiff be assessed at the sum of ——— dollars. 2 Abb. Forms 507.

V. Judgments at Common Law.

A. Judgment for Plaintiff in Debt.

Therefore it is considered, that the said plaintiff do recover against the said defendant his said debt, and his damages, costs and charges aforesaid, by the jurors aforesaid, in form aforesaid assessed, and also ——— dollars, for his costs and charges by the court now here adjudged of increase, to the said plaintiff, and with his assent. And the said defendant in mercy, etc. (or, if the defendant has denied his deed, instead of the last clause, say, "And let the said defendant, inasmuch as he has denied his deed, be taken," etc.). Burr. App. 168, §312.

B. Judgment Where Breaches Are Assigned and Damages Assessed.

Therefore it is considered, that the said plaintiff do recover against the said defendant his said debt, and his damages aforesaid, on occasion of the detention thereof, together with his costs and charges aforesaid, by the jurors aforesaid, in form aforesaid assessed, and also ——— dollars and ——— cents, for his costs and charges by the court now here adjudged of increase to the said plaintiff, with his assent; which said damages, costs

and charges, in the whole amount to _____ dollars and _____ cents.

And it is further considered, that the said plaintiff have execution against the said defendant, of the damages aforesaid, to _____ dollars, by the jurors aforesaid, in form aforesaid assessed, on occasion of the aforesaid breaches of the said writing obligatory, according to the form of the statute in such case made and provided.

And the said defendant in mercy, etc. Burr. App. 168, §313.

C. Judgment on Verdict for Plaintiff in Assumpsit, Case, Covenant, and Trespass.

Therefore it is considered, that the said plaintiff do recover against the said defendant, his said damages, costs and charges, by the jurors aforesaid, in form aforesaid assessed, and also _____ dollars and _____ cents), for his said costs and charges, by the said court now here adjudged, of increase, to the said plaintiff, and with his assent, which said damages, costs and charges, in the whole, amount to _____ dollars and _____ cents.

And the said defendant in mercy, etc. Burr. App. 166, §310.

D. Judgment for Defendant in Bar, or on Demurrer.

Therefore it is considered, that the said plaintiff take nothing by his said bill (or writ, or declaration), but that he be in mercy, etc.; and that the said defendant do go thereof without day, etc. And it is further considered by the said court now here, that the said defendant do recover against the said plaintiff _____ dollars and _____ cents, for his costs and charges by him, about his defense in this behalf, laid out and expended, by the said court now here adjudged to the said defendant, and with his assent, according to the form of the statute in such case made and provided. And that the said defendant have execution thereof, etc. Burr. App. 159, §302; 172, §320.

E. Judgment, Not Pleading in Assumpsit.

Therefore it is considered, that the said plaintiff do recover against the said defendant his damages by occasion of the premises, to _____ dollars, by the court here assessed, and also _____ dollars for his costs and charges by the court now here adjudged to the said plaintiff, with his assent; which said damages, costs and

charges, in the whole amount to _____ dollars.

And the said defendant in mercy, etc. Burr. App. 139, §267.

F. Judgment in Debt, on Bond, Not Pleading.

Therefore it is considered, that the said plaintiff do recover against the said defendant his said debt, and also _____ dollars and _____ cents for his damages which he hath sustained, as well on occasion of the detaining the said debt, as for his costs and charges by him about his suit in this behalf expended, by the said court now here adjudged of increase to the said plaintiff and with his assent. And it is further considered, that the said plaintiff do recover against the said defendant _____ dollars for his damages aforesaid, by the said inquisition above found. And that the said plaintiff have execution thereof, etc.

And the said defendant in mercy, etc. Burr. App. 137, §266.

G. Judgment in Ejectment for Plaintiff.

Therefore it is considered that the said A. B. do recover against the said C. D. the possession of the said premises, according to the said verdict of the said jury. And it is further considered, that the said A. B. do recover against the said C. D. his damage, costs and charges, by the jury aforesaid, in form aforesaid assessed; and also _____ dollars, for his said costs and charges by the said court now here adjudged of increase to the said A. B. and with his assent; which said damages, costs and charges in the whole amount to _____ dollars, and hereupon the said A. B. prays the writ of the people of the state of New York to be directed to the sheriff of the (city and) county of _____ aforesaid, to cause him to have possession of the said premises, according to the force, form and effect of his said recovery; and it is granted to him, returnable before the said justices of the supreme court of judicature aforesaid, at the (court house in the city of Rochester, the third Monday of October) next. Burr. App. 527, §1049.

H. Judgment in Ejectment for Plaintiff on Default.

Therefore it is considered that the said plaintiff do recover against the said defendant, the possession of the said premises. And it is further considered,

that the said plaintiff do recover against the said defendant ——— dollars, for his costs and charges by him about his suit in this behalf expended, by the court now here adjudged to the said plaintiff, and with his assent. And hereupon the said plaintiff prays the writ of the people, etc. (as in last form to the end). Burr. App. 528, §1050.

I. Judgment in Ejectment, Title Expires Before Trial.

Therefore it is considered, that the said plaintiff do recover against the said defendant his damages, costs and charges aforesaid, by the jurors aforesaid, in form aforesaid assessed: (and also ——— dollars for his said costs and charges by the said court now here adjudged, of increase, to the said plaintiff, and with his assent: which said damages, costs and charges in the whole amount to ——— dollars). And as to the premises described in the aforesaid declaration of the said plaintiff, it is further considered, that the said defendant do go thereof without day, etc. Burr. App. 529, §1051.

J. Judgment in Ejectment on Suggestion of Damages.

Therefore it is considered, that the said plaintiff do recover against the said defendant his said damages, costs and charges, by the jurors aforesaid in form aforesaid assessed; and also, etc. (judgment for costs in the usual form). Burr. App. 529, §1052; Yates' Forms 493.

K. Judgment for One Defendant and Against the Other.

Therefore it is considered, that the said plaintiff do recover against the said defendant C. D. his said damages, costs and charges, by the jurors aforesaid, in form aforesaid assessed; and also ——— dollars for his costs and charges, by the said court now here adjudged, of increase, to the said plaintiff, and with his assent; which said damages, costs and charges in the whole amount to ———. And the said defendant C. D. in mercy, etc. (If costs are given to the defendant who is acquitted, proceed thus): And it is further considered, as to the said defendant K. L. that the said plaintiff be in mercy, etc., and that the said defendant K. L. do go thereof without day. And it is further considered, that the said defendant K. L. do recover against the said plaintiff ——— dol-

lars, and ——— cents for his costs and charges by him laid out and expended in and about his defense in this suit, by the court now here adjudged to the said defendant K. L. and with his assent. And that the said defendant K. L. have execution thereof, etc. Burr. App. 175, §324; Yates' Forms 165.

L. Judgment Record for Defendant, Goods Replevied.

Therefore it is considered, that the said plaintiff take nothing by his said writ, but that he and his pledges to prosecute be in mercy, etc. And that the said defendant do go thereof without day, etc. And that he have a return of the goods and chattels aforesaid. And it is further considered that the said defendant do recover against the said plaintiff his damages aforesaid by the jurors aforesaid in form aforesaid assessed, and also ——— dollars and ——— cents, for his costs and charges, by the court now here adjudged of increase to the said defendant, and with his assent, according to the form of the statute in such case made and provided, which said damages, costs and charges in the whole amount to ———.

And that the said defendant have execution thereof.

(Where the defendant waives a judgment for the return of the goods, the judgment is entered thus): And, the said defendant, now here waiving any judgment for a return of the said goods and chattels, and praying judgment for the value thereof, it is further considered that the said defendant do recover against the said plaintiff ——— dollars, being the value of the said goods and chattels by the jurors aforesaid above found; and also ——— dollars for his damages aforesaid by the same jurors in form aforesaid assessed; and also ——— dollars for his costs, etc. (as above) which said value, damages, costs and charges in the whole amount, etc. (as above). Burr. App. 173, §321; Yates' Forms 568.

M. Judgment for Defendant, Goods Not Replevied.

(As in the last form concluding as follows):

Therefore it is considered, that the said plaintiff take nothing by his said writ, but that he and his pledges to prosecute be in mercy, etc. And that

the said defendant do go thereof without day, etc. And it is further considered, that the said defendant do recover against the said plaintiff ——— dollars and ——— cents, for his costs and charges by him about his defense in this behalf laid out and expended, by the court now here adjudged to the said defendant, and with his assent, according to the form of the statute in such case made and provided; and that the said defendant have execution thereof, etc. Burr. App. 174, §322.

N. Judgment in Replevin, Not Pleading.

Therefore it is considered, that the said plaintiff do recover against the said defendant his damages aforesaid by the said inquisition above found, and also ——— dollars for his costs and charges by the said court now here adjudged, of increase, to the said plaintiff and with his assent; which said damages, costs and charges in the whole amount to ——— dollars. And the said defendant in mercy, etc. (If the goods have not been replevied, add a further judgment as follows): And it is further considered that the goods and chattels in the said plaintiff's declaration specified, be replevied and delivered to the said plaintiff without delay, or in default thereof, that the said plaintiff do recover against the said defendant ——— dollars, being the value of the said goods and chattels by the said inquisition above found, etc. Burr. App. 140, §268; Till. Forms 225.

O. Judgment, Non Pros., Not Declaring in Replevin.

Therefore it is considered that the said A. B. take nothing by his said writ, but that he be in mercy, etc., and that the said C. D. do go thereof without day, etc.: (and that he have a return of the said goods and chattels, etc.) It is also considered by the court here that the said C. D. do recover against the said A. B., ——— dollars for his costs and charges by him laid out about his defense in this behalf, by the said court here adjudged to the said C. D., and with his assent, according to the form of the statute in such case made and provided. And that the said C. D. have execution thereof, etc. Burr. App. 133, §261; Yates' Forms 566; Archb. Forms 413.

P. Judgment on Non-Detinet in Replevin for Plaintiff.

Therefore it is considered, etc. (judgment as in V, C, and then thus): And it is further considered, that the goods and chattels aforesaid in the said declaration specified, be replevied and delivered to the said plaintiff without delay, or, in default thereof, that the said plaintiff recover against the said defendant ——— dollars, being the value of the said goods and chattels, by the jurors aforesaid in form aforesaid assessed, according to the form of the statute in such case made and provided; which said value, damages, costs and charges aforesaid, amount in the whole to ——— dollars and ——— cents. And the said defendant in mercy, etc. Burr. App. 171, §317.

Q. Judgment on Default of Plaintiff To Plead to Avowry in Replevin (With Award of Retorno Habendo and Writ of Inquiry).

Therefore it is considered, that the said A. B. take nothing by his said writ, but that he be in mercy, etc.; and that the said C. D. do go thereof without day, etc.; and that he have a return of the goods and chattels aforesaid. And it is further considered, that the said C. D. ought to recover against the said A. B. his damages on occasion of the premises, according to the form of the statute in such case made and provided.

Therefore it is commanded to the sheriff that without delay he caused the goods and chattels aforesaid to be returned to the said C. D. And in what manner he shall execute the writ of the said people, he make appear to the said justices of the supreme court of judicature aforesaid, on, etc. It is also commanded to the sheriff, that by the oath of twelve good and lawful men of his county, he diligently inquire what damages the said C. D. hath sustained, as well on occasion of the premises, according to the form of the statute in such case made and provided, as for his costs and charges by him laid out about his defense in this behalf; and that the inquisition which the said sheriff shall thereupon take, he make appear to the said justices, etc., at, etc., under his seal and the seals of those by whose oath he shall take that inquisition; and that he have there the names of them by whose

oath he shall take that inquisition, together with the writ of the said people to him thereupon directed. The same day is given to the said C. D., etc.

At which day, etc. (proceed to enter the return of the inquisition, and the finding of the jury, and conclude with final judgment for the damages and costs). Burr. App. 141, §269; Till. Forms 226; Yates' Forms 566.

R. Judgment To Determine Claims to Real Property.

Therefore it is considered, that the said C. D. and all persons claiming under him the premises described in the notice aforesaid, by title accruing subsequently to the service of the aforesaid notice, be forever barred from all claim to any estate of inheritance or freehold in the said premises. And it is further considered, that all other proceedings in this behalf be, and they are hereby discontinued, etc. (no judgment for costs). Burr. App. 533, §1057; Yates' Forms 772.

S. Judgment on Non Pros., Not Declaring.

Therefore it is considered that the said A. B. take nothing by his said writ, but that he be in mercy, etc. And that the said C. D. do go thereof without day, etc. And it is further considered by the said court now here, that the said C. D. do recover against the said A. B. ——— dollars and ——— cents, for his costs and charges, by him about his defense in this behalf laid out and expended, by the said court now here adjudged to the said C. D., and with his assent, according to the form of the statute in such case made and provided; and that the said C. D. have execution thereof, etc. Burr. App. 132, §260; Till. Forms 207.

T. Judgment on Nolle Prosequi to Some Defendants.

(In entering judgment against one defendant, insert a judgment for the other defendant for his costs thus):

And it is further considered by the court here, that the said ——— do recover against the said plaintiff, ——— dollars for his costs and charges by him about his defense in this behalf laid out and expended, by the said court here adjudged to the said defendant, ——— and with his assent, according to the form of the statute in such case made and pro-

vided. And that the said defendant have execution thereof, etc. Burr. App. 147, §281.

U. Judgment for Defendant on Plea of Misnomer.

Therefore it is considered, that the said bill (or declaration), of the said plaintiff be quashed, etc. And that the said defendant do go thereof without day, etc. Burr. App. 172, §319.

V. Judgment on Demurrer to Declaration or Replication in Assumpsit Overruled.

Therefore it is considered, that the said plaintiff do recover against the said defendant his damages by occasion of the premises, to ——— dollars and ——— cents, by the court here assessed; and also ——— dollars and ——— cents, for his costs and charges, by the court now here adjudged to the said plaintiff, with his assent; which said damages, costs and charges, in the whole amount to ——— dollars and ——— cents.

And the said defendant in mercy, etc. Burr. App. 158, §300.

W. Judgment on Cassetur Bill.

Therefore it is considered, that the said bill (or writ) be quashed, etc. And that the said defendant do go thereof without day, etc. And it is further considered by the said court now here (judgment for costs as in V, S, supra). Burr. App. 148, §282; Till. Forms 213.

X. Judgment on Election Meliora Damna.

Therefore it is considered, that the said plaintiff do recover against the said defendants C. D., I. J., K. L. and M. N., his better damages aforesaid, above found and now here elected by the said plaintiff, and also ——— for his costs and charges, etc. (in the usual form). Burr. App. 183, §337; Yates' Forms 165.

Y. Judgment on Plea of Abatement Sustained.

Therefore it is considered that the said bill (or writ, or declaration) of the said plaintiff be quashed. And that the said defendant do go thereof without day, etc. (the rest of the judgment as in V, D). Burr. App. 160, §305.

Z. Judgment on Report of Referees.

Therefore it is considered, that the said report do stand confirmed; and it is further considered that the said plaintiff do recover against the said

defendant his damages aforesaid, by the referees aforesaid in form aforesaid reported; and also ——— dollars and ——— cents for his said costs and charges by the said court now here adjudged to the said plaintiff, and with his assent, which said damages, costs and charges, in the whole, amount to ——— dollars and ——— cents.

And the said defendant in mercy, etc. Burr. App. 163, §308.

(Judgment for defendant in ordinary form according to case.) Burr. App. 164, §309.

VI. Judgment Under the Codes.

A. Judgment on Verdict.

The issues in this action having been brought on for trial before Mr. Justice ———, and a jury at a circuit (or trial term of this) court, held on the first Monday of ———, 18—, and * the issues having been tried, and a verdict for the plaintiff (or defendants) having been duly rendered on the ——— day of ———, 18— (and their costs having been adjusted at ——— dollars):

Now, on motion of M. N., for said ———, it is adjudged that said plaintiffs recover of said defendants ——— dollars found by the jury, with ——— dollars costs (or that the defendants have judgment against the plaintiff, upon the issues in this action, for the sum of ——— dollars), (or state special relief). 2 Abb. Forms 540.

B. Judgment on Verdict Subject to Opinion of the Court.

A verdict having been taken in this cause for the plaintiff, subject to the opinion of the court, at the general term, on a case to be made by the plaintiff, and the case having been heard at said term; now, on motion of M. N. for the defendant, and after hearing O. P., for the plaintiff:

It is adjudged that (etc., as in other forms). 2 Abb. Forms 542.

C. Judgment on Trial of Issues of Fact by the Court (a).

This action having been brought to a trial by the court (a trial by jury having been duly waived), and a decision therein having been rendered for the plaintiff (or defendant), and filed; now, on motion of M. N., counsel for said ———,

It is adjudged that, etc. (as in other forms). 2 Abb. Forms 543.

Judgment on Trial of Issues of Fact by Court (b).

"This cause was heard before the Honorable C. D. Clark, judge, etc., without the intervention of a jury, a jury having been waived by stipulation in writing, signed by plaintiff and defendant; and the court having heard the evidence and argument of counsel, finds the issues joined in favor of the plaintiff, and that the defendant is justly indebted to plaintiff, principal and interest to the present date, in the sum of three thousand one hundred and thirty-eight dollars and eight cents. It is therefore adjudged by the court that Athens Woolen Mill recover of American Credit Indemnity Company said sum of three thousand one hundred and thirty-eight dollars and eight cents (\$3,138.08), together with all the costs of this cause, for both of which execution will issue." American Credit I. Co. v. Athens Woolen Mills, 92 Fed. 581, 34 C. C. A. 161.

D. Judgment on Trial of Issues of Fact by the Court, Where a Reference Has Been Had After Trial and Before Final Judgment.

The issues in this cause having been tried by the court without a jury, and the written decision of the justice holding said court having been made, bearing date the ——— day of ———, 18—, and duly filed, and an order of reference thereon made, bearing date the ——— day of ———, 18—, duly entered, and the report of the referee thereon, bearing date the ——— day of ———, 18—, made and filed, by which it appears (briefly stating conclusions of report):

Now, therefore, on due proof (that the complaint and notice of the pendency of this action was filed on the ——— day of ———, 18—, in the office of the clerk of the county of ———, and) of the service of due notice of hearing of the cause on all the defendants, and on motion of M. N. for the plaintiff, and after hearing O. P. for the defendant, no one else appearing for any defendant,

It is adjudged (etc., stating relief as in other forms). 2 Abb. Forms 543.

E. Judgment Where Part of the Issues Were Tried With a Jury, and a Part Without, and Questions of Law Were Reserved.

This case having been tried before

Mr. Justice ———, and a jury, as to certain issues, and by the said judge without a jury as to the residue, and the questions of law having been reserved for argument before said justice, and the same having been argued; now, on motion of M. N. for the defendants,

It is ordered and adjudged that the complaint be, and the same is hereby dismissed, without costs to either party as against the other. 2 Abb. Forms 545.

F. *Against Executor or Administrator.*

(Recite proceedings and verdict, decision or report, as in preceding forms, continuing):

Therefore it is adjudged that said plaintiff recover against said defendant as executor of the will of M. N., deceased (or administrator of the goods, chattels, and credits which were of M. N., deceased), ——— dollars, to be levied and collected of the goods and chattels, and credits of said M. N. in the hands of said defendant to be administered (or which shall hereafter come to the hands of said defendant to be administered), together with ——— dollars costs of this action, to be levied in the same manner as aforesaid (or, if chargeable on defendant personally, say: to be levied of the proper goods, chattels, lands, and tenements of the said defendant, in case the same cannot be levied of the goods and chattels of the said M. N., as aforesaid). 2 Abb. Forms 552.

G. *Judgment in Action in the Nature of Scire Facias.*

(Recite proceedings as in preceding forms, continuing):

And it appearing that the action is brought to continue the action mentioned in the complaint herein, in the name of the above named plaintiff, as executor of, and in lieu and place of M. N., deceased, the former plaintiff therein; and, also, to obtain execution, in the name of the plaintiff, of the judgment mentioned in the complaint herein, according to the force, form, and effect thereof, and of the recovery therein, and certain findings of fact and conclusions of law being made by this court; now, on motion of O. P., for the plaintiff herein:

It is adjudged that the said action mentioned in the complaint herein be

continued in the name of the plaintiff A. B., as executor of the said M. N., deceased; and that the said A. B., as executor as aforesaid, have execution of the aforesaid judgment for the damages and costs aforesaid, and the interest thereon, against the said defendant, with the like effect as if the said M. N. had not died, according to the force, form, and effect of the said judgment.

And it is further adjudged that the plaintiff recover of the said defendant ——— dollars, for his costs and disbursements in this action; and that the plaintiff have execution therefor. 2 Abb. Forms 553.

H. *Judgment in Replevin for Recovery of Possession.*

(Recitals of proceedings and verdict, decision, or report, as in preceding forms, continuing): and the value of the property claimed (and damages for the detention thereof), having been assessed at ——— dollars, by the jury (or by a sheriff's jury by the direction of the court, or by said referee):

Therefore it is adjudged that the plaintiff (or defendant) recover of the defendant the possession of the personal property described in the complaint (or the following described personal property, description); or ——— dollars in case a delivery of said property cannot be had; and also that he recover (——— dollars damages, together with) ——— dollars costs, amounting in the whole to ——— dollars. 2 Abb. Forms 554.

I. *Judgments in Actions for Lands (Ejectment) for Recovery of Possession, With Damages, Etc.*

(Recitals of proceedings, and verdict, decision or report, as in preceding forms, continuing): therefore:

It is adjudged that the plaintiff (naming him) recover of the defendant (naming him) the possession of the real property described in the complaint (or, if only a part is recovered, the following described real property: description); and, further, that he recover of the defendant (the sum of) ——— dollars, damages for the withholding thereof, and also ——— dollars for the rents and profits thereof, and) ——— dollars costs of this action, amounting in the whole to ——— dollars. 2 Abb. Forms 555.

J. Judgments of Perpetual Injunction Enjoining Construction or Authorization of Railroad.

(Recitals as in preceding forms, continuing):

It is therefore ordered and adjudged that the said defendants (names), and each of them, and all persons claiming under them, or acting under the authority and direction of them, or either of them, are hereby perpetually enjoined and restrained from entering into or upon said street, called Broadway, for the purpose of laying or establishing a railroad therein, under the grant or resolution of said common council, above referred to.

And it is further ordered and adjudged that the said defendants, the mayor, aldermen and commonalty of the city of New York, be, and they hereby are, perpetually enjoined and restrained from granting to any person or persons whomsoever the exclusive right, liberty, and privilege of laying down or constructing a railroad in Broadway. 2 Abb. Forms 555.

K. Judgment on Order Dismissing Action.

This action having been commenced by the service of the summons, without a copy of the complaint, on the defendant, and the said defendant having, on the _____ day of _____, 18—, served on the plaintiff's attorney a notice of appearance, and demanded a copy of the complaint, and due proof having been given to the court of such notice and demand, and that no copy of the complaint has been served (and the court having made an order that unless plaintiff, within twenty days from service of such order, serve a copy of said complaint; and due proof being produced by the affidavit of M. N. that said order was served on the plaintiff's attorney, on the _____ day of _____, and that no copy-complaint has been served, although more than twenty days have elapsed), now, on motion of M. N. for the defendant:

It is adjudged that the complaint be dismissed for want of service of a copy thereof, and that the defendant recover of the plaintiff _____ dollars, his costs of the action. 2 Abb. Forms 504.

L. Judgment for Defendant, After Order Sustaining Demurrer.

An order having been entered in this

action on the _____ day of _____, 18—, giving the said plaintiffs leave to amend their complaint herein within twenty days after service of such order upon their attorneys, and giving the said defendants twenty days after service of such amended complaint upon their attorneys to demur or answer to said amended complaint, and directing that if the said plaintiffs should fail, within that time, to amend their said complaint, that the same be dismissed, and judgment entered herein, in favor of the defendant herein, without costs to either party; and a copy of said order having been served on said attorneys, on the _____ day of _____, 18—, and more than twenty days having elapsed since such service, and the said plaintiffs having failed to amend their said complaint, as by said order allowed:

Now, on motion of M. N., attorney for the said defendants, it is ordered and adjudged that the complaint herein be, and the same is hereby dismissed, and that the defendants have judgment herein without costs to either party (or for his costs and disbursements, amounting to the sum of _____ dollars). 2 Abb. Forms 539.

M. Judgment for Plaintiff After Order Overruling Demurrer.

The order of the court (made at general term, reversing the order of the special term by which the demurrer was sustained, and) giving judgment in favor of the plaintiff in this cause upon the demurrer therein, with the usual leave to defendant to answer, having been served on the defendant's attorney more than _____ days ago, and the defendant not having elected to answer; now (on filing the clerk's report, etc., or such other assessment of damages as is required by section _____ of the code), and on motion of M. N., counsel for the plaintiff:

It is adjudged that the plaintiff recover of the defendant _____ dollars, with _____ dollars costs of the action, making together _____ dollars (or state special relief). 2 Abb. Forms 539.

N. Judgment Dismissing the Complaint (Non Pros.) for Failure To Furnish Particulars.

(Recite service of summons and complaint as in other cases): And an order having been made, dated on the _____ day of _____, that the said

plaintiff's attorney should deliver to the said defendant's attorney an account in writing of the particulars of the plaintiff's demand for which this action was brought (or show cause on the _____ day of _____), and that in the meantime all further proceedings in this cause should be stayed; at which day, the plaintiff not having delivered the particulars, it was ordered that the said plaintiff's attorney should, within _____ days, deliver to the said defendant's attorney an account in writing of the particulars of the said plaintiff's demand for which the said action was brought, and that in default thereof the defendant should be at liberty to enter judgment of dismissing the plaintiff's complaint. And although notice of the said last mentioned order was, on the _____ day of _____, given to the attorney of the plaintiff, and although the said _____ days have elapsed, yet the said attorney of the said plaintiff has not delivered to the said defendant's attorney, or the said defendant, any account in writing of the particulars of the said plaintiff's demand for which this action was brought. Therefore, ordered, that the said plaintiff take nothing by his said action, and that the same be dismissed, and that the said defendant do recover against the plaintiff _____ dollars for his costs and disbursements. 2 Abb. Forms 190.

O. Judgment on Nonsuit at the Trial.

(As in VI, A, to the *, continuing): and the allegations and proofs on the part of the plaintiff having been heard and considered, and said judge having directed the complaint to be dismissed, and judgment rendered for defendant; now, on motion of M. N., for said defendant:

It is adjudged that the defendant recover of the plaintiff _____ dollars, his costs and disbursements of this action. 2 Abb. Forms 540.

P. Judgment on Acceptance of Offer.

This action having been commenced (e. g., thus) by personal service of summons upon the defendant Y. Z., on the _____ day of _____, 18—, and the defendant W. X. having appeared, and said defendants having offered in writing to allow the plaintiff to take judgment against them for _____, which offer the plaintiff within ten days thereafter duly accepted in

writing, pursuant to section _____ of the code of procedure, now, on motion of M. N., plaintiff's counsel:

It is adjudged that said plaintiff recover of said defendants _____ dollars (or other relief, according to the offer), with _____ dollars costs and disbursements, making together _____ dollars. 2 Abb. Forms 506.

VII. Notices of Judgment.

A. Notice of Judgment of Respondeat Ouster.

Please to take notice that judgment of respondeat ouster has been rendered in this cause, and the within (or annexed) is a copy of the rule entered thereon. Burr. App. 201, §388.

B. Notice of Judgment.

Take notice that judgment was entered in this action, in favor of the (plaintiff) for (_____ dollars, damages and costs), in the office of the clerk of the county of _____ (or the clerk of this court), on the _____ day of _____, 18— (and affirming the judgment theretofore recovered herein by said plaintiff). 2 Abb. Forms 636.

VIII. Setting Aside Judgments.

A. Notice of Motion To Set Aside Final Judgment as Irregular.

Sir: Please to take notice that, on the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held in the capitol at the city of Albany, on the first Tuesday of (April) next, that the judgment entered in this cause (and the execution issued thereupon) be set aside for irregularity, with costs. Burr. App. 215, §432.

B. Notice of Motion To Set Aside Interlocutory Judgment as Irregular.

Sir: Please to take notice that, on the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol of the city of Albany, on the first Tuesday of (April) next, that the interlocutory judgment entered in this cause, and (if a writ of inquiry have been executed), the writ of inquiry and inquisition thereon, be set aside for irregularity with costs, and (if there has been any misconduct on the part of the plaintiff), that the plaintiff answer the matters of the affidavit. Burr. App. 215, §433.

C. Order To Set Aside Final Judgment as Irregular.

On motion of Mr. H., of counsel for the defendant, and after hearing counsel in opposition thereto, ordered, that the judgment entered in this cause (and all the proceedings subsequent thereto), be, and the same are hereby set aside, with ten dollars costs. Burr. App. 467, §948.

D. Order To Set Aside an Interlocutory Judgment for Irregularity.

On motion of Mr. H., of counsel for the defendant, and after hearing counsel in opposition thereto, ordered, that the interlocutory judgment entered in this cause (and the writ of inquiry issued and executed thereon) be, and the same is (or are) hereby set aside for irregularity, with ten dollars costs. Burr. App. 455, §905.

E. Order Vacating Judgment and for Re-Assessment of Damages.

On reading and filing affidavit of service of notice of motion in this cause, and on motion of Mr. I. J., of counsel for the plaintiff (no one appearing to oppose), ordered, that the judgment entered up in this cause be, and the same is hereby vacated, and that the plaintiff's damages be re-assessed by (Charles Humphrey), esquire, one of the clerks of this court. Burr. App. 456, §906.

JUDGMENTS AND DECREES, ENFORCEMENT OF.

I. Executions, 726

A. Against the Property, 726

1. *In Assumpsit*, 726
2. *In Debt*, 727
3. *Debt Qui Tam*, 727
4. *Covenant*, 728
5. *Trespass*, 728
6. *Case*, 728
7. *Trover*, 728
8. *Replevin*, 728
9. *Replevin, Goods Not Replevied*, 729
10. *For Defendant on Verdict*, 729
11. *Non Pros.*, 729
12. *Non Pros. for Not Replying*, 730
13. *On Default of Plaintiff for Not Joining in Demurrer*, 730
14. *Nonsuit*, 730
15. *As in Case of Nonsuit*, 730
16. *On Discontinuance*, 730
17. *Nolle Prosequi*, 730
18. *Executors and Administrators*, 730

a. On Judgment for Testator or Intestate, 730

b. For Executor or Administrator, 731

c. Against Executor or Administrator, Judgment Against Testator, 731

d. For Damages De Bonis Testatoris, 731

19. Against Joint Debtors, All Not Served, 732

20. Residue and Debt, 732

21. Residue in Assumpsit, 732

22. Alias, 732

23. Pluries, 732

24. Testatum in Case, 733

25. Testatum in Debt, 733

26. Testatum for Residue, 733

27. Testatum Alias, 733

28. Testatum Pluries, 734

29. On Scire Facias, 734

30. Against Special Bail, 734

31. After Scire Facias by Default, 734

32. Against Heirs and Terre-Tenants, 734

33. After Non Pros. or Affirmation in Supreme Court, 735

34. On Reversal for Costs, 735

B. Against Property Under the Code, 735

1. Against Property, 735

2. Against Joint Property and Separate Property of Some, 736

3. Against Property in Hands of Personal Representative, 736

4. For Specific Real or Personal Property, 736

C. Executions Against the Body, 737

1. In Assumpsit, 737

2. Debt, 737

3. Debt Qui Tam, 737

4. Replevin for Plaintiff, 737

5. Trespass, 737

6. Case, 737

7. Trover, 738

8. Non Pros., Not Declaring, 738

9. Non Pros., Not Replying, 738

10. As in Case of Nonsuit, 738

11. On Nonsuit, 738

12. On Verdict for Defendant, 738

13. Alias, 739

14. Pluries, 739

15. Testatum in Assumpsit, 739

16. Testatum in Debt, 739

17. On Scire Facias on Judgment in Debt, 739

D. Executions Against the Person (Code), 740

E. Setting Aside Executions, 740

1. *Notice of Motion To Set Aside Fieri Facias as Irregular*, 740
2. *Order To Set Aside Fieri Facias as Irregular*, 740
3. *Notice of Motion To Set Aside Capias as Irregular*, 740
4. *Order To Set Aside Capias as Irregular*, 740
5. *Notice of Motion To Set Aside Execution*, 740
6. *Order To Set Aside Execution*, 740
- F. *Indorsements (Code)*, 741
 1. *On Execution*, 741
 2. *Execution on Judgment by Confession, Debt Not All Due*, 741
 3. *Debt Secured by Mortgage*, 741
- G. *Sheriff's Certificate of Sale of Real Estate*, 741
- H. *Venditioni Exponas*, 741
 1. *General Form*, 741
 2. *Combined With Fi. Fa. for Residue*, 742
- II. *Actions*, 742
 - A. *Declarations*, 742
 1. *On Final Judgment*, 742
 2. *On Judgment for Defendant*, 743
 3. *On Justice's Judgment*, 743
 4. *On Foreign Judgment*, 744
 - B. *Complaints*, 744
 1. *General Form*, 744
 2. *On Foreign Judgment*, 744
 3. *On Justice's Judgment*, 744
 4. *On Foreign Judgment of Inferior Tribunal*, 745
 5. *By Assignee*, 745
 6. *By Purchaser at Sheriff's Sale for Waste Before Conveyance*, 745
 - C. *Pleas*, 745
 1. *Nul Tiel Record*, 745
 2. *Payment*, 746
 3. *No Appearance in Foreign Court*, 746
 - D. *Answers*, 746
 1. *Invalidity of Foreign Judgment*, 746
 2. *Invalidity of Judgment Against Non-resident*, 746
 3. *Fraud in Recovery*, 746
- CROSS REFERENCES:
- ADMIRALTY:
 - Venditioni Exponas on Final Decree*;
 - Fieri Facias Against Goods, Chattels and Lands*.
- ASSISTANCE, WRITS OF:
 - Writ of Assistance*.
- AUDITA QUERELA:
 - Writ of Audita Querela*.

- BILLS TO ENFORCE DECREES:
Plea to Bill To Carry Decree Into Execution.
- CONTEMPT:
Order To Turn Over to Prison Party Brought Up on Attachment, or by Habeas.
- CREDITORS' SUITS:
See Creditors' Suits.
- DOWER, PROCEEDINGS TO RECOVER:
Writ of Habere Facias Seisinam of Recovered Dower.
- EJECTMENT:
Writ of Possession in Ejectment;
Writ of Possession in Ejectment With Fieri Facias for Costs;
Writ of Possession in Ejectment With Capias Ad Satisfaciendum;
Writ of Restitution in Ejectment.
- FRAUDULENT CONVEYANCES:
Bill Requiring Grantee To Pay Over Balance of Purchase Price;
Complaint by Subsequent Creditor;
Decree, Conveyance in Contemplation of Insolvency Set Aside.
- HOMESTEAD AND EXEMPTION:
Report of Appraisers on Exempt Property;
Answer to Affidavit Setting Up Exemption;
Affidavit for Exemption of Wages;
Notice to Sheriff That Debtor Will Choose Exempt Property.
- INJUNCTIONS:
Writ of Injunction;
Injunction Against Proceeding, With Leave To Proceed to Judgment.
- JUDICIAL SALES:
See Judicial Sales.
- MANDAMUS:
Execution on Mandamus for Relator;
Execution for Defendant on Mandamus.
- MECHANICS' LIENS:
Execution on Judgment in Mechanic's Lien.
- NUISANCE:
Execution in Nuisance.
- REPLEVIN:
Retorno Habendo for Want of Plea in Bar to Avowry;
Retorno Habendo on Non Pros;
Retorno Habendo After Verdict.
- RETURNS:
Return to Fieri Facias, Nulla Bona;
Return to Fieri Facias to Part, Nulla Bona to Part;
Return to Fieri Facias, Special;
Return to Fieri Facias (Have caused to be made);

Return to Fieri Facias, Unsold for Want of Buyer;

Return to Rescue and Resistance to an Execution;

Return, Capi Corpus in Custody;

Return to Capias Ad Satisfaciendum, Non Est Inventus.

SCIRE FACIAS:

Scire Facias To Revive a Judgment in Assumpsit;

Scire Facias To Revive Judgment in Debt;

Revival of Judgment Against Terre Tenants;

Scire Facias To Revive Judgment in Covenant;

Scire Facias To Revive a Judgment in Replevin;

Scire Facias in Trespass;

Scire Facias After Former Revival;

Scire Facias by Executor of Sole Plaintiff After Interlocutory Judgment and Before Inquiry;

Scire Facias by Executor of Sole Plaintiff After Final Judgment;

Scire Facias by Administrator After Final Judgment in Assumpsit;

Scire Facias To Revive Judgment in Case;

Return to Scire Facias Served on Defendant;

Return on Scire Facias, Defendant Cannot Be Found.

SEQUESTRATION:

Order for Sequestration on Return of Attachment (English);

Order for Sequestration;

Order for Sequestration for Not Answering;

Order for Sequestration; Corporation.

SHERIFFS AND CONSTABLES:

Declaration Against Sheriff for Neglecting To Levy and Return a Fieri Facias;

Complaint Against Sheriff for Neglecting To Return Execution;

Complaint Against Sheriff for Neglecting To Levy;

Notice To Return Fieri Facias;

Notice To Return Capias Ad Satisfaciendum;

Affidavit of Service of Notice That Sheriff Returned Capias or Execution;

Bond of Indemnity to Sheriff, Title of Property in Dispute.

STAY OF PROCEEDINGS:

Supersedeas To Discharge for Not Charging Defendant in Execution in Time.

SUPPLEMENTARY PROCEEDINGS:

Affidavit To Obtain Order for Ex-

amination of Debtor, on Judgment of Court of Record;

Order for Examination of Judgment Debtor After Return of Execution;

Affidavit To Obtain Arrest of a Judgment Debtor Who Is About To Leave the State or Conceal Himself;

Warrant for the Arrest of a Judgment Debtor;

Affidavit of Service of Order for Examination of Judgment Debtor;

Examination of Debtor in Supplementary Proceeding;

Order That Debtor Pay the Judgment;

Order Appointing Receiver in Supplementary Proceedings;

Receiver's Notice in Supplementary Proceedings;

Complaint by Receiver Alleging Appointment in Supplementary Proceedings;

Commitment for Contempt.

WASTE:

Execution in Waste.

WRIT OF ERROR:

Writ of Restitution After Judgment Reversed With a Fieri Facias Clause.

I. Executions.

A. Against the Property.

1. Fieri Facias for Plaintiff in Assumpsit.

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made _____ dollars, which A. B., plaintiff, lately in our supreme court of judicature, before our justices thereof, recovered against the said defendant for his damages which he had sustained, as well by reason of the not performing certain promises and undertakings then lately made by the said defendant to the said plaintiff, as for the costs and charges, by the said plaintiff, about his suit in that behalf expended; whereof the said defendant is convicted, as appears to us of record. And if sufficient goods and chattels of the said defendant cannot be found within your county, that then you cause the damages aforesaid to be made of the real estate, whereof the said defendant was seised, on the _____ day of _____, in the year one thousand

_____ (the day of docketing judgment), or at any time thereafter, in whose hands soever the same may be. * And have you that money before our justices of our supreme court of judicature, in sixty days from the receipt hereof by you, to render unto the said plaintiff, for the damages aforesaid; and have you then there this writ.

Witness, _____, esquire, our chief justice, at the court house in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight _____.

_____, clerks.
_____, attorney.

(Endorsed.)
Supreme court.
A. B. v. C. D.

Fi. fa. ret. (_____, 18—).

_____, plaintiff's attorney.

Levy, \$_____, with interest from (Oct. 1, 18—), besides your fees, poundage, etc.

(In cases where several suits have been brought on one instrument, add to the preceding endorsement the following): unless you shall collect the amount of the execution herewith (or heretofore) delivered in the case of the same plaintiff, against K. L., in which case you will only levy under this execution (\$20), being the disbursements of the plaintiff in this suit. Burr. App. 99, §191; Till. Forms 71; Grah. Pr. 724.

2. *Fieri Facias for Plaintiff in Debt.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made _____ dollars of debt which A. B., plaintiff, lately in our supreme court of judicature, before our justices thereof, recovered against the said defendant, and _____ dollars and _____ cents, which, in our said court were adjudged to the said plaintiff, for the damages which he had sustained, as well by occasion of the detention of that debt as for the costs and charges by the said plaintiff, about his suit in that behalf expended; where of the said defendant is convicted, as appears to us of record. And, if sufficient goods and chattels of the said defendant cannot be found in your county, that then you cause the same to be made of the real estate, whereof the said defendant was seised on the

_____ day of _____, in the year one thousand eight hundred and _____ (day of docketing judgment), or at any time afterwards, in whose hands soever the same may be: And that you have those moneys before our said justices, in sixty days from the receipt hereof, by you to render unto the said plaintiff for his debt and damages aforesaid; and have you then there this writ. Witness, etc. (teste as in I, A, 1). Burr. App. 100, §192; Till. Forms 72.

3. *Fieri Facias for Plaintiff in Debt Qui Tam.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made a certain debt of _____ dollars, which A. B., plaintiff, who sued as well for us as for himself in that behalf, lately in our supreme court of judicature, before our justices thereof, recovered against the said defendant, that is to say, one moiety thereof to the said plaintiff who sued as aforesaid, to his own proper use, and the other moiety thereof to our own proper use (and if the judgment was for costs, add: "and also _____ dollars, which, in our said court, before our said justices thereof, were adjudged to the said plaintiff who sued as aforesaid, and with his assent, according to the form of the statute in such case made and provided, for his costs and charges by him about his suit in that behalf expended"); whereof the said defendant is convicted, as appears to us of record: And if sufficient goods and chattels of the said defendant cannot be found in your county, that then you cause the debt (and if the judgment were for costs, add: "and damages"), aforesaid to be made, etc. (as in I, A, 1). And have you those moneys before our said justices of our supreme court of judicature aforesaid, in sixty days from the receipt hereof by you, to render one moiety thereof to us, and the other moiety to the said plaintiff who sued as aforesaid (or, if there are costs, "one moiety of the said debt of _____ dollars to us, and the residue thereof, as well as the said sum of _____ dollars, for the costs and charges aforesaid, to the said plaintiff who sued as aforesaid"), and have you then there this writ. Witness, etc. (teste as I, A,

1). Burr. App. 101, §192a; Till. Forms 72.

4. *Fieri Facias for Plaintiff in Covenant.*

The people of the state of New York,
to the sheriff of the county of _____,
greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made _____ dollars, which A. B., plaintiff, lately in our supreme court of judicature, before our justices thereof, recovered against the said C. D., for his damages which he had sustained, as well on occasion of * the breach of a certain covenant made between the said plaintiff and the said defendant as for the costs and charges by the said plaintiff, about his suit in that behalf expended; whereof the said defendant is convicted, as appears to us of record: And if sufficient goods and chattels of the said defendant cannot be found, etc. (as in I, A, 1, to the end). Burr. App. 101, §193; Till. Forms 73.

5. *Fieri Facias for Plaintiff in Trespass.*

The people of the state of New York,
to the sheriff of the county of _____,
greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made _____ dollars, which A. B., plaintiff, lately in our supreme court of judicature, before our justices thereof, recovered against the said defendant for his damages which he has sustained, as well on occasion of a certain trespass then lately committed by the said defendant against the said plaintiff as for the costs and charges by the said plaintiff about his suit in that behalf expended; whereof the said defendant is convicted, as appears to us of record: And if sufficient goods and chattels of the said defendant cannot be found, etc. (as in I, A, 1, to the end). Burr. App. 102, §194; Till. Forms 74.

6. *Fieri Facias for Plaintiff in Case.*

The people of the state of New York,
to the sheriff of the county of _____,
greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made _____ dollars, which A. B., plaintiff, lately in our supreme court of judicature, before our justices thereof, recovered against the said defendant for his damages,

which he had sustained, as well on occasion of a certain grievance then lately committed by the said defendant against the said plaintiff, as for the costs and charges by the said plaintiff about his suit in that behalf expended, whereof the said defendant is convicted, as appears to us of record. And if sufficient goods and chattels of the said defendant cannot be found, etc. (as in I, A, 1, to the end). Burr. App. 103, §196; Till. Forms 73.

7. *Fieri Facias for Plaintiff in Trover.*

The people of the state of New York,
to the sheriff of the county of _____,
greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made _____ dollars, which A. B., plaintiff, lately in our supreme court of judicature, before our justices thereof, recovered against the said defendant for his damages which he had sustained, as well on the occasion of the converting and disposing of certain goods and chattels of the said plaintiff by the said defendant, as for the costs and charges by the said plaintiff about his suit in that behalf expended; whereof the said defendant is convicted, as appears to us of record. And if sufficient goods and chattels of the said defendant cannot be found, etc. (as in I, A, 1, to the end). Burr. App. 103, §198; Till. Forms 73.

8. *Fieri Facias for Plaintiff in Replevin.*

The people of the state of New York,
to the sheriff of the county of _____,
greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made _____ dollars, which A. B., plaintiff, lately in our supreme court of judicature, before our justices thereof, recovered against him, for his damages which he had sustained, as well on occasion of the (taking and) unjustly detaining of the goods and chattels of the said plaintiff, as for the costs and charges by the said plaintiff about his suit in that behalf expended; whereof the said defendant is convicted, as appears to us of record: And if sufficient goods and chattels of the said defendant cannot be found, etc. (as in I, A, 1, to the end). Burr. App. 103, §199; Till. Forms 75.

9. *Fieri Facias for Plaintiff in Replevin Where Goods Were Not Replevied.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made, etc. (as in last form, and pursuing the form in I, A, 1, to the *, after which proceed thus): And we further command you, that you replevy and deliver to the said plaintiff certain goods and chattels, to-wit (specify the articles), which the said defendant hath taken, and still unjustly detains from the said plaintiff; and if such goods and chattels cannot be found in your county, then we command you, that of the goods and chattels of the said defendant you cause to be made _____ dollars, being the value of the said goods and chattels above specified, together with the aforesaid damages and costs: And if sufficient goods, etc. (repeating the form in I, A, 1, to the end). Burr. App. 104, §200.

10. *Fieri Facias for Defendant on Verdict.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of A. B., plaintiff, in your county, you cause to be made _____ dollars and _____ cents (the defendant's taxed costs), which lately in our supreme court of judicature, before our justices thereof, were adjudged to C. D., defendant, according to the form of the statute in such case made and provided, for his costs and charges by him laid out, in and about his defense in a certain action of trespass on the case upon promises (or as the action is), lately prosecuted in our said supreme court, before our aforesaid justices thereof, by the said plaintiff, against the said defendant, whereof the said plaintiff is convicted, as appears to us of record. And if sufficient goods and chattels of the said plaintiff cannot be found within your county, that then you cause the costs and charges aforesaid to be made of the real estate, whereof the said plaintiff was seised, on the _____ day of _____, in the year of our Lord one thousand eight hundred _____ (day of docketing judgment), or at any time thereafter, in whose hands soever the same

may be. And have you those moneys before our justices of our supreme court of judicature, in sixty days from the receipt hereof by you, to render unto the said defendant, for his costs and charges aforesaid; and have you then there this writ. Witness, _____, esquire, our chief justice, at the _____ in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred _____.

_____, _____, clerks.

_____, attorney.

Till. Forms 88.

(Endorsed.)

Supreme court.

C. D. ads. A. B.

Fi. fa. ret., _____, 18—.

_____, attorney.

Levy, \$87.75, defts. costs.

Burr. App. 104, §201.

11. *Fieri Facias on Non Pros. for Not Declaring.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of A. B., plaintiff, in your county, you cause to be made _____ dollars and _____ cents (the defendant's taxed costs), which lately in our supreme court of judicature, before our justices thereof, were adjudged to C. D., defendant, according to the form of the statute in such case made and provided, * for his costs and charges by him laid out, in and about his defense of and upon our certain writ of capias ad respondendum, issued out of our said court, before our aforesaid justices thereof, at the suit of the said plaintiff, against the said defendant, for that the said plaintiff had not declared thereupon, in our said court, before our said justices, against the said defendant, before the end of _____ term in the year of our Lord one thousand eight hundred _____, being the next term after the appearance of the said defendant at the suit of the said plaintiff; whereof the said plaintiff is convicted, as appears to us of record: And if sufficient goods and chattels of the said plaintiff cannot be found within your county, that then you cause the costs and charges aforesaid to be made of the real estate, whereof the said plaintiff was seised on the _____ day of _____, in the year one thousand eight hundred and _____ (day of docketing the judgment), or at any

time thereafter, in whose hands soever the same may be: And have you those moneys before our justices of our supreme court of judicature in sixty days from the receipt hereof by you, to render unto the said defendant for his costs and charges aforesaid, and have you then there this writ. Witness, etc. (teste as in I, A, 10). Burr. App. 106, §203; Till. Forms 86.

12. *Fieri Facias on Non Pros. for Not Replying.*

(As in last form to the *, and then as follows): for his costs and charges by him laid out, in and about his defense, in a certain action of trespass on the case upon promises (or as the action is), then lately commenced and depending in our said court, before our aforesaid justices thereof, at the suit of the said plaintiff against the said defendant; * for that the said plaintiff had not replied to certain pleas then lately pleaded by the said defendant in the said action, or further prosecuted the same; whereof the said plaintiff is convicted, etc. (as in last form to the end). Burr. App. 106, §204; Till. Forms 87.

13. *Fieri Facias on Default of Plaintiff for Not Joining in Demurrer.*

“(As in I, A, 11, to the *, then as follows): for his costs and charges by him laid out in and about his defense, in a certain action of trespass on the case upon promises (or as the action is), then lately commenced and depending in our said court, before our aforesaid justices thereof, at the suit of the said plaintiff, against the said defendant, for that the said plaintiff had not joined in a certain demurrer on the part of the said defendant to the declaration of the said plaintiff, in the said action; whereof the said plaintiff is convicted, etc. (as in I, A, 11, to the end). Burr. App. 107, §206.

14. *Fieri Facias on a Judgment of Nonsuit.*

(As in I, A, 11, to the *, and then as follows): for his costs and charges by him laid out in and about his defense, in a certain action of trespass on the case upon promises (or as the action is), lately brought in our said supreme court, before our said justices thereof, by the said plaintiff against the said defendant, for that the said plaintiff did not prosecute the said action; whereof the said plaintiff is convicted, etc. (as in I, A, 11, to the end).

Burr. App. 107, §208; Till. Forms 88.

15. *Fieri Facias on Case as of Nonsuit.*

(As in I, A, 11, to the *, and then as follows): for his costs and charges by him laid out in and about his defense, in a certain action of trespass on the case upon promises (or as the action is), then lately commenced and depending in our said court, before our aforesaid justices thereof, at the suit of the said plaintiff against the said defendant, for that the said plaintiff had neglected to bring a certain issue, before then joined in the said action, on to be tried, according to the course and practice of our said supreme court; whereof the said plaintiff is convicted, etc. (as in I, A, 11, to the end). Burr. App. 107, §207; Till. Forms 88.

16. *Fieri Facias on Discontinuance.*

(Same as I, A, 14, inserting after the words, “did not prosecute the said action,” these words, “but voluntarily suffered the same to be discontinued.”) Burr. App. 108, §209.

17. *Fieri Facias on Judgment of Nolle Prosequi.*

(Same as in I, A, 14, inserting after the words, “did not prosecute the said action,” these words, “but freely confessed he would not further prosecute the same.”) Burr. App. 108, §210.

18. *Executors and Administrators.*

a. *Fieri Facias for Executor or Administrator on Judgment for Testator or Intestate.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made _____ dollars, which A. B., plaintiff, in his lifetime, lately in our supreme court of judicature, before our justices thereof, recovered against him, for his damages which he had sustained, etc. (state the recovery), whereof the said defendant is convicted, as appears to us of record; and if sufficient goods and chattels of the said defendant cannot be found in your county, that then you cause the damages aforesaid to be made of the real estate, whereof the said defendant was seised on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____ (day of docketing judgment), or at any time thereafter, in whose hands soever the same may

be; and whereupon it is considered in our said supreme court, before our aforesaid justices thereof, that M. J., executor of the last will and testament of the said A. B., deceased (or, administrator of all and singular the goods, chattels and credits, which were of the said A. B., deceased, at the time of his death, who died intestate), have execution against the said defendant, as also appears to us of record; and have that money before our aforesaid justices of our said supreme court of judicature, in sixty days from the receipt hereof by you, to render to the said M. J., executor (or administrator), as aforesaid; and have you then and there this writ. Witness, etc. (as in I, A, 1). Burr. App. 108, §211; Till. Forms 82.

b. *Fieri Facias for Executor or Administrator.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of C. D., defendant, in your county, you cause to be made _____ dollars, which A. B., executor of the last will and testament of L. K., deceased (or administrator of all and singular the goods, chattels and credits, which were of K. L., deceased, at the time of his death, who died intestate), lately, in our supreme court of judicature, before our justices thereof, recovered against him, etc. (state the recovery), whereof the said defendant is convicted, as appears to us of record. And if sufficient goods and chattels of the said defendant cannot be found, etc. (as in I, A, 1, to the end). Burr. App. 109, §212; Till. Forms 83.

c. *Fieri Facias Against Executor or Administrator on Judgment Against Testator or Intestate.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels which were of C. D., deceased, at the time of his death, in the hands of M. J., executor of the last will and testament of the said C. D., deceased (or administrator of all and singular the goods, chattels and credits, which were of the said C. D., deceased, at the time of his death, who died intestate), to be administered in your county, you cause to be made _____ dollars, which A. B., plaintiff,

lately, in our supreme court of judicature, before our justices thereof, recovered against the said C. D., for his damages, which he had sustained, etc. (here state the recovery) whereof the said C. D. was convicted, as appears to us of record; and whereupon, it is considered in our supreme court, before our aforesaid justices thereof, that the said plaintiff have his execution against the said M. J., as executor (or administrator), as aforesaid, of the damages aforesaid, of the goods and chattels which were of the said C. D., at the time of his death, in the hands of the said M. J., as executor (or administrator), as aforesaid, to be administered, according to the form and effect of the said recovery. And have that money, etc. (as in I, A, 1, to the end). (Endorse the writ, in addition to the usual endorsement, with a direction to levy the amount directed by the surrogate.) Burr. App. 109, §213; Till. Forms 83.

d. *Fieri Facias Against Executor or Administrator for Damages De Bonis Testatoris.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels, in your county, which were of C. D., deceased, at the time of his death, in the hands of I. J., executor (or administrator), etc. (as in I, A, 18, c), to be administered, you cause to be made _____ dollars, which A. B., lately, in our supreme court of judicature, before our justices thereof, recovered against the said I. J., as executor (or administrator), as aforesaid, for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings made by the said C. D. in his lifetime to the said A. B., as for his costs and charges by him, about his suit in that behalf expended; whereof the said I. J. is convicted, as appears to us of record; if the said I. J. hath so much thereof in his hands to be administered.* And if he hath not so much thereof in his hands, to be administered, then that you cause to be made _____ dollars and _____ cents), parcel of the damages aforesaid, being for the costs and charges aforesaid, of the proper goods and chattels of the said I. J. in your county. And if sufficient goods and chattels of the said I. J. cannot be

found, etc. (as in I, A, 1, to the end).

(Endorsed as in last form.) Burr. App. 110, §213a; Till. Forms 84.

19. *Fieri Facias Against Joint Debtors, Where All Have Not Been Served.*

(The fi. fa. in this case is in the ordinary form, against all the defendants, as though all had appeared; and is so endorsed in the title of the cause.)

But the following special endorsement is required by statute, in addition to the usual directions to the sheriff): "The sheriff will not levy on the sole property of R. B. (the defendant not taken or served), but on his personal property, owned by him as a partner with C. D. and H. P. (the defendants taken or served), or with either of them." Burr. App. 110, §214.

20. *Fieri Facias for Residue in Debt.*

The people, etc., to the sheriff, etc. Whereas, etc. (here recite the fieri facias as in I, A, 2, and then proceed as in that form, in all respects, except that instead of "damages," only, you say "debt and damages," throughout. Burr. App. 111, §216.

21. *Fieri Facias for Residue in Assumpsit.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

Whereas by our writ, we lately commanded you, that of the goods and chattels of C. D., defendant, in your county, you should cause to be made _____ dollars, which A. B., plaintiff, then, lately, in our supreme court of judicature, before our justices thereof, had recovered against the said defendant, for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings then lately made by the said defendant to the said plaintiff, as for the costs and charges by the said plaintiff, about his suit in that behalf expended; whereof the said defendant was convicted, as appeared to us of record. And, if sufficient goods and chattels of the said defendant could not be found in your county, that then you should cause the damages aforesaid to be made of the real estate, whereof the said defendant was seised on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, or at any time afterwards, in whose hands soever the same might be; and that you should

have that money before our said justices of our supreme court of judicature aforesaid, in sixty days from the receipt thereof, by you, to render to the said plaintiff for his damages aforesaid; and you, at the expiration of the said sixty days, returned to our said justices of our supreme court of judicature aforesaid, that, by virtue of the said writ to you directed, you had caused to be made of the goods, chattels and real estate, of the said defendant _____ dollars, parcel of the damages aforesaid, which money you had ready at the day in the said writ contained, as by the said writ you were commanded; and that the said defendant had not any other or more goods, chattels, or real estate, in your county, whereof you could cause to be made the residue of the damages aforesaid, or any part thereof; therefore, we command you, that of the goods and chattels of the said defendant, in your county, you cause to be made _____ dollars, residue of the damages aforesaid. And if sufficient goods and chattels of the said defendant cannot be found in your county, that then you cause the said _____ dollars, residue of the damages aforesaid, to be made of the real estate, in your county, whereof the said defendant was seised on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, or at any time afterwards, in whose hands soever the same may be. And have you those moneys before our justices of our supreme court of judicature, in sixty days from the receipt hereof by you, to render unto the said plaintiff, for the residue of his damages aforesaid. And have you then there this writ. Witness, etc. (teste in ordinary form, see I, A, 1). Burr. App. 111, §215; Till. Forms 75.

22. *Fieri Facias, Alias.*

The people of the state of New York, to the sheriff of the county of (Essex), greeting:

We command you, as before we have commanded you, that of the goods and chattels of C. D., etc. (as in the ordinary forms). Burr. App. 112, §217.

23. *Fieri Facias Pluries.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, as oftentimes before we have commanded you, that of the goods and chattels, etc. (as in the

ordinary forms). Burr. App. 112, §218.

24. *Fieri Facias, Testatum in Case.*
The people of the state of New York,
to the sheriff of the county of
_____, greeting:

Whereas by our writ of fieri facias we lately commanded our sheriff of the county of _____, that of the goods and chattels of C. D., defendant, in his county, he should cause to be made, (four hundred) dollars, which A. B., plaintiff, lately before our justices of our supreme court of judicature, recovered against him, for the damages which he had sustained, as well by reason of, etc. (reciting the fi. fa.), as for the costs and charges by him about his suit in that behalf expended; whereof the said defendant was convicted as appeared to us of record; and if sufficient goods and chattels of the said defendant could not be found in his county, that then he should cause the damages aforesaid to be made of the real estate, etc. (as in fi. fa.), and that he should have those moneys before our said justices of our supreme court of judicature aforesaid, in sixty days from the receipt of the said writ by him, to render unto the said plaintiff, for the damages aforesaid; and our said sheriff of the said county of (Ulster), at the expiration of the said sixty days, returned to our said justices, that the said defendant had no goods, chattels, or real estate, in his county, whereof he could cause to be levied the damages aforesaid, or any part thereof. Whereupon, on behalf of the said plaintiff, it is sufficiently testified to our said court, that the said defendant has sufficient goods, chattels, and real estate, in your county, whereof you may cause to be levied the damages aforesaid. Therefore we command you, that of the goods and chattels of the said defendant, in your county, you cause to be made the damages aforesaid; and if sufficient goods and chattels of the said defendant cannot be found therein, that then you cause the damages aforesaid to be made of the real estate in your county, whereof the said defendant was seised, on the _____ day of _____, in the year one thousand eight hundred and _____ (day of docketing judgment), or at any time afterwards, in whose hands soever the same may be. And have you those moneys before our said justices, in sixty days from the

receipt hereof by you, to render unto the said plaintiff, for the damages aforesaid. And have you then there this writ. Witness, etc. (Teste in the ordinary form, see I, A, 1.) Burr. App. 112, §219; Till. Forms 89.

25. *Fieri Facias, Testatum in Debt.*

(Same as last form, with the necessary difference in reciting the writ of fi. fa. and substituting "debt and damages," for "damages," throughout. Burr. App. 113, §220.

26. *Fieri Facias, Testatum for Residue.*

The people of the state of New York,
to the sheriff of the county of
_____, greeting:

Whereas by our writ we lately commanded our sheriff of the county of _____ that of the goods and chattels, etc. (to the end of the fieri facias, and then as follows): And our said sheriff of the county of _____, at the expiration of the said sixty days returned to our said justices of our supreme court of judicature aforesaid, that, by virtue of the said writ to him directed, he had caused to be made of the goods and chattels, etc., of the said defendant _____ dollars, parcel of the damages (or debt and damages) aforesaid, which money he had ready before our said justices of our supreme court of judicature aforesaid, at the day in the said writ contained, as by the said writ he was commanded; and that the said defendant had not any other or more goods or chattels, nor any real estate, in his county, whereof he could cause to be made the residue of the damages (or debt and damages), aforesaid, or any part thereof; and because it is sufficiently testified in our said supreme court of judicature, before our said justices thereof, that the said defendant hath sufficient goods and chattels in your county, whereof you may cause to be made the residue of the damages (or debt and damages), aforesaid; therefore, we command you, that of the goods and chattels of the said defendant, in your county, you cause to be made _____ dollars, residue of the damages (or debt and damages), aforesaid. And if sufficient goods, etc. (as in I, A, 1, to the end). Burr. App. 113, §221.

27. *Fieri Facias, Testatum Alias.*

(Same as the testatum, I, A, 24, adding, in the mandate, the words, "as

before we have commanded you." Burr. App. 113, §222.

28. *Fieri Facias, Testatum Pluries.*

(Same as the testatum, I, A, 24, adding in the mandate, the words, "as oftentimes before we have commanded you.") Burr. App. 114, §223.

29. *Fieri Facias on Scire Facias.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of C. D., defendant in your county, you cause to be made _____ dollars, which A. B., plaintiff, lately in our supreme court of judicature, before our justices thereof, recovered against the said defendant, for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings then lately made by the said defendant to the said plaintiff, as for the costs and charges, by the said plaintiff, about his suit in that behalf expended (if the action were debt, vary this part of the form as in I, A, 2), whereof the said defendant was convicted, as appears to us of record; and also _____ dollars (the costs of the scire

facias), which in our said court, before our aforesaid justices thereof, were adjudged to the said plaintiff, according to the form of the statute in such case made and provided, for his costs and charges by him laid out, in and about the prosecution of our writ of scire facias, for having execution upon the said judgment, for the damages (or debt and damages), aforesaid;* and whereupon, it was, after plea pleaded (or demurrer joined), therein, considered in our same court, before our aforesaid justices thereof, that the said plaintiff should have his execution against the said defendant, of the damages (or debt and damages), aforesaid, according to the force, form and effect of the said recovery, as also appears to us of record. And if sufficient goods and chattels of the said defendant cannot be found in your county, that we command you, that you cause the damages and costs (or debt, damages and costs), aforesaid, to be made of the real estate, whereof the said defendant was seised on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____ (day of docketing judgment), or at any time thereafter, in whose hands soever the same may be. And have you

those moneys before our justices of our supreme court of judicature, in sixty days from the receipt hereof by you, to render to the said plaintiff for the (debt), damages and costs aforesaid. And have you then there this writ. Witness, etc. (teste, etc., as in I, A, 1, to the end). Burr. App. 114, §224; Caines' Forms 260; Till. Forms 75.

30. *Fieri Facias Against Special Bail on Recognizance After Default.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of I. S. and I. N., the bail of C. D., defendants in your county, you cause to be made _____ dollars of debt, which A. B., plaintiff, lately in our supreme court of judicature, before our justices thereof, recovered against the said defendants, and _____ dollars which in our said court were adjudged to the said plaintiff for the damages which he had sustained, as well by occasion of the detention of that debt, as for the costs and charges by the said plaintiff, about his suit in that behalf expended, whereof the said defendants are convicted, as appear to us of record. And if sufficient goods, etc. (as in I, A, 2, to the end). Burr. App. 115, §225.

31. *Fieri Facias After Scire Facias by Default.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, etc. (as in I, A, 29, to the *, and then as follows): And whereupon it is considered in our same court, before our aforesaid justices thereof, that the said plaintiff have his execution against the said defendant, of the damages (or debt and damages), aforesaid, according to the force, form and effect of the said recovery, by the default of the said defendant, as also appears to us of record. And if sufficient goods and chattels of the said defendant, etc. (as in I, A, 29, to the end). Burr. App. 115, §226; Till. Forms 75.

32. *Execution Against Heirs and Terre-Tenants.*

The people, etc., to the sheriff of the (city and) county of _____, greeting:

We command you that of all (here describe the land as in the scire facias), in your county, of which C. D., lately

deceased, or any person or persons in trust for him, was or were seized on the _____ day of _____, in the year, etc., you cause to be made _____ dollars and _____ cents, which A. B., lately, in our supreme court of judicature, recovered by our writ of seire facias against (here name the heirs or terre-tenants), heirs (or terre tenants), of the said C. D., deceased; and wherein it was considered that the said A. B. have execution thereof; and whereof the said (heirs or terre-tenants) are convicted, as appears to us of record. And have those moneys before, etc. (return and teste as in an ordinary fi. fa., I, A, 1). Burr. App. 518, §1039.

33. *Fieri Facias After Non Pros. or Affirmation in Supreme Court.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of C. D., in your county, you cause to be made _____ dollars (or a certain debt of _____ dollars), which A. B., lately in our court of common pleas, in and for the (city and) county of _____ (or otherwise, describing the court), before the judges thereof (or otherwise, according to the style of the court), recovered against the said C. D., etc. (state the recovery): Whereof the said C. D. is convicted, as by the inspection of the record and proceedings thereof, which we lately caused to be brought into our supreme court of judicature, before our justices thereof, at the _____ in the city of _____, for certain supposed causes of error therein, and which are now there remaining, appears to us of record; and also _____ dollars, which in our said supreme court, before our said justices thereof, were adjudged to the said A. B., according to the form of the statute in such case made and provided, for his damages, costs and charges which he had sustained and expended, on occasion of the delay of execution of the judgment aforesaid, on pretence of prosecuting our writ of error brought thereupon by the said C. D. against the said A. B., because the said C. D. did not prosecute the said writ of error with effect (or on an affirmance, the said judgment being in our said court, before our aforesaid justices thereof, in all things affirmed), whereof the said C. D. is also

convicted, as appears to us of record. And if sufficient goods and chattels of the said C. D. cannot be found in your county, that then you cause the damages (or debt and damages), and costs aforesaid, to be made of the lands, tenements, real estate and chattels real, in your county, whereof the said C. D. was seised on the _____ day of _____ in the year of our Lord, one thousand eight hundred and _____, or at any time afterwards, in whose hands soever the same may be. And have the said moneys before our said justices of our supreme court of judicature aforesaid, in sixty days from the receipt hereof by you, to render to the said A. B. for his damages, costs and charges aforesaid. And have you then there this writ. Witness, etc. (teste in the usual form). Burr. App. 115, §227; Till. Forms 76.

34. *Fieri Facias on Reversal for Costs.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

We command you, that of the goods and chattels of C. D., in your county, you cause to be made _____ dollars, and _____ cents, which in our court for the correction of errors were adjudged to C. D., for his costs and charges by him laid out and expended in and about the prosecution of our writ of error brought into our said court for the correction of errors, of and upon a judgment rendered in our supreme court of judicature before our justices thereof, in favor of A. B. against the said C. D., in a plea of (trespass on the case upon promises), and which said judgment of our said justices of our said supreme court, was, for certain errors therein, reversed by our said court for the correction of errors; whereof the said A. B. is convicted as appears to us of record; and if sufficient goods, etc. (conclude as in usual form). Burr. App. 117, §228a; Yates' Forms 619.

B. *Under the Codes.*

1. *Execution Against Property.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

Whereas judgment was rendered on the _____ day of _____, one thousand eight hundred and _____, in an action in the _____ court, between A. B., plaintiff, and Y. Z., defendant,

in favor of the said (naming judgment creditor), against the said (debtor) **, for the sum of _____ dollars, as appears to us by the judgment-roll, filed in the office of the clerk of the county of _____ (or, of the clerk of said court). And whereas the said judgment was docketed in your county, on the _____ day of _____, in the year one thousand eight hundred and _____, and the sum of _____ is now actually due thereon with interest from the _____ day of _____: therefore we command you that you satisfy the said judgment (a) out of the personal property of the said judgment-debtor within your county; or if sufficient personal property cannot be found, then out of the real property in your county belonging to such judgment debtor on the day (a) when the said judgment was so docketed in your county, or at any time thereafter, in whose hands soever the same may be, and return this execution within sixty days after its receipt by you, to the clerk of (designating the clerk with whom the record of judgment is filed).

Dated at _____, the _____ day of _____, 18____.

(Signature of judgment-creditor or his attorney.) 2 Abb. Forms 603.

2. Execution Against Joint Property of All, and Separate Property of Some of Defendants.

(As in preceding form, substituting instead of the words between (a) (a), the following): Out of the joint personal property of all the defendants, and the separate personal property of the said Y. Z. (naming the defendant served) within your county; or, if sufficient personal property cannot be found, then out of the real property within your county belonging jointly to all the defendants, or separately to the said Y. Z. on the day. 2 Abb. Forms 604.

3. Execution Against Property in Hands of Personal Representatives, Etc.

(As in I, B, 1, to the *, continuing): As the executor of the will (or, the administrator of the goods, chattels, and credits which were) of M. N., late of _____, in the county of _____, deceased, in favor of said (judgment creditor), and against said (naming judgment-debtor) as such executor (or administrator), as aforesaid,

for the sum of _____ dollars, as appears by the judgment-roll, filed in the office of the clerk of _____ county (or, of said court). And whereas said judgment was docketed in your county on the _____ day of _____, in the year 18____, and the sum of _____ dollars is now actually due thereon, with interest from the _____ day of _____.

Therefore we command you that you satisfy the said judgment out of the personal property of said M. N. in the hands of said (judgment debtor) in your county. And return (concluding as in I, B, 1). 2 Abb. Forms 604.

4. Execution for Specific Real or Personal Property.

(As in I, B, 1, to the **, continuing): For the delivery to said (naming successful party) of the possession of the following described real (or personal) property, viz.: (describe the same particularly), (and, if personal property, add, or if a delivery thereof cannot be had then for _____ dollars, the value thereof, duly assessed), and also for _____ dollars (stating the sums recovered for damages and for costs in accordance with the judgment) as appears by the judgment-roll, filed in the office of the clerk of the county of _____.

And whereas, the said judgment was docketed in your county on the _____ day of _____, 18____ (and the sum of _____ dollars with interest from the _____ day of _____, 18____, is now actually due thereon); (and _____ dollars additional, with interest as aforesaid, in case the property is not delivered);

Therefore we command you, that you deliver the said property to the said _____; and that you satisfy the said sum of _____ dollars (damages and costs), with interest as aforesaid (and, also, in case a delivery of the said personal property cannot be had, the further sum of _____ dollars, with interest as aforesaid), out of the personal property of the said judgment debtor within your county; or if sufficient personal property cannot be found, then out of the real property in your county belonging to such judgment debtor on the day when the said judgment was docketed in your county, or at any time thereafter, in whose hands soever the same may be; and return this execution, within sixty days after its receipt by you, to the clerk

of (designating the clerk with whom the judgment record is filed).

(Date and signature as in I, B, 1.)
2 Abb. Forms 605.

C. *Erecutions Against the Body.*

1. *Capias Ad Satisfaciendum in Assumpsit.*

The people of the state of New York,
to the sheriff of the county of _____,
greeting:

We command you, that you take C. D., if he may be found in your county, and him safely keep, so that you may have his body before our justices of our supreme court of judicature, at the _____ in the city of _____, on the _____ Monday of _____ next,* to satisfy A. B., plaintiff, _____ dollars, which the said plaintiff, lately, in our supreme court, before our said justices thereof, recovered against the said defendant for his damages which he had sustained, * as well by reason of the not performing certain promises and undertakings then lately made by the said defendant to the said plaintiff, as for the costs and charges by the said plaintiff about his suit in that behalf expended; whereof the said defendant is convicted, as appears to us of record. And have you then there this writ.

Witness, Greene C. Bronson, esquire, our chief justice, at the _____ in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred and _____.

_____, clerks.
_____, attorney.

(Endorsed.) Supreme Court. A. B. v. C. D. Ca. sa. Ret. (May Term, 1846.)
_____, plaintiff's attorney.

Levy (or receive), etc. (as on the f. fa., I, A, 1.) Burr. App. 117, §229; Till. Forms 101.

2. *Capias Ad Satisfaciendum in Debt.*

As in last form to the first *, and then as follows): To satisfy A. B., plaintiff (one thousand) dollars of debt, which he, lately in our said court, before our said justices thereof, recovered against the said defendant, and also (forty-seven dollars and seventy cents), which, in our said court, were adjudged to the said plaintiff for the damages which he had sustained, as well by occasion of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended;

whereof the said defendant is convicted, as appears to us of record. And have you then there this writ. Witness, etc. (as in last form to the end). Burr. App. 118, §230.

3. *Capias Ad Satisfaciendum for Plaintiff in Debt, Qui Tam.*

(As in I, C, 1, to the first *, and then as follows): To satisfy A. B., who sued as well for us as for himself, in that behalf, of a certain debt of _____ dollars, which he lately, in our supreme court of judicature, before our justices thereof, recovered against the said C. D., that is to say: one moiety thereof to the said A. B. who sued as aforesaid, to his own proper use, and the other moiety thereof to our own proper use (and if the judgment were for costs, add, "and also _____ dollars, which in our said court, before our said justices thereof, were adjudged to the said A. B., who sued as aforesaid, and with his assent, according to the form of the statute in such case made and provided, for his costs and charges by him about his suit in that behalf expended"), whereof the said C. D. is convicted, as appears to us of record, etc. (as in I, C, 1, to the end). Burr. App. 118, §231; Till. Forms 101.

4. *Capias Ad Satisfaciendum in Replevin for Plaintiff.*

(As in I, C, 1, to the second *, and then as follows): As well on occasion of the taking and unjustly detaining of the goods and chattels of the said plaintiff, as for his costs and charges by him about his suit in that behalf expended; whereof the said defendant is convicted, as appears to us of record, etc. (as in I, C, 1, to the end). Burr. App. 119, §232; Till. Forms 103.

5. *Capias Ad Satisfaciendum in Trespass.*

(As in I, C, 1, to the second *, and then as follows): As well on occasion of a certain trespass (and assault) then lately committed by the said defendant against the said plaintiff, as for the costs and charges by the said plaintiff about his suit in that behalf expended; whereof, etc. (as in I, C, 1, to the end). Burr. App. 119, §234.

6. *Capias Ad Satisfaciendum in Case.*

(As in I, C, 1, to the second *, and then as follows): As well on occasion of a certain grievance then lately committed by the said defendant against

the said plaintiff, as for the costs and charges by the said plaintiff about his suit in that behalf expended; whereof, etc. (as in I, C, 1, to the end). Burr. App. 119, §235.

7. *Capias Ad Satisfaciendum in Trover.*

(As in I, C, 1, to the second *, and then as follows): As well on occasion of the converting and disposing of certain goods and chattels of the said plaintiff, by the said defendant, as for the costs, etc. (as in I, C, 1, to the end). Burr. App. 120, §236; Till. Forms 102.

8. *Capias Ad Satisfaciendum on Non Pros. for Not Declaring.*

(As in I, C, 1, to the *, and then as follows): To satisfy C. D., defendant, ——— dollars (the defendant's taxed costs), which lately, in our supreme court of judicature, before our aforesaid justices thereof, were adjudged to the said defendant, according to the form of the statute in such case made and provided, for his costs and charges by him laid out in and about his defence * of and upon our certain writ of *capias ad respondendum*, issued out of our said court, before our aforesaid justices thereof, at the suit of the said plaintiff, against the said defendant, for that the said plaintiff had not declared thereupon, in our said court, before our said justices, against the said defendant, before the end of ——— term, in the year of our Lord one thousand eight hundred and ———, being the next term after the appearance of the said defendant, at the suit of the said plaintiff, whereof the said plaintiff is convicted as appears to us of record, etc. (as in I, C, 1, to the end). Burr. App. 120, §237; Till. Forms 111.

9. *Capias Ad Satisfaciendum on Non Pros. for Not Replying.*

(As in the last form to the *, and then as follows): In a certain action of trespass on the case (or, as the action is), then lately commenced and depending in our said court, before our aforesaid justices thereof, at the suit of the said plaintiff, against the said defendant, for that the said plaintiff had not replied to certain pleas then lately pleaded by the said defendant in the said action, or further prosecuted the same; whereof, the said plaintiff is convicted, etc. (as in I, C, 1, to the end). Burr. App. 120, §238; Till. Forms 112.

10. *Capias Ad Satisfaciendum on Judgment as in Case of Nonsuit.*

(As in I, C, 7, to the *, and then as follows): In a certain action of trespass on the case (or as the action is), then lately commenced and depending in our said court, before our aforesaid justices thereof, at the suit of the said plaintiff, against the said defendant, for that the said plaintiff had neglected to bring a certain issue before then joined in the said action, on to be tried, according to the course and practice of our said supreme court, whereof the said plaintiff is convicted, as appears to us of record, etc. (as in I, C, 1, to the end). Burr. App. 120, §239; Till. Forms 112.

11. *Capias Ad Satisfaciendum on Nonsuit.*

(As in I, C, 7, to the *, and then as follows): In a certain action of trespass on the case (or as the action is), lately brought in our said supreme court, before our said justices thereof, by the said plaintiff, against the said defendant, for that the said plaintiff did not prosecute the said action; whereof the said plaintiff is convicted, etc. (as in I, C, 1, to the end). Burr. App. 121, §240; Till. Forms 112.

12. *Capias Ad Satisfaciendum on Verdict for Defendant.*

The people of the state of New York, to the sheriff of the county of ———, greeting:

We command you, that you take A. B., if he may be found in your county, and him safely keep, so that you may have his body before our justices of our supreme court of judicature, at the ———, in the city of ———, on the (first Monday of ——— next), to satisfy C. D., defendant, ——— dollars and ——— cents), which lately, in our supreme court of judicature, before our aforesaid justices thereof, were adjudged to the said defendant, according to the form of the statute in such case made and provided, for his costs and charges by him laid out, in and about his defence, in a certain action of trespass on the case (or as the action is), lately prosecuted in our said supreme court, before our aforesaid justices thereof, by the plaintiff, against the said defendant; whereof the said plaintiff is convicted, etc. (as in I, C, 1, to the end). Burr. App. 121, §241; Till. Forms 113.

13. *Capias Ad Satisfaciendum, Alias.*

The people of the state of New York,
to the sheriff of the county of
———, greeting:

We command you, as we have before
commanded you, that you take, etc. (as
in any other writ of *capias ad satisfaciendum*, altering the return and teste
to suit the case). Burr. App. 121, §242.

14. *Capias Ad Satisfaciendum, Pluries.*

The people of the state of New York,
to the sheriff of the county of
———, greeting:

We command you, as we have often-
times before commanded you, that you
take, etc. (as in any other *ca. sa.*, alter-
ing the return and teste to suit the
case). Burr. App. 122, §243.

15. *Capias Ad Satisfaciendum, Testatum in Assumpsit.*

The people of the state of New York,
to the sheriff of the county of
———, greeting:

Whereas we lately commanded our
sheriff of the county of ———, that
he should take C. D., defendant, if
he should be found within his county,
and him safely keep, so that he might
have his body before our justices of
our supreme court of judicature, at a
certain place and on a certain day now
past, to satisfy A. B., plaintiff, ———
dollars, which he lately in our said
supreme court, before our aforesaid
justices thereof, recovered against the
said defendant for the damages which
he had sustained, as well by reason
of the not performing certain promises
and undertakings then lately made by
the said defendant to the said plaintiff,
as for his costs and damages by him
about his suit in that behalf expended;
whereof the said defendant was con-
victed, as appeared to us of record;
and that he should have then and there
that writ. And our sheriff of the
county of ———, on that day re-
turned to our said court, that the said
defendant was not found within his
county; whereupon, on behalf of the
said plaintiff, it is sufficiently testified
to our said court that the said defend-
ant does lurk and secret himself in
your county. Therefore we command
you, that you take him, if he shall be
found within your county, and him
safely keep, so that you may have his
body before our justices of our said
supreme court of judicature, at the
——— in the city of ———, on

the (first Monday of ———) next,
to satisfy the said plaintiff for the
damages, costs and charges aforesaid;
and have you then there this writ.
Witness, etc. (teste in ordinary form,
as in I, C, 1). Burr. App. 122, §244;
Till. Forms 113.

16. *Capias Ad Satisfaciendum, Testatum in Debt.*

The people of the state of New York,
to the sheriff of the county of
———, greeting:

Whereas we lately commanded our
sheriff of the county of ———, that
he should take C. D. (recite the *ca. sa.*
as above, with the necessary changes).
And our said sheriff, etc., on that day
returned, etc. (as in last form through-
out, except that for "damages" you
say, "debt and damages"). Burr.
App. 122, §245.

17. *Capias Ad Satisfaciendum on Scire Facias on Judgment in Debt.*

The people of the state of New York,
to the sheriff of the county of
———, greeting:

We command you, that you take C.
D., if he may be found in your county,
and him safely keep, so that you may
have his body before our justices of
our supreme court of judicature, at the
——— in the city of ———, on
the (first Monday of ———) next, to
satisfy A. B., plaintiff, ——— dol-
lars of debt which he lately in our said
court, before our said justices thereof,
recovered against the said defendant,
and also ——— dollars and ———
cents), which in our said court were
adjudged to the said plaintiff for the
damages which he had sustained, as
well by occasion of the detention of
that debt as for his costs and charges
by him about his suit in that behalf
expended (if the action were for dam-
ages, vary the form as in I, C, 1),
whereof the said defendant was con-
victed, as appears to us of record. And
also ——— dollars (the costs of the
scire facias), which in our said court,
before our aforesaid justices thereof,
were adjudged to the said plaintiff, ac-
cording to the form of the statute in
such case made and provided, for his
costs and charges by him laid out in
and about the prosecution of our writ
of *scire facias* for having execution
upon the said judgment for the debt
and damages (or damages), aforesaid;
and whereupon it was considered in
our same court, before our aforesaid

justices thereof, that the said plaintiff should have his execution against the said defendant, of the debt and damages (or damages), aforesaid, according to the force, form and effect of the said recovery, as also appears to us of record. And have you then there this writ. Witness, etc. (as in I, C, 1, to the end). Burr. App. 123, §245a.

D. Execution Against the Person (Code).

(As in I, B, 1, to the †, continuing): And whereas, an execution against the property of the said ——— has been duly issued to the sheriff of the county of ——— (or to you), and returned unsatisfied; therefore we command you, that you arrest the said ———, and commit him (or them) to the jail of your county until he (or they) shall pay the said judgment, or be discharged according to law. And return (concluding as in I, B, 1). 2 Abb. Forms 605.

E. Setting Aside Execution.

1. Notice of Motion To Set Aside Fieri Facias as Irregular.

Sir: Please to take notice that, on the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol of the city of Albany, on the first Tuesday of ——— next, that the writ of fieri facias issued in this cause, and all the proceedings which have been had thereupon, be set aside for irregularity, with costs, and that the goods of the defendant taken and levied upon by virtue of the said writ be discharged from the said levy (or if the goods have been sold, "that the sum of ——— levied and paid into the hands of the sheriff of the county of ——— be restored to the defendant, and that the said sheriff retain the same in his hands until the further order of this court"), or for such other rule or order as the court may direct. Burr. App. 215, §434.

2. Order To Set Aside Fieri Facias as Irregular.

On motion of Mr. H., of counsel for the defendant, and after hearing counsel in opposition thereto, ordered, that the fieri facias issued in this cause be, and the same is hereby set aside for irregularity with ——— dollars costs, and that the goods of the defendant, taken and levied upon, by virtue of the said writ, be discharged from the said

levy (or otherwise, as the rule may direct). Burr. App. 467, §949.

3. Notice of Motion To Set Aside Capias Ad Satisfaciendum as Irregular.

Sir: Please to take notice that, on the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the ——— of the city of ———, on the first Tuesday of ——— next, that the writ of capias ad satisfaciendum issued in this cause to the sheriff of the county of ——— be set aside for irregularity with costs; and that the defendant be discharged from the custody of the said sheriff; or for such other rule, etc. Dated (March 17th, 1846). Burr. App. 216, §434a.

4. Order To Set Aside a Capias Ad Satisfaciendum as Irregular.

On motion, etc., ordered that the capias ad satisfaciendum, issued in this cause be set aside for irregularity, with ten dollars costs (and that the defendant be discharged from the custody of the sheriff of ——— on his stipulating not to bring an action for false imprisonment). Burr. App. 467, §949a.

5. Notice of Motion To Set Aside Execution.

Take notice that on the affidavit of which a copy is herewith served, and on the judgment and proceedings in this cause, the undersigned will move the court at a special term thereof to be held at ——— on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, or as soon thereafter as counsel can be heard, that the execution issued in this action be set aside with costs, and that the money levied thereon be restored to the defendant with interest thereon from the time of such levy.

6. Order Setting Aside Execution and Making Restitution (Code).

On reading and filing the affidavit of W. X., and on motion of O. P., for the defendant, and after hearing Q. R. (or and on proof of service of due notice of this motion, and no one appearing) for the plaintiff, in opposition thereto:

Ordered, that the execution issued in this action be, and the same is hereby set aside with ——— dollars costs, and that the moneys levied thereon be restored to the defendant, with interest

thereon from the time of such levy.
2 Abb. Forms 607.

F. *Indorsements (Code).*

1. *Indorsement on Execution.*

Levy \$——, with interest from the (date of entering judgment), besides your fees.

(Date and signature as in I, B, 1.)
(Address to sheriff.) 2 Abb. Forms

606.

2. *Indorsement on Execution on a Judgment by Confession, Where the Debt is Not All Due.*

Levy \$——, with interest thereon from the —— day of ——, 18—, being the amount now due on the judgment within mentioned, and also levy \$——, costs thereof, with interest thereon from the —— day of ——, 18—, besides your fees.

(Date and signature as in I, B, 1.)
(Address to sheriff.) 2 Abb. Forms

606.

3. *Indorsement on Execution Where Judgment is for Debt Secured by Mortgage.*

Levy \$——, with interest from the —— day of ——, 18—, besides your fees; but not out of any part of (describing the property), being the premises mortgaged by the defendant to ——, by mortgage, dated the —— day of ——, 18—, and recorded in the office of the —— of the county of ——, liber —— of mortgages, page ——, for securing the debt for which the judgment herein was rendered.

(Date and signature as in I, B, 1.)
(Address to sheriff.) 2 Abb. Forms

606.

G. *Sheriff's Certificate of Sale of Real Estate.*

I, W., J. (late) sheriff of the (city and) county of ——, do hereby certify that by virtue of a certain writ of fieri facias, issued out of and under the seal of the (supreme court of judicature of the people of the state of New York), in which A. B. is plaintiff and C. D. is defendant (or in favor of A. B., plaintiff, against C. D., defendant), to me directed and delivered, I did this day, in the manner provided by statute, sell at public vendue, unto D. L., of ——, for the sum of five thousand dollars, he being the highest bidder, and that being the highest price bidden for the same, all the right, title and interest of the said defendant C.

D., of which he was seised or possessed on the —— day of ——, one thousand eight hundred and ——, or at any time afterwards, of, in and to all that certain lot or parcel of land, situate, etc. (describing the property particularly), together with all and singular the appurtenances thereunto belonging, or in any wise appertaining. And I do further certify that the purchase money so bidden as aforesaid has been paid to me, and that the said purchaser will be entitled to a conveyance for the said premises, on the —— day of ——, one thousand eight hundred and —— unless the same shall be sooner redeemed, according to the statute. Given under my hand this —— day of ——, one thousand eight hundred and ——.

W. J., (late) sheriff.

Burr. App. 585, §1148.

H. *Venditioni Exponas.*

1. *Venditioni Exponas, General Form.*

The people of the state of New York, to the sheriff of the county of ——, greeting:

Whereas, by our writ we lately commanded you, that of the goods and chattels of C. D., defendant, in your county, etc. (here recite the *fi. fa.* to the end). And you at that day returned to our said justices, at the —— in the city of ——, that by virtue of the said writ to you directed, you had taken goods and chattels of the said defendant, to the value of the damages (or debt and damages), aforesaid, which said goods and chattels remained in your hands unsold, for want of buyers: Therefore we, being desirous that the said plaintiff should be satisfied his damages (or debt and damages), aforesaid, command you, that you sell, or cause to be sold, the goods and chattels of the said defendant, by you in form aforesaid taken, and every part thereof, for the best price that can be got for the same, and at least for the damages (or debt and damages) aforesaid. And have the money arising from such sale before our said justices of our supreme court aforesaid, at the (capitol in the city of Albany), on the (first Monday of January) next, to render to the said plaintiff, for his damages (or debt and damages) aforesaid. And have you then there this writ.

Witness, Greene C. Bronson, esquire,

our chief justice, at the ——— in the city of ———, the third Monday of ———, in the year of our Lord one thousand eight hundred and ———.

———, ———, clerks.

———, attorney.

Burr. App. 123, §246; Till. Forms 94.

2. *Venditioni Exponas for Part, Combined With Fi. Fa. for the Residue.*

The people of the state of New York, to the sheriff of the county of ———, greeting:

Whereas, by our writ we lately commanded you, that of the goods and chattels of C. D., defendant, in your county, etc. (reciting the fi. fa.). And you at that day returned to our said justices of our supreme court, at the ——— in the city of ———, aforesaid, that, by virtue of the said writ to you directed, you had taken goods and chattels of the said defendant, to the value of (two hundred) dollars, parcel of the damages (or debt and damages), aforesaid; which said goods and chattels remained in your hands unsold for want of buyers, and therefore that you could not have that money before our said justices of our supreme court of judicature aforesaid, at the ———, in the city of ———, at the day aforesaid: and that the said defendant had no other or more goods or chattels in your county, whereof you could cause to be made the residue of the damages (or debt and damages), aforesaid, or any part thereof, as by the said writ you were commanded. Therefore, we command you, that you expose to sale the goods and chattels of the said defendant, by you in form aforesaid taken, and have the said (two hundred) dollars, parcel of the damages (or debt and damages) aforesaid, before our said justices of our supreme court of judicature aforesaid, at the ——— in the city of ———, on the (third Monday of ———), next, to render to the said plaintiff for so much of the damages (or debt and damages) aforesaid: We also command you, that of the goods and chattels of the said defendant, in your county, you cause to be made ——— dollars, residue of the damages (or debt and damages) aforesaid. And if sufficient goods and chattels of the said defendant cannot be found in your county, that then you cause the damages (or debt and damages) aforesaid, to be

made of the real estate in your county, whereof the said defendant was seised, on the (tenth day of ———), in the year of our Lord one thousand eight hundred and ———, or at any time afterwards, in whose hands soever the same may be: And have that money, together with the said ——— dollars, parcel of the damages (or debt and damages) aforesaid, before our said justices of the supreme court of judicature aforesaid, at the day and place aforesaid, to render to the said plaintiff for his damages (or debt and damages) aforesaid: And have you then there this writ. Witness, etc. (as in preceding form to the end). Burr. App. 124, §247; Till. Forms 94.

II. Actions.

A. Declarations.

1. *Declaration on a Final Judgment.*

A. B., plaintiff in this suit, by E. F., his attorney, comes into this court, according to the form of the statute authorizing the commencement of suits by declaration, and complains of C. D., defendant in this suit, of a plea that he render to the said plaintiff the sum of ——— dollars and ——— cents (the amount of the judgment as docketed), lawful money of the United States of America, which he owes to, and unjustly detains from him. For that whereas the said plaintiff heretofore, to-wit, in the term of (May), in the year of our Lord one thousand eight hundred and ———, in the (supreme court of judicature of the people of the state of New York), at the ——— in the city of ———, before the aforesaid justices thereof, by the consideration and judgment of the said court, recovered against the said defendant the said sum of money above demanded, which, in and by the said court, were then and there adjudged to the said plaintiff, for his damages which he had sustained, as well by reason of the non-performance, by the said defendant, of certain promises and undertakings, then lately made by the said defendant to the said plaintiff, as for his costs and charges, by him about his suit in that behalf expended (if in debt, after the words, "recovered against the said defendant," add, "as well a certain debt of ——— dollars, as also ——— dollars, which, in and by the said court, before the aforesaid justices thereof, were then and there

adjudged to the said plaintiff, for his damages which he has sustained, as well by reason of the detention of the said debt, as for his costs and charges by him about his suit in that behalf expended); whereof the said defendant was convicted, as by the record and proceedings thereof, remaining in the said court, before the aforesaid justices thereof, more fully appears; which said judgment still remains in full force and effect, not reversed, satisfied, or otherwise vacated: And the said plaintiff hath not obtained any execution or satisfaction of or upon the said judgment so recovered as aforesaid: Whereby an action hath accrued to the said plaintiff, to demand and have of and from the said defendant the said sum of money above demanded. Nevertheless the said defendant (although often requested so to do) hath not as yet paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but hath hitherto wholly neglected and refused, and still neglects and refuses so to do. To the damage of the said plaintiff of one hundred dollars (enough to cover interest, etc.), and therefore he brings his suit, etc. Burr. App. 278, §546.

2. *Declaration on Judgment for Defendant.*

(Same as in preceding form, to and including the words, "recovered against the said defendant," and then proceed as follows): the sum of _____ dollars, above demanded, which in and by the said court of the said people, before the aforesaid justices thereof, were adjudged to the said plaintiff, and with his assent, for his costs and charges, by him laid out and expended in and about his defense of a certain action of trespass on the case on promises (or as the action is), then lately prosecuted in the said court by the said defendant against the said plaintiff, whereof the said defendant was convicted, as by the record, etc. (same as in preceding form to the end). Burr. App. 279, §547.

3. *Declaration on a Justice's Judgment.*

For that whereas, heretofore, to-wit, on the _____ day of _____, in the year eighteen hundred and _____, at the town of W., in the county of A., the said A. B. commenced an action of assumpsit against the said C. D., then (and still) being a resident of the said county, by summons before J. S.,

then (and still) being a justice of the peace in and for the said county, and having authority under and by virtue of article two, part three, title four, chapter two of the revised statutes of this state, entitled "Of the jurisdiction of justices' courts," and the act amending the same, passed May 14th, 1840, entitled "An act concerning justices' courts," to hold courts for the trial of actions of assumpsit in certain cases. The said summons was issued by and under the hand of the said justice, directed to any constable of the said county, commanding him to summon the said C. D. to be and appear before the said justice, at _____, in the said town of W., on the _____ day of _____, in the year eighteen hundred and _____, at _____ o'clock in the afternoon, to answer the said A. B. in a plea of trespass on the case; and was by the said justice delivered to I. J., then (and still) being a constable of the said county, who afterwards, and before the time of appearance therein mentioned, returned the same to the said justice, with a return thereupon in writing, with his name signed thereto, that he had, on the _____ day of _____, in the year, etc., served the same upon the said C. D. personally. At which said time and place of appearance mentioned in the said summons (if the defendant did not appear), the said A. B. appeared before the said justice, and the said C. D. did not appear, then nor within one hour thereafter, but therein made default. (If the defendant did appear, then say: the said A. B. and C. D. appeared before the said justice, and the said A. B. declared against the said C. D. upon an account for work and labor (or as the case may be), and claimed damages to the amount of one hundred dollars only (if the defendant appeared and pleaded, say): to which the said C. D. pleaded the general issue; the said justice then holding a court by authority of the acts aforesaid, for the trial of the said action. And such proceedings were thereupon had before the said justice, that the said A. B., afterwards, to-wit, on the _____ day of _____, in the year, etc. (or, if judgment was rendered the same day, "on the day and year last aforesaid"), at the place aforesaid, by the consideration and judgment of the said justice, recovered against the said C. D. the sum of

— dollars, for his damages and costs therein adjudged to the said A. B. by the said justice, and whereof the said C. D. is convicted. Which said judgment still remains in full force and effect, wholly unsatisfied, not paid nor reversed, annulled, nor set aside, nor hath the said A. B. had execution thereof. Whereby an action hath accrued, etc. (conclude in the ordinary form). Burr. App. 279, §548; 1 Humph. Prec. 682.

4. Declaration on Judgment of Foreign Court.

For that whereas, heretofore, to-wit, on, etc., a certain decree and sentence was made, in and by his majesty's court of sessions in Scotland, to-wit, at, etc. (venue), in a certain matter then depending in the same court, wherein the said plaintiff was pursuer, and the said defendant was defender, by which said decree it was found, and the lords of council and sessions being the judges of the same court, did thereby then and there find the said defendant liable to the said plaintiff in the sum of £——— sterling, as the said plaintiff's salary for eighteen nights he had been engaged to perform by the said defendant at certain theatres, etc. (set out the adjudicatory part of the decree carefully), as by the said decree and sentence more fully appears, of which said decree and sentence the said defendant afterwards, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, had notice, which said decree and sentence still remain in full force and effect, not in any wise reversed, set aside or otherwise vacated; and the said plaintiff hath not obtained any satisfaction of or upon the said decree or sentence for the said several sums of money so decreed and ordained as aforesaid, whereby an action hath accrued to the said plaintiff, to demand and have of and from the said defendant the said sum of £———, parcel of said sum above demanded. 2 Chit. Pl. 415.

B. Complaints.

1. Complaint on Judgment, General Form.

I. That on the ——— day of ———, 18—, at ———, in the court of ——— (or before M. N., a justice of the peace in and for the town of, etc.), the plaintiff recovered a judgment, which was duly given by said court (or justice) against the defend-

ant, for ——— dollars, in an action wherein this plaintiff was plaintiff (or defendant), and the defendant herein was defendant (or plaintiff).

II. That no part thereof has been paid (except, etc.). 1 Abb. Forms 333.

Note.—In some jurisdictions if more than ten years have elapsed since recovery of the judgment, that fact must be alleged; if a lesser period has elapsed it must appear that leave of court has been obtained. Therefore the statute must be consulted.

2. Complaint on Foreign Judgment of Court of General Jurisdiction.

I. That at the times hereinafter mentioned, the circuit court of the county of ———, of the state of ———, was a court of general jurisdiction, duly created by the laws of that state.

II. That on or about the ——— day of ———, the plaintiff commenced an action in said court (or, if the preceding allegation is not inserted, in the supreme court of the state of ———), against the defendant by the issue of summons (or other process), which summons was duly and personally served on the defendant (or in which action the defendant voluntarily and duly appeared in person, or by attorney).

III. That such proceedings were thereupon had, that on the ——— day of ———, 18—, in said action, the plaintiff recovered judgment, which was duly given by said court against the defendant, for the sum of ——— dollars.

IV. That no part thereof has been paid (except, etc.). 1 Abb. Forms 334.

3. Complaint Upon Justice's Judgment.

I. That on the ——— day of ———, 18—, at ———, before M. N., a justice of the peace in and for the town of ———, the plaintiff recovered a judgment, which was duly given by said justice, against the defendant for ——— dollars damages and ——— dollars costs, in an action wherein this plaintiff was plaintiff (or defendant), and the defendant herein was defendant (or plaintiff).

II. That on the ——— day of ———, 18—, a transcript of the same was filed and docketed in the office of the clerk of the county of ——— (if the judgment debtor resided in an-

other county, add: and on ——— a transcript of the same was filed and docketed in the office of the clerk of the county of ———, in which county the defendant then resided (or state ignorance of residence, etc., as in next form).

III. That on the ——— day of ———, 18—, an execution in due form was issued upon the said judgment against the personal and real property of the defendant, to the sheriff of said (last mentioned) county, in which county the defendant then resided (or allege non-residence; see next form).

Continue as in other forms. 1 Abb. Forms 570.

4. *Complaint on Foreign Judgment of Inferior Tribunal.*

I. That at the times hereinafter mentioned, M. N. was a justice of the peace, in and for the town of ———, in the county of ———, and state of ———, having authority under and by virtue of an act of said state, entitled ———, passed on the ——— day of ———, 18—, to hold court, and having jurisdiction as such over actions of (state the jurisdiction sufficiently to make it appear that it included the cause in question).

II. That on the ——— day of ———, 18—, at ———, aforesaid, the plaintiff commenced an action against the defendant before the said justice, by summons (or other process), duly issued by said justice on that day, for the recovery of (here designate the cause of action sufficiently to show it to be within the jurisdiction), which summons was duly and personally served on the defendant (or in which action the defendant voluntarily and duly appeared).

III. That such proceedings were thereupon had, that on the ——— day of ———, 18—, in said action the plaintiff recovered judgment, which was duly given by said justice against the defendant, for the sum of ——— dollars, to-wit, ——— dollars for said debt (or damages), and ——— dollars costs.

IV. That no part thereof has been paid (except, etc.). 1 Abb. Forms 335.

5. *Complaint on Judgment by Assize.*

I. That on the ——— day of ———, at ———, in the court of ——— (or before M. N., a justice of the peace in and for the town of, etc.),

one O. P. recovered a judgment which was duly given by said court (or justice) against the defendant, for ——— dollars, in an action wherein the said O. P. was plaintiff, and the defendant was defendant (or otherwise as the case was).

II. That thereafter (or on the ——— day of ———, 18—, at ———), said M. N. duly assigned said judgment to this plaintiff (of which the defendant had due notice).

III. That no part thereof has been paid (except, etc.). 1 Abb. Forms 333.

6. *Complaint by Purchaser at Sheriff's Sale for Waste Committed Before Conveyance.*

I. That on the ——— day of ———, 18—, the premises hereinafter described, being then owned in fee simple by one K. L., but being subject to the lien of a judgment theretofore recovered by M. N. against O. P., and docketed in said county, the sheriff of said county, by virtue of an execution thereon, sold the same, which are bounded and described as follows (here describe the premises).

II. That at such sale the plaintiff became the purchaser, and the sheriff executed and delivered to him a certificate of the sale, and subsequently, and on the ——— day of ———, 18—, and before this action, executed and delivered to the plaintiff a deed of the premises pursuant to the sale, and the plaintiff paid the purchase money therefor.

III. That intermediate the sale and the delivery of the deed, the defendant, being in possession (or the said ——— being in possession, the defendant, with his consent), cut and carried from the land one thousand pine trees, etc., of the value of ——— dollars. 1 Abb. Forms 479.

C. *Pleas.*

1. *Plea of Nul Tiel Record in Action on Judgment.*

And the said defendant, by ———, his attorney, comes and defends the wrong and injury, when, etc., and says that there is not any record of the said supposed recognizance (or, if in debt upon a judgment, say, "of the said supposed recovery"), in the said declaration mentioned remaining in the said court of our said lord the King, before the king himself (or in C. P., "in the said court of our said lord the king of the bench"), in the manner

and form as the said plaintiff hath above in his said declaration alleged, and this the said defendant is ready to verify. Wherefore he prays judgment if the said defendant ought to have or maintain his aforesaid action thereof against the said defendant, etc. 3 Chit. Pl. 994.

2. *Plea of Payment of Judgment.*

Because he says that after the recovery of the said judgment, and before the exhibiting of the bill of the said plaintiff against the said defendant in this behalf (or, if in C. P., or by original, "before the commencement of this suit"), to-wit, on, etc., at, etc. (venue), aforesaid, he the said defendant paid and satisfied to the said plaintiff the said sum of £———, in form aforesaid recovered. And this, etc. (conclude as in preceding form). 3 Chit. Pl. 996a.

3. *Plea, No Appearance in Foreign Court (a).*

And the said defendant, for a further plea in this behalf, by leave of the court here, etc., says that the plaintiffs their said action thereof ought not to have or maintain against him, because, he says, that he was never served with any process in the suit in which the judgment in the plaintiffs' declaration mentioned was obtained; that he did not appear thereto in person or by any duly authorized attorney; that he was not resident or present within the jurisdiction of said court in which the said judgment was rendered, at any time pending the said suit, or when judgment was rendered therein; that some person or persons, to-wit, James, Noyes and Barber, appear in the said suit for the defendant, but that neither they nor any person or persons were ever authorized by the defendant to do so, and this he is ready to verify; wherefore he prays judgment if the said plaintiffs their aforesaid action thereof ought to have or maintain against him. Price v. Ward, 25 N. J. L. 225.

Plea, No Appearance in Foreign Court (b).

And the said defendant, by P. B., his attorney, comes and defends the wrong and injury when, etc., and says that the plaintiffs their said action thereof ought not to have or maintain against him, because he says, that he was never served with any process in the suit in which the judgment in the plaintiffs' declaration mentioned

was obtained; that he did not appear to said suit in person or by attorney; and that he was not resident nor present within the jurisdiction of the said court in which the said judgment was rendered, at any time pending the said suit, or when judgment was rendered therein, and this he is ready to verify; wherefore he prays judgment if the plaintiffs ought to have or maintain the aforesaid action thereof against him. Price v. Ward, 25 N. J. L. 225.

D. *Answers (Code).*

1. *Answer, Invalidity of Foreign Judgment.*

I. That no process was served upon him in the action mentioned in the complaint.

II. That he never appeared in person or by attorney in the said action. 2 Abb. Forms 102.

2. *Answer, Invalidity of Judgment Against Non-Resident.*

I. That the action in which the supposed judgment against him was alleged to have been recovered arose upon an alleged contract.

II. That when that action was commenced this defendant was a non-resident of the state of New York and a resident of Illinois.

III. That he never appeared in that action, and never was personally served in the state of New York with summons therein.

IV. That when the order for publication of the summons in that action was made, and for a long time before and after, he had no property or rights of property within the state of New York; and that when that judgment was rendered, said court had acquired no jurisdiction of his person. 2 Abb. Forms 102.

3. *Answer, Fraud in Recovery of Judgment.*

I. That after the commencement of the action mentioned in the complaint, the said plaintiff came to this defendant, and, with intent to deceive him, and prevent him from defending it, falsely and fraudulently represented (here state representations, e. g., thus): that he, said plaintiff, intended to and would dismiss said action, and that this defendant need not appear therein.

II. That, relying on said representations, this defendant omitted to appear therein, as he otherwise would have done.

III. That the plaintiff thereafter,

and without the knowledge of, or notice to, this defendant, proceeded to judgment therein, with intent to defraud him.

Wherefore the defendant asks that said judgment be adjudged void, and the plaintiff be forever restrained from enforcing it; and for his costs of this action 2 Abb. Forms 101.

JUDGMENTS AND DECREES, REVIVAL OF.

- I. Notice of Motion To Revive Dormant Judgment, 747
- II. Order Reviving Dormant Judgment, 747
- III. Notice of Motion To Vacate Order Reviving Dormant Judgment, 748
- IV. Complaint for Revival of Judgment by Action, 748

CROSS-REFERENCES:

SCIRE FACIAS:

- Scire Facias To Revive a Judgment in Assumpsit;
- Scire Facias To Revive Judgment in Debt;
- Revival of Judgment Against Terre Tenants;
- Scire Facias To Revive Judgment in Covenant;
- Scire Facias To Revive a Judgment in Replevin;
- Scire Facias in Trespass;
- Scire Facias After Former Revival;
- Scire Facias by Executor of Sole Plaintiff After Interlocutory Judgment and Before Inquiry;
- Scire Facias by Executor of Sole Plaintiff After Final Judgment;
- Scire Facias by Administrator After Final Judgment in Assumpsit;
- Scire Facias To Revive Judgment in Case;
- Return to Scire Facias Served on Defendant.

I. Notice of Motion To Revive Dormant Judgment.

"Comes now the plaintiff, Joseph McMullen, and represents and shows to the court that heretofore, to-wit, on the 28th day of October, 1892, the above named plaintiff obtained judgment in this court against the above named defendant, James McCornack, for the sum of \$2,400.00, to bear interest at the rate of eight per cent per annum from the said date of its rendition, and the costs of said action taxed at \$——, which said judgment is cited and made a part hereof.

"That said judgment remains due and wholly unpaid; that by operation of law the said judgment has become dormant.

"Plaintiff therefore moves the court that said judgment be by the order of this court revived against the defendant, and for all other proper relief in the premises.

"Joseph McMullen,

"By J. A. Wilson, His Attorney."

Wilson v. McCornack, 10 Okla. 180, 61 Pac. 1068.

Note.—Sufficiency not questioned. Order of revival set aside because of service of notice by attorney instead of sheriff as required by statute.

II. Order Reviving Dormant Judgment.

"And now on this 16th day of March, 1898, the same being one of the regular judicial days of said court, this cause came on for hearing on the motion of the plaintiff for a revivor of this judgment, and it appearing to the court that said judgment was rendered on the 28th day of October, 1892, and that the same has become dormant by the lapse of time; and it further appearing to the court that the plaintiff has served due and legal notice of this motion for revivor upon the said defendant; and it further appearing that said judgment was rendered for the sum of \$2,397.96, and to draw interest from the 28th day of October, 1892, at the rate of seven per cent per annum and that said interest accrued to this date amounts to \$917.46, and that costs accrued herein amounts to \$6.80;

"It is therefore considered, ordered and adjudged by the court, that said motion to receive said judgment be sustained, and that the same is hereby in all things revived, the same as if it had not become dormant by the lapse of time. It is further adjudged that there is due on said judgment the principal sum of \$2,397.96, and the further sum of \$917.46, interest accrued to this date since the rendition of said judgment of \$3,315.41, and that the costs accrued herein, which is a part of this judgment, is the sum of \$6.80, and it is further ordered by the court that execution issue herein on the praecipe of the plaintiff.

J. R. Keaton, Judge."

Wilson v. McCornack, 10 Okla. 180, 61 Pac. 1068.

III. Notice of Motion To Vacate Order Reviving Judgment.

"Comes now the above named defendant, James McCornack, and moves the honorable court to set aside and vacate the order of revivor made on the 16th day of March, 1898, for the following reasons:

"First. That no such judgment was ever rendered against this defendant as that recited in the order of revivor complained of by this defendant.

"Second. That no service of motion, process, writ, or summons, was ever made upon the defendant as required by law.

"Wherefore, the defendant asks that said order of revivor be held for naught, and that the same be vacated and set aside as void for the reasons herein recited.

A. B. Hammer, Attorney for Plaintiff.

Wilson v. McCornack, 10 Okla. 180, 61 Pac. 1068.

IV. Complaint for Revival of Judgment by Action.

"The plaintiffs complain of the defendant, and allege, that heretofore, to-wit, on the 3d day of December, 1855, the above named Philander Wheeler recovered a judgment in the supreme court of the state of New York against the said defendant, in an action upon contract, for the sum of eleven hundred and thirty-four dollars and eighteen cents, damages and costs, which said judgment was duly docketed in the office of the clerk of the county of Dutchess, in said state, on the 3d day of December, 1855, in which action said Philander was plaintiff, and said Orville was defendant, which judgment still remains undischarged and unpaid, and not reversed or set aside, and is now in full force and effect, and upon which judgment execution hath not been issued; that after the rendition of said judgment, and on or about the 15th day of December, in the year 1855, the said Philander died, leaving a last will and testament, and codicil; that said Philander was, up to the period of his death, a resident of the town of Salisbury, in the state of Connecticut; that after the death of the said Philander Wheeler, said last will and testament with codicil, was duly proven in the court of probate for the district of Salisbury, in said state of Connecticut,

a court duly organized, having authority to take proof of wills and admit the same to probate, and appoint such administrators as next described, under and by virtue of the laws of the state of Connecticut; and said plaintiffs were, by said probate court, duly appointed administrators, with the will annexed, of the goods, chattels and credits which were in said state of Connecticut, of the said Philander, deceased; that thereupon said plaintiffs accepted said appointment, were duly qualified and entered upon the discharge of the duties of such administrators; that afterwards, and on the 29th day of February last, said plaintiffs were duly appointed by the surrogate of the county of Dutchess, in the state of New York, administrators, with the will and codicil annexed, of all the goods, chattels and credits, which were of the said deceased in said state of New York, and thereupon were duly qualified, and entered upon the discharge of the duties of said office; that said defendant resided in said county of Dutchess at the period of the death of the said Philander, and immediately previous thereto he had assets which then were, or before the appointment of said plaintiffs as such administrators by said surrogate of the county of Dutchess, came within said county of Dutchess.

"Wherefore plaintiffs ask the judgment of this court in their favor, that execution may issue upon said judgment against said defendant in the name of the plaintiffs, to be levied of any lands which the defendant held when the said judgment was docketed, or for such further or other order, judgment or relief as may be meet and proper, with costs of suit." Wheeler v. Dakin, 12 How. Pr. (N. Y.) 537.

JUDGMENTS, SATISFACTION OF.

I. Satisfaction Piece, 748

II. Entry, 749

A. On Payment, 749

B. On Execution, 749

CROSS-REFERENCE:

APPEALS:

Complaint for Repayment of Judgment Paid and Afterwards Reversed.

I. Satisfaction Piece, Judgment.

——— court. Of ——— term, in

the year one thousand eight hundred and —, A. B. v. C. D.

(City and) county of —, ss.:

Satisfaction is acknowledged between A. B., plaintiff, and C. D., defendant, of a plea of trespass on the case (or as the action is), for — dollars damages and costs (or of a plea of debt for — dollars of debt and — dollars damages and costs). Judgment docketed the — day of —, one thousand eight hundred —.

Taken and acknowledged before me this — day of —, 18—, by the said A. B., known to me (or proved to my satisfaction) to be the plaintiff in the above entitled cause (or by the said E. F., known to me [or proved to my satisfaction] to be the attorney for the plaintiff in the above entitled cause [or by the said K. L., known to me, etc.] to be the executor [or administrator] of the said A. B., deceased).

M. N., commissioner of deeds.

A. B.

(Or E. F., attorney for plaintiff, or K. L., executor of A. B., deceased, etc.)

Burr. App. 469, §956.

II. Entry.

A. Entry of Satisfaction of Judgment on Payment.

(At the end of the judgment record, add the following): Afterwards, to-wit, on the — Monday of —, in the term of (January), in the year of our Lord one thousand eight hundred —, before the (justices) of the — court of — (of the people) of the state of —, at the — in the city of —, comes the aforesaid plaintiff, by his attorney aforesaid (or by I. J., his attorney, in this behalf thereto specially constituted), and acknowledges himself to be satisfied by the said defendant, of the damages, costs and charges aforesaid (or, in debt, of the debt and damages aforesaid). Therefore let the said defendant be thereof acquitted, etc. Burr. App. 97, §187; Caines' Forms 283; Till. Forms 149.

B. Entry of Satisfaction of Judgment on Return of Fieri Facias.

Afterwards, to-wit, on the — Monday of —, in January term, in the year of our Lord one thousand eight hundred and —, the said plaintiff comes here into court, by his attorney aforesaid, and prays the writ

of (the people of) the state of New York, of fieri facias, to be directed to the sheriff of the county of — for levying the said sum of — dollars, being the (damages aforesaid in form aforesaid assessed), and it is granted to him, returnable before the justices of the — court of — of the (people) aforesaid, in — days from the receipt thereof by the said sheriff. And now at this day, that is to say, on the — Monday of — in — term, in the year last aforesaid (the term in or after which the sixty days expire), before the said justices of the — court of — aforesaid, at the — in the city of — comes the said plaintiff by his said attorney, and the sheriff, to-wit, H. B., esq., sheriff of the said county of —, now here returns that he has caused to be levied of the goods and chattels of the said defendant the said sum of — dollars, as by the said writ he was commanded. And hereupon the said plaintiff freely here in court acknowledges that he is fully paid and satisfied all such damages so assessed as aforesaid, together with his costs of suit, and all reasonable charges for executing the said execution: Therefore let the lands and goods of the said defendant be forthwith discharged of the said execution, according to the form of the statute in such case made and provided. Burr. App. 97, §188; Caines' Forms 283; Till. Forms 149.

JUDICIAL SALES.

- I. Notice of Sale, 750
- II. Referee's Report, 750
- III. Referee's Report, Purchase Not Completed, 750
- IV. Order Setting Aside Sale, 751
- V. Bond for Re-sale, 751
- VI. Order Confirming Sale, 751
- VII. Affidavit To Compel Purchaser To Complete, 751
- VIII. Notice of Motion To Compel Purchaser To Complete, 752
- IX. Order Compelling Purchaser To Complete, 752
- X. Order Discharging Purchaser, 752

CROSS-REFERENCE:

PARTITION:

Order for Sale of Premises in Partition;

Report of Commissioners of Sale in
Partition;

Order To Confirm Sale.

I. Notice of Sale of Real Property Under Foreclosure or Partition.

By virtue of a judgment of foreclosure and sale (or of partition and sale), made in the above entitled action on the _____ day of _____, 18—, the subscriber, a referee, for that purpose duly appointed, will sell, at _____, in _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon of that day, the real estate (and mortgaged premises) directed by said judgment to be sold, and therein described as follows (describe premises, each lot separately).

(Date and signature of referee and attorney.) 2 Abb. Forms 608.

II. Referee's Report of Sale in Partition, Foreclosure, or Other Action.

To the _____ court of _____.

In pursuance of a judgment of this court, in this action, bearing date the _____ day of _____, 18—, I, R. F., referee, to whom the execution thereof was confided, do report:

That I caused notice of the time and place of sale of the premises mentioned in the judgment, containing a brief description thereof, to be published (here state mode, so as to show compliance with the directions of the judgment and rules of court). And agreeably to said notice, I did, at the time and place specified in the notice, to-wit, the _____ day of _____, 18—, at noon, attend at the _____ in said city, and exposed said premises for sale, by public auction to the highest bidder.

And I further report that the said premises were then and there fairly struck off and sold to M. N. for _____ dollars, he being the highest bidder therefor, and that being the highest sum bid for the same.

(Or, where there are several parcels): And I further report that the several lots or parcels of land so directed to be sold as aforesaid, were put up for sale separately, and were each and every of them fairly struck off and sold to M. N., for the following sums respectively (here name the parcels and prices); those sums being the highest sums bid for the said lots respectively, and the said M. N. being the highest bidder therefor; which several sums

amount in the aggregate to _____ dollars.*

And I do further report that I received from the said purchaser the amounts so bid by him as above mentioned, and that thereupon I executed, acknowledged and delivered to said purchaser the usual referee's deed for said premises, and that I have paid over and disposed of the purchase-money or proceeds of sale as follows, viz.:

I have retained in my hands the sum of _____ dollars, being the amount of my fees and expenses on said sale.

I have paid (here enumerate in detail the payments made, according to the judgment; and in case of a surplus in foreclosure, add): and I have deposited the balance, being the sum of _____ dollars, in the hands of the county treasurer of _____ county to the credit of the clerk of this court, as directed by said judgment.

(In case of a deficiency in foreclosure, substitute for the foreclosure sentence): And I have paid the plaintiff, through his attorney, the whole of the residue, being the sum of _____ dollars; and I also report that the deficiency due to the plaintiff from the defendant Y. Z., and for which he is personally liable under the judgment herein, is _____ dollars, with interest from the date of this my report. I have taken receipts for the sum so paid, which are hereto annexed. The schedule hereto annexed contains a statement of the sums thus received and paid out.

(I do also report that I have let the said M. N. into the possession of said premises.)

All which is respectfully submitted.
2 Abb. Forms 608.

III. Referee's Report of Sale in Partition, Foreclosure, or Other Action, Where Purchaser Has Not Completed His Purchase.

(As in preceding form to the *, concluding thus):

That the terms and conditions of such sales were reduced to writing, and made known to the persons attending such sale, previous to putting up said premises, and were as follows (that the purchaser of each lot or separate parcel, was to pay ten per cent. of the purchase money down, on the day of sale, and the residue when the sale should be confirmed and the deed de-

livered). And that the said M. N. has signed the written conditions of sale above mentioned, together with an acknowledgment that he has purchased the premises upon those terms, and he has paid to me the amount required to be paid down.

All of which is respectfully submitted. 2 Abb. Forms 610.

IV. Order Setting Aside Sale on Ground of Mistake and Inadequacy of Price.

(As in IX, adding at the end):

And that the sale be set aside on condition that the defendant pay to M. N., the purchaser, upon demand, his costs and expenses attending the purchase, which are hereby fixed and allowed at _____ dollars, together with _____ dollars costs of attending this motion.

And it is further ordered that if the said condition be complied with, the plaintiff be at liberty to cause the mortgaged premises to be again exposed for sale by the same referee, and according to the directions in the judgment in this action; and that the costs and expenses of the former notice and sale on the part of the plaintiff, to be ascertained and declared by said referee in his report of such second sale be included in the costs of this action, and be chargeable with the other costs of this action, upon the mortgaged premises; and that a copy of this order be forthwith served on the attorney for the plaintiff, and also on the purchaser or his counsel. 2 Abb. Forms 612.

V. Bond Required as Condition of Ordering Re-Sale.

Know all men by these presents, that we, W. X. and Y. Z., of _____, are held and firmly bound unto A. B., of _____, in the sum of _____ dollars, lawful money of the United States of America, to be paid to the said obligee, his executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the _____ day of _____, 18—.

Whereas, at a special term of the supreme court of the state of New York, held at the city hall, in the city of New York, on the _____ day of _____, 18—, an order was duly en-

tered in the above entitled cause, setting aside the sale of the premises heretofore had under the judgment in said cause, and described in the complaint in this action; and ordering a resale of the same, upon the defendant filing a bond with sureties, to be approved by a judge, that at least the sum of _____ dollars, and the expenses of a resale, shall be bid by a bona fide bidder at said resale. Now the condition of this obligation is such that if, on said resale, there shall be a bona fide bid of _____ dollars, and in addition thereto of a sum sufficient to pay the expense of said resale, and such bidder shall then and there, if the property is struck down to him, complete his bid as required by the terms of said resale, then this obligation to be void; otherwise to be and remain in full force and virtue. 2 Abb. Forms 613.

VI. Order Confirming Referee's Report of Sale.

On reading and filing the report of R. F., esq., referee, appointed to sell the premises described in the complaint in this action, which report bears date the _____ day of _____, 18—, and on filing proof of service of due notice of this motion on all the parties who have appeared in this action:

Ordered, that the said report be, and the same is hereby in all respects confirmed. 2 Abb. Forms 610.

VII. Affidavit To Move To Compel Purchaser To Complete His Purchase.

O. P., being sworn, saith: That he is one of the plaintiff's attorneys in this action; that the action was instituted for (the foreclosure of a mortgage), and the (mortgaged) premises were offered for sale, under the direction of the sheriff of _____ county (or of R. F., esq., referee, whose report of sale is hereto annexed), on the _____ day of _____, 18—, under the usual terms of sale, and purchased by M. N.; that by the terms of sale, the deed was to be delivered to the purchaser, and the purchase money was to be paid to the sheriff (or to said referee) on the _____ day of _____, 18—. That said purchaser declines to complete his purchase, alleging that the proceedings in foreclosure are irregular and void in this, viz. (here indicate the objections made, e. g., thus): that the summons is not cor-

rectly published, and that the defendants W. X. and Y. Z., who are proceeded against by advertisement, are not foreclosed thereby. Deponent further states that a copy of said summons, as advertised, is hereto annexed. 2 Abb. Forms 611.

VIII. Notice of Motion To Compel Purchaser To Complete His Purchase.

Take notice that on the affidavit of which a copy is herewith served, and on the judgment and proceedings in this cause, the undersigned will move the court, at a special term thereof to be held at ———, on the ——— day of ———, 18—, at ——— o'clock in the ——— noon, or as soon thereafter as counsel can be heard, for an order requiring you to complete your purchase mentioned in said affidavit, and pay the amount bid therefor, and for such other relief as may be just, together with the costs of this motion.

(Address to purchaser.) 2 Abb. Forms 610.

IX. Order Compelling Purchaser To Complete His Purchase.

On reading and filing the affidavit of O. P. (and the report of R. F., esq., referee herein), and after hearing O. P. for the motion, and Q. R. (or and on proof of service of due notice of this motion, and no one appearing) in opposition:

Ordered, that said motion be and the same hereby * is granted. 2 Abb. Forms 611.

X. Order Discharging Purchaser.

(As in preceding form to the *, continuing): denied, and that M. N., the purchaser, be discharged from his said purchase.

And it is further ordered that R. F., esq., the referee in this action (or the sheriff of said ——— county), repay to said M. N. his said deposit.

And it is further ordered that the plaintiff pay to said M. N., on demand (or within ——— days after service of this order), (interest thereon from the time when the purchase was to have been completed, together with) his expenses of examining the title, which are hereby fixed and allowed at the sum of ——— dollars, together with ——— dollars costs of this motion. 2 Abb. Forms 612.

JURIES AND JURORS.

I. Venire, 752

A. *Venire To Summons Jury Drawn Pursuant to Statute*, 752

B. *Venire for a Foreign Jury*, 753

II. Return by Officer to Venire, 753

III. Order for Certification of Jury List Nunc Pro Tunc, 754

IV. Challenge to the Array, 754

V. Challenge to the Array, Entry of, 754

VI. Plea to Challenge of Jury, 754

VII. Replication to Plea To Challenge to Jury, 755

VIII. Notice of Motion for Foreign Jury, 755

IX. Order for Foreign Jury, 755

X. Notice of Motion for Special Jury, 755

XI. Affidavit To Move for Special Jury in Action for Libel, 755

XII. Order for Special or Struck Jury, 755

XIII. Application for Elisors To Summon Special Jury in Criminal Case, 756

XIV. Notice of Striking Jury, 756

CROSS-REFERENCES:

EMINENT DOMAIN:

Application for Assessment of Damages by Jury in Condemnation Proceedings;

Order To Summon Jury in Condemnation Proceedings.

JEOPARDY:

Plea, Discharge of Jury Without Verdict;

Replication to Plea of Jeopardy.

NEW TRIAL:

Affidavit To Move for a New Trial on the Ground of Misconduct of a Juror;

Affidavit To Move for New Trial on Ground of Improper Communication by Plaintiff to Jury.

SPECIAL INTERROGATORIES TO JURIES:

Form of Verdict on Special Interrogatories.

VIEW BY JURY:

Order Directing View by Jury.

WITHDRAWAL OF JUROR:

Entry of Withdrawal of Juror.

I. Venire.

A. *Venire To Summon Jurors Drawn Pursuant to Statute*.

Commonwealth of Massachusetts. Plymouth, ss. To either of the constables of the town of Duxbury in our said county, greeting: (Seal.)

We command you that without delay you make known unto the selectmen and town clerk of said Duxbury and them warn to assemble at the town clerk's office, or at some other public place appointed for the purpose in said town, there by you made known, and be present at the draft and selection of one person qualified to serve as juror, of good moral character, of sound judgment, and free from all legal exceptions, to serve as traverse juror, at our supreme judicial court, to be holden at Plymouth, within and for our county of Plymouth, on the third Tuesday of May next. And you will take care that the meeting for the draft of such juror be held not less than seven days, and not more than twenty-one days, before the day when they are required to attend.

We also command you, that four days, at least, before the day when they are required to attend, you summon the person so drawn and selected, to attend at our said court, on Tuesday the eighteenth day of said May at 11 of the clock in the forenoon.

Hereof fail not, and make due return of this venire, with your doings herein, to the clerk's office, four days before the opening of said court.

Witness, Marcus Morton, Esquire, at Plymouth, the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and eighty-six.

Wm. H. Whitman, clerk.

Com. v. Besse, 143 Mass. 80, 8 N. E. 878.

B. Venire for Foreign Jury (From Another County).

The people of the state of New York, to the sheriff of the county of Schenectady (the county from which the jury is to come), greeting: (Seal.)

We command you, that you cause to come before our justices of our Supreme Court of Judicature, at the City Hall in the city of New York, on the first Monday of May next (the term following the circuit at which the cause is to be tried), (or before the justices of the supreme court, circuit judges, or some or one of them, at a circuit court to be held in and for the county of Rensselaer), (the county where the cause is to be tried), at the court-house in the city of Troy, in the said county of Rensselaer,

on the ——— day of ——— (the time of holding the circuit), if they, or any or either of them shall sooner come, according to the form of the statute in such case made and provided), twelve good and lawful men of your county, each of whom shall be assessed for personal property belonging to him in his own right, to the amount of two hundred and fifty dollars, or who shall have a freehold estate in real property in your county belonging to him in his own right, or in the right of his wife, to the value of one hundred and fifty dollars, free from all reprises, debts, demands or incumbrances whatsoever, by whom the truth of the matter may be better known, and who are in no wise of kin either to A. B. the plaintiff, or C. D. the defendant, to make a certain jury of the country between the parties aforesaid, in a plea of trespass on the case (or whatever the action is), because as well the said plaintiff as the said defendant between whom the controversy is, have put themselves upon the jury. And have you then there the names of those jurors, and this writ. Witness (Greene C. Bronson), Esquire, our Chief Justice at the (capitol in the city of Albany, the eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-six).

—————, ———, clerks.

E. F., attorney.

Burr. App. 485, §990; Till. Forms 69.

II. Return by Officer to Venire.

Duxbury, April 28, 1886.

Plymouth, ss.

In obedience to this venire, I have this day served the same upon the selectmen and town clerk of said town, and on the twenty-eighth day of April, 1886, Robert T. Randall was openly drawn by one of the selectmen from the jury box, to serve as traverse juror at the said court; and on the twenty-ninth day of April, 1886, I summoned said person to attend said court, by reading to him this venire, with the endorsement thereon of his having been drawn (or by leaving at his place of abode a written notification of) his having been drawn traverse juror as aforesaid, and of the time and place of the sitting of the said court and the time when he will be required to

attend; and now make return of this venire.

Wm. J. Alden,

Constable of the town of Duxbury.

Com. v. Besse, 143 Mass. 80, 8 N. E. 878.

III. Order for Certification of Jury List *Nunc Pro Tunc*.

"It appearing to the court that James Tobin, Charles S. Bohlor, Chas. H. Sibley and Walter A. Clark, four of six jury commissioners who revised the list of grand and traverse jurors at the time of the last revision prescribed by law, are here in court, the two other jury commissioners, Chas. Spaeth and Joshua K. Evans, having, since the date of said revision, departed this life, and that said surviving commissioners are ready to certify that the list made out at said revision and now presented to them, contains all the names placed in the grand and the traverse jury boxes respectively at said last revision. And the clerk of this court, who is ex-officio clerk of said board of jury commissioners, is also ready to certify to said list, and that the names of the grand jurors mentioned in the third plea in abatement are in the jury box by them revised and on the list made out by them at said revision.

"It is ordered that said commissioners and said clerk be allowed to certify said list *nunc pro tunc*." *Jackson v. State*, 76 Ga. 551.

IV. Challenge to the Array.

(Title of the cause.)

And now, at this day, to-wit: (the time and place, etc.), came as well the aforesaid plaintiff, as the aforesaid defendant, by their respective attorneys aforesaid, and the jurors of the jury empaneled in this cause, being summoned, also came, and hereupon, the said (defendant) challenges the array of the said panel; because he says, that, etc. (here set forth the matter of challenge with certainty and precision), and this he is ready to verify: Wherefore, he prayeth judgment, and that the said panel may be quashed.

G. H., attorney for defendant.

Burr. App. 70, §140; Yates' Forms 72.

V. Challenge to the Array, Entry of.

(After appearance of the jury in the postea, proceed as follows): And

hereupon the said defendant, by G. H., his attorney, challenges the array of the said panel because he says that, etc. (here set forth the cause of challenge). Wherefore he prays judgment, and that the said panel may be quashed, etc. Burr. App. 96, §186; Yates' Forms 782.

VI. Plea to Challenge of Jury.

And hereupon the people aforesaid, by Alanson Munger, District Attorney of the county of Tioga aforesaid, answers the said challenge so made by the said John M. Thurston, and says, that after the drawing of the said thirty-six jurors, before mentioned, for said court of Oyer and Terminer, in due and legal manner, the said order of the said Wm. H. Shankland, one of the justices of the Supreme Court, ordering and directing the drawing of twenty-four additional petit jurors to attend the said term of the said court of Oyer and Terminer, was obtained, served and filed with the clerk of said county of Tioga; that after the time of drawing the said thirty-six jurors, and before the time for the drawing of the said twenty-four additional jurors, under and in pursuance of said order, a new return of jurors had been made by the proper town officers of the several towns in the said county of Tioga, as provided by statute, to the said clerk; that thereupon and before the time for drawing the said twenty-four additional jurors, the said county clerk had destroyed (as he was required by law to do) the list of jurors or ballots from which the jurors to attend the court of Oyer and Terminer of said county had theretofore been drawn, and that the said twenty-four additional jurors, so required by said order, were drawn in manner and form directed by statute in such cases made and provided, by the said clerk from and out of said new lists of jurors, so newly furnished to him, the said clerk as aforesaid, and that the full number of twenty-four additional jurors were drawn out of the proper lists or ballots, in pursuance of said order and in the manner provided by law, and the twenty-four jurors thus drawn, as last aforesaid, were duly summoned, which said people are ready to verify, wherefore they pray judgment that the said panel may not be quashed, etc. *People v. Thurston*, 2 Park. Cr. (N. Y.) 49, 54.

VII. Replication to Plea to Challenge of Jury.

And the said John M. Thurston, protesting that the said answer and the matters therein contained, are not a sufficient answer in law to said challenge; replies to said answer that twenty-four additional jurors were not drawn, as required by said order, or in manner and form directed by the statute in such case made and provided, by the said clerk, and that the full number of twenty-four additional jurors were not drawn from and out of the proper list or ballots, in pursuance of said order, or in the manner provided by law, but that one of the jurors of the twenty-four drawn, in pursuance of said order, was also one of the thirty-six petit jurors previously drawn for said term of said court of Oyer and Terminer, and was not an additional juror thereto, and that but twenty-three additional jurors were in fact drawn in pursuance of said order. And this he is ready to verify; wherefore, as before, he prays judgment that the panel may be quashed, etc. *People v. Thurston*, 2 Park. Cr. (N. Y.) 49, 54.

VIII. Notice of Motion for Foreign Jury.

Sir—Please to take notice, that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol in the city of Albany, on the first Tuesday of (April) next, that the issue in this cause be tried by a jury to be summoned from the county of _____. Dated, March 14th, 1846.

Yours, etc.,

G. H., attorney for defendant,
(or plaintiff).

To E. F., esquire, attorney for plaintiff (or defendant).

Burr. App. 211, §417.

IX. Order for Foreign Jury.

On reading and filing an affidavit of due service of notice of motion in this cause, and on motion of Mr. I. J., of counsel for the defendant, no one appearing to oppose. Ordered, that the issue joined in this cause be tried by a jury, to be taken and summoned from the body of the county of (Richmond). Burr. App. 460, §923.

X. Notice of Motion for a Special Jury.

Take notice that on an affidavit of

which a copy is herewith served upon you, and upon the pleadings and proceedings in this action, the undersigned will move the court, at a special term to be held at the courthouse in _____, in the county of _____ (or at the city hall in the city of _____), on the _____ day of _____, 18—, at _____ o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order that a special jury be struck for the trial of this action. 2 Abb. Forms 460.

Notice of Motion for a Special Jury (b).
(Title of the cause.)

Sir:—Please to take notice, that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol in the city of Albany, on the first Tuesday of (April) next, that a special jury be struck for the trial of the issue in this cause. Dated, March 14th, 1846.

Yours, etc.,

G. H., attorney for defendant (or plaintiff).

To E. F., esquire, attorney for plaintiff (or defendant).

Burr. App. 210, §416.

XI. Affidavit To Move for a Special Jury.

A. B., of _____, being duly sworn, says:

I. That he is the plaintiff in the above entitled action.

II. That the same is brought against the defendant for publishing of this plaintiff, in his official character as (state the office), the following libelous and scandalous words, to-wit (insert the words charged). And this deponent further says that the said words so as aforesaid uttered and published of this deponent are wholly false. 2 Abb. Forms 461.

XII. Order for Special or Struck Jury (a).

On motion of Mr. J., of counsel for the plaintiff, and after hearing counsel in opposition thereto, ordered that a special jury be struck for the trial of this cause (and that the plaintiff pay seven dollars costs of opposing this motion). Burr. App. 459, §922.

Order for a Special or Struck Jury (b).

On reading and filing the annexed notice of motion (and proof of service thereof) and the affidavit of _____, and on motion of G. H., after hearing

Q. R. (or no one appearing) in opposition:

Ordered that a special jury be struck for the trial of this action, for the purpose of trying the same at the next circuit court, appointed to be held in and for the county of _____, at _____, on the _____ day of _____, 18—. 2 Abb. Forms 461.

XIII. Application for Elisors To Summon Special Jury in Criminal Case.

*State of Missouri, plaintiff, v. Marshall J. Hultz, defendant.

"The state comes by her attorney, and moves the court for an order appointing one or more impartial persons to act as elisors in summoning the special venire ordered in this cause, and to do and perform all other functions and duties devolved upon the sheriff in the further conduct of the trial thereof, for the reasons following: Because said sheriff and coroner are unduly biased and prejudiced in favor of the defendant in the cause, and will not for said reason impartially summon the venire ordered and return an unbiased and impartial persons thereon, or execute impartially the other duties involved in the trial of said cause.

"(Signed) C. H. Gordon.

"C. H. Gordon, prosecuting attorney for the state, makes oath and says he believes the matters and facts as set out in the foregoing motion are true.

"(Signed) C. H. Gordon.

"Subscribed and sworn to before me this nineteenth day of April, 1889.

(Signed) J. W. Stone, clerk."

State v. Hultz, 106 Mo. 41, 16 S. W. 940.

XIV. Notice of Striking Jury (a).

Take notice that I shall attend before the clerk of the county of _____, at his office in the city (or town) of _____, for the purpose of having the special jury struck for the trial of this action, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon of that day. 2 Abb. Forms 461.

Notice of Striking Jury (b).

Sir: Please to take notice that on the _____ day of _____ instant (or next), at ten o'clock in the forenoon, I shall attend on behalf of the above named (defendant), before I. N., esquire, clerk of the county of _____,

at his office in, etc., for the purpose of having the jury struck, which has been ordered in this cause. Dated. etc. Burr. App. 199, §379.

JURISDICTION.

- I. Plea to Jurisdiction, 756
- II. Demurrer for Want of Jurisdiction as to Person, 757
- III. Demurrer for Want of Jurisdiction as to Subject, 757
- IV. Answer, No Jurisdiction by Foreign Corporation, 757
- V. Answer, No Jurisdiction by Domestic Corporation, 757
- VI. Answer, by a Consul, No Jurisdiction of Person, 757
- VII. Answer, No Jurisdiction of the Person, 757
- VIII. Answer, No Jurisdiction of the Subject, 757
- IX. Answer, That a Court of the United States Possesses Exclusive Jurisdiction, 758

CROSS-REFERENCES:

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Special Motion by One Defendant To Dismiss for Want of Jurisdiction of Person.

EMINENT DOMAIN:

Plea by Owner in Condemnation Proceedings, Jurisdiction.

PROHIBITION:

Return, That Court Was Without Jurisdiction.

I. Plea to Jurisdiction (a).

And the said defendant, in his own proper person comes and says, that this court ought not to have or take further cognizance of the action aforesaid, because he says, that the said supposed cause of action, and each and every of them (if any such have accrued to the said plaintiff, accrued) to the said plaintiff out of the jurisdiction of this court, that is to say, at _____ in the county of _____ and not at _____ in the county of _____ or elsewhere within the jurisdiction of this court; and this the said defendant is ready to verify, wherefore he prays judgment whether this court can or will take further cognizance of the action aforesaid. (There must be an affidavit of the truth.) 3 Chit. Pl. 894.

Plea to Jurisdiction (b).

"And the said George H. Sidwell,

one of the defendants in the above entitled cause, for the sole purpose of pleading to the jurisdiction of the said court, comes and says that this court ought not to have or take cognizance of the said action, because the said supposed causes of action, and each and every one of them, arose in the county of Cook in said State of Illinois, and not within the said county of Vermilion, and that the said action is not a local action, and that both he and his co-defendant, George T. Sidwell, at the time said suit was begun, and at all times since, have resided in said Cook county, and not within the said county of Vermilion; that process was served on the said George T. Sidwell in said county of Cook, and not within the said county of Vermilion; and was served on this defendant while he was on a public railroad train passing through said county of Vermilion, and not within the said county of Cook where he resides; and this the said defendant is ready to verify; wherefore he prays judgment whether this court can or will take further cognizance of this action.

George H. Sidwell."

"State of Illinois, county of Cook, ss.

George H. Sidwell, being first duly sworn, says the foregoing plea, by him subscribed, and the statement made therein, are true.

George H. Sidwell."

Subscribed and sworn to before me, this 17th day of May, A. D. 1897.

Robert Jeffrey, notary public."

(Seal)

Sandusky v. Sidwell, 73 Ill. App. 493.

II. Demurrer for Want of Jurisdiction as to Person.

The defendant demurs (or if only a part of them join, the defendants, naming which, demur) to the complaint herein (or to the first, or, second, or other, cause of action stated in the complaint herein), for the ground that it appears upon the face of the complaint:

* That the court has no jurisdiction of the person of this defendant (or these defendants). 2 Abb. Forms 4.

III. Demurrer for Want of Jurisdiction as to Subject.

(Add to the preceding form, or substitute at the *):

That the court has no jurisdiction

of the subject of this action. 2 Abb. Forms 5.

IV. Answer, No Jurisdiction by Foreign Corporation.

I. That the defendants (foreign corporation) are a corporation created by or under the laws of the state of _____ (or other foreign government or country), and not by the laws of this state.

II. That the plaintiff is not a resident of this state, but resides at _____, in the state of _____.

III. That the said (here state facts showing that the cause of action arose without the state, and is not upon a contract made, executed or delivered within the state). 2 Abb. Forms 24.

V. Answer, No Jurisdiction by Domestic Corporation Sued in Local Court.

I. That these defendants are a corporation created under the laws of this state, and pursuant to an act of the legislature, entitled (title of the act), passed (date of the enactment).

II. That said corporation do not transact their general business, nor keep any office for the transaction of business, within this city; nor are they established by law therein, but have their general business and office at _____, and there only. 2 Abb. Forms 23.

VI. Answer by a Consul, No Jurisdiction of Person.

That he was at the commencement of this action, and is now, consul of the King of Italy for the city of _____, duly accredited to the President of the United States, and by him received and acknowledged as such. 2 Abb. Forms 23.

VII. Answer, No Jurisdiction of the Person.

That at the commencement of this action this defendant was not a resident (or, all of the defendants herein were not residents) of this county; but that he was (or, the defendant Y. Z. was) a resident of _____, in the county of _____. 2 Abb. Forms 23.

VIII. Answer, No Jurisdiction of the Subject.

That the supposed cause of action accrued to the said plaintiff, if at all, out of the jurisdiction of this court, that is to say, at _____, in the

county of _____, and not at _____ within the jurisdiction of this court. 2 Abb. Forms 22.

IX. Answer, That Court of United States Possesses Exclusive Jurisdiction.

I. That said county is within the _____ district, in which there is and was a circuit court of the United States, called a district court, holden for said _____ district.

II. That all suits or penalties and forfeitures incurred under the laws of the United States, to which the United States are parties, arising within said district, ought to be brought in said court, and not elsewhere.

III. That said _____, at the commencement of this suit, was and still is resident within said district, and at _____. 2 Abb. Forms 24.

JUSTICES OF THE PEACE.

I. Indictment of Justice, Failing To Turn Over Property, 758

II. Indictment of Justice, Failing To Report, 758

I. Indictment of Justice, Failing To Turn Over Property.

That on the 1st of June, 1863, at the city of Baltimore, Silas Wright, a negro, was arrested and brought before the plaintiff in error, who was then and there a justice of the peace of said city, accused of stealing certain bank notes and promissory notes, and upon a hearing by the justice was discharged; that at the time of the arrest, Wright was searched and certain bank notes taken from him and delivered to the plaintiff in error, who was in duty bound to deliver the same to the person legally entitled to demand and receive the same; that William Daniel afterwards became and was legally entitled to receive the same, and the plaintiff in error, then and there, unlawfully, wilfully, oppressively, corruptly, and in violation and contempt of his duty in that behalf as justice of the peace, did neglect and refuse to deliver the bank notes, etc., to the said Daniel, being then and there requested so to do, well knowing the said Daniel was so entitled, etc. *Hiss v. State*, 24 Md. 556.

II. Indictment of Justice, Failing To Report (a).

"The grand jurors of the state of

Arkansas, duly selected, empanelled, sworn and charged to inquire in and for the body of the county of Nevada, on their oath, present that one W. R. McClure, late of said county, on the first day of August, 1881, with force and arms, in the county aforesaid, then and there being a justice of the peace of Caney township, in said county, did, on or before said day, the same being the day fixed by law for the commencement of the circuit court of said county, for the present term thereof, and since hitherto has failed to file with the county clerk of said county an abstract of all misdemeanors tried before him, the said W. R. McClure, as said justice of the peace, since the last term of said court, giving the style of the case, the nature of the offense, how he obtained jurisdiction thereof, whether the offender was acquitted, or convicted, and if convicted, the amount of the fine or punishment imposed. And the grand jurors aforesaid, on their oaths aforesaid, do say that the said W. R. McClure, a justice of the peace as aforesaid, is guilty of non-feasance in office, in manner and form aforesaid, contrary," etc. *McClure v. State*, 37 Ark. 426.

Indictment of Justice, Failing To Report (b).

"Being charged and required by the code of criminal procedure to report to each term of the district court of Liberty county the number of criminal cases tried and determined before him, wherein he as such justice of the peace had jurisdiction to try, did wilfully, corruptly, and unlawfully fail and neglect to report to the district court of Liberty county, at the October term, A. D. 1872, of said court, the criminal causes tried before him subsequent to and following the June term, A. D. 1872, of the district court of Liberty county; wherefore the grand jurors aforesaid, upon their oaths aforesaid, do say that the said Baldwin hath committed a misdemeanor in office," etc. *State v. Baldwin*, 39 Tex. 156.

JUSTIFICATION.

CROSS-REFERENCES:

FALSE IMPRISONMENT:

Plea Justifying Imprisonment on Suspicion of Felony;
Plea of Justification by Officer;

Plea, Justification by Justice of the Peace;

Answer, Justification of Arrest on Suspicion of Felony;

Answer, Justification by Officer, of Arrest on Suspicion of Felony;

Answer, Justification by Officer of Arrest Under Criminal Process;

Answer, Justification by Officer of Arrest Under Civil Process;

Answer, Justification by Officer Under Order of Arrest.

INNS AND INNKEEPERS:

Plea by Innkeeper Justifying Turning Plaintiff Out of Inn.

LIBEL AND SLANDER:

Plea of Justification of Words of Perjury;

Plea of Justification of Words of Theft;

Replication to Plea Justifying Words De Injuria;

Answer, Justification of Charge of Perjury;

Answer, Truth of Words;

Answer, Justification and Denial of Malice in Charge of Larceny;

Answer, Justification and Mitigation in Publishing Account of Arrest;

Answer, Alleged Libel Was Privileged Communication;

Answer, Alleged Slander Was Privileged Communication to Employer;

Answer, Alleged Libel Fair Report of Public Official Proceedings.

MALICIOUS PROSECUTION:

Answer Pleading Justification in Malicious Prosecution.

NUISANCE:

Plea, Justifying Removal of Nuisance.

KIDNAPING.

I. Indictment for Kidnaping, 759

II. Indictment for Kidnaping With Intent To Carry From Residence, 759

III. Information for Kidnaping Under Common Law, 759

IV. Indictment for Fraudulent Arrest and Carrying Away, 760

I. Indictment for Kidnaping.

"The jurors for the state, upon their oath present, that on the 23d day of January, A. D. 1884, in the county of Wake, one Irene Pearson, then and there being a child of one H. I. Pearson, was residing with her said father,

H. I. Pearson, and that then and there, while the said Irene Pearson was so residing with her said father, John George alias John Green, late of said county, wilfully and unlawfully did abduct the said Irene Pearson from, and induce her, the said Irene Pearson, to leave her father aforesaid, the said H. I. Pearson, she, the said Irene Pearson, then and there being under the age of fourteen years, against the form of the statute," etc. *State v. George*, 93 N. C. 567.

II. Indictment for Kidnaping With Intent To Carry From Residence.

"That Anzley Sutton, on the 5th day of April, 1886, at Dubois county, in the State of Indiana, did then and there feloniously, forcibly and fraudulently arrest Joel R. King, with the felonious and fraudulent intention of carrying him, the said Joel R. King, forcibly and against his will, from his place of residence, said forcible and fraudulent arrest not being then and there made in pursuance of any law of this state or of the United States." *State v. Sutton*, 116 Ind. 527, 19 N. E. 602.

III. Information for Kidnaping Under Common Law.

"That on the 25th day of July, in the year 1883, at said county, said William Smith did feloniously, unlawfully, maliciously, and wilfully assault one A. B. Ewers, and then and there feloniously, unlawfully, injuriously, wilfully, and without lawful authority, forcibly confine and imprison, against his, the said A. B. Ewers', will, and him, the said A. B. Ewers then and there feloniously, and without any lawful authority, and against his will, forcibly did convey from Mill Creek, in said county, to Hawthorne's store, in said county, against the peace and dignity of the state of Wisconsin." *Smith v. State*, 63 Wis. 453, 23 N. W. 879.

Note.—Held insufficient under the statute, but describing an offense at common law. The mandate of the court was as follows:

By the Court.—The judgment of the circuit court is reversed, and the cause remanded with directions to sentence the defendant under and by virtue of section 4635 of the Revised Statutes of 1878, as having been found guilty of a crime at common law, "the punishment of which is not prescribed by

any statute of this state." *Smith v. State*, 63 Wis. 453, 23 N. W. 879.

IV. Indictment for Fraudulent Arrest and Carrying Away From Residence.

"Did then and there feloniously, knowingly, and fraudulently carry off and decoy and kidnap Arizona Wilson and Rosa Wilson from their then place of residence in the city of Indianapolis, Indiana, and carry the said Arizona Wilson and Rosa Wilson away from their then place of residence in the said city and county aforesaid, into the city of Evansville, Indiana, said acts not being, then and there, done in pursuance of the laws of the State of Indiana or of the United States," etc. *Wallace v. State*, 147 Ind. 621, 47 N. E. 13.

Note.—This is under a statute making it an offense to take a person from his residence, or to arrest or imprison any one with such intention, unless it be in pursuance of the law of the state or of the United States.
KIN OR KINDRED.—See INHERITANCE.

LACHES.

Answer Setting Up Laches.

(After setting out matters in defense) "This defendant, the said Richard Sullivan, further says, and the said Appleton believes it to be true, that when the said deed was executed by the said Thomas R. and Emily, she was perfectly sane and intelligent, fully capable to appreciate the circumstances of the case, and the valuable interest thereby assigned; that they have been informed, and believe and so allege, that she and the said Thomas R. were made acquainted with all the facts necessary to form a judgment as the reasonableness and propriety of their executing the same, and that they did so voluntarily and of their own accord, and for the considerations therein stated. And these defendants expressly deny upon their knowledge, information and belief, that the said deed was executed by the said Thomas R. and Elizabeth, or either of them, under the circumstances of fraud or duress, and insist that the same was done by them voluntarily and knowingly, and for a good and valuable consideration. And these defendants say that, by the said several deeds, the said John L., Thomas R., Elizabeth

and Emily, for good and valuable considerations did assign, remise, release, and forever quit-claim unto the said William Sullivan and Jonathan Amory, all their respective interest, present or reversionary, in and to said trust fund, and all claims and demands which they or either of them had or could have against them, the said Sullivan and Amory, on account of anything done or omitted to be done by them in the care, management and disposal of said trust fund, or in any wise relating thereto; and these defendants insist upon said releases, and claim the same benefit thereof as if they had pleaded the same. And these defendants say that for many years after the said Emily executed said deed in the year eighteen hundred and twenty-six, she continued to be of sane and intelligent mind, and was well acquainted with all the circumstances relating to said trust fund and the nature and effect of her said deed, and that to their knowledge or belief she never repudiated the same, or denied her obligation under the same, or pretended to have any claims, or demands upon the said trustees on account thereof; and these defendants submit to the judgment of this honorable court, whether, after so many years perfect and entire acquiescence therein by the said Emily, during which time she was sane and intelligent and able to act for herself, it is competent for any person being, or pretending to be her guardian, to set up and maintain in her behalf this present suit." *Sullivan v. Sullivan*, 23 Fed. Cas. No. 13,598.

LANDLORD AND TENANT.

I. Declarations, 761

- A. *For Rent on Lease*, 761
- B. *On Demise, and Use and Occupation*, 762
- C. *For Rent on Agreement To Let*, 763

II. Complaints, 764

- A. *For Tax Which Tenant Agreed To Pay*, 764
- B. *On Promise To Pay for Surrender*, 764
- C. *Against Lessee for Deficiency After Re-entry*, 764
- D. *Against Lessee for Rent*, 765
- E. *Against Assignee for Rent*, 765
- F. *Lessor Against Executor*, 765
- G. *Grantee of Reversion for Rent*, 766

- H. *Assignee of Rent Against Lessee*, 766
- I. *Heir Against Lessee*, 766
- J. *Assignee of Reversion Against Assignee of Part of Premises*, 766
- K. *Against Tenant on Covenant To Repair*, 767
- L. *Against Landlord on Covenant To Repair*, 767
- M. *Against Landlord for Breach of Covenant for Quiet Possession*, 767
- N. *Against Landlord on Agreement To Well Complete*, 768
- O. *Subtenant Against His Immediate Lessor*, 768
- P. *Lessor Against Lessee for Injunction and Damages*, 769

III. Pleas, 769

- A. *No Rent in Arrear*, 769
- B. *Assignment by Assignee Before Rent Due*, 770
- C. *Assignment and Acceptance of Assignee*, 770
- D. *Traversal of Assignment*, 770
- E. *Eviction*, 770
- F. *Lessor Was Seised for Life Only*, 770
- G. *Defendant Did Repair*, 771
- H. *Premises Not Out of Repair*, 771
- I. *Defendant Unable To Obtain Possession*, 771
- J. *By Assignee of Tenant, Assignment*, 771

IV. Answers, 771

- A. *Denial of Hiring*, 771
- B. *Denial of Use and Occupation*, 771
- C. *Denial by Assignee of Occupation*, 771
- D. *Assignee's Assignment to Third Person*, 771
- E. *Tender of Rent on Land*, 771
- F. *Eviction*, 772
- G. *Surrender of Premises*, 772
- H. *Landlord Accepted Assignee*, 772

CROSS-REFERENCES:

BONDS:

Complaint on Bond for Rent Against Principal and Sureties.

COVENANT, ACTION OF:

Declaration for Not Repairing, Against Lessee;

Plea That Premises Are Not Out of Repair.

DISORDERLY HOUSE:

Indictment for Leasing Property for Disorderly House.

GUARANTY:

Complaint Against Guarantors for Payment of Rent.

INJUNCTIONS:

- Injunction Against Tenant of Mine;
- Injunction Against Removing Fixtures;
- Injunction Against Taking Rents and Profits;
- Injunction Against Underletting;
- Injunction Against Carrying on Business Forbidden by Lease.

INTERVENTION:

Petition by Landlord To Be Made Defendant in Ejectment.

MORTGAGES:

Complaint To Redeem by Lessee.

REJOINDER:

Rejoinder to Replication of Demise to Plaintiff, Notice To Quit; Surrejoinder That Notice To Quit Was Waived.

REPLEVIN:

- Cognizance for Rent;
- Plea, Traverse to Avowry, No Rent in Arrear;
- Plea in Traverse to Cognizance, No Rent in Arrear in Part, Tender in Part;
- Replication to Plea to Avowry, Demand After Tender.

SPECIFIC PERFORMANCE:

Bill for Specific Performance, Lessee Against Lessor of House.

USE AND OCCUPATION:

Declaration for Use and Occupation of Dwelling;

Complaint for Use and Occupation, General Form;

Complaint for a Fixed Rent.

WASTE:

Complaint by Lessor for Damages for Waste.

I. Declarations.

A. *Declaration for Rent on Lease.*

A. B., plaintiff in this suit, by E. F., his attorney, comes into this court, according to the form of the statute authorizing the commencement of suits by declaration, and complains of C. D., defendant in this suit, of a plea of breach of covenant: For that whereas heretofore, to-wit, on the ——— day of ———, in the year of our Lord one thousand eight hundred and ——— (the date of the lease), at (New York, to-wit, at the city and) in the county of (New York) aforesaid, by a certain indenture then and there made between the said plaintiff of the one part, and the said defendant of the other part (the counterpart of which said indenture [or, if both parts of the deed be originals, that is, signed

by all the contracting parties, say: "one part of which said indenture", sealed with the seal of the said defendant, the said plaintiff now brings here into court, the date whereof is the day and year aforesaid), the said plaintiff did demise, lease and to farm let (according to the words in the lease), unto the said defendant, his executors, administrators and assigns, a certain messuage, or dwelling house, tenements and premises, with the appurtenances, particularly mentioned and described in the said indenture, situate in the city and county of New York aforesaid (if the description of the premises be very long, say: "certain tenements with the appurtenances particularly mentioned and described in the said indenture, situate, etc.," and in order to avoid variance, it is advisable not to state the abutfalls, or any other very particular description), (except as in the said indenture is excepted), to have and to hold the said messuage, or dwelling house, tenements and premises, with the appurtenances (except as aforesaid), unto the said defendant, his executors, administrators and assigns, from the _____ day of _____ then last past, to the full end and term of (seven) years thence next ensuing, and fully to be complete and ended (pursuing the words of the lease): yielding and paying therefor, yearly and every year, to the said plaintiff, his heirs (or executors, administrators, as in the indenture), or assigns, the clear yearly rent or sum of _____ dollars, payable quarterly, that is to say, on the _____ day of, etc., in each and every year, by even and equal portions (or otherwise, according to the words in the lease). And the said defendant did thereby for himself, his executors, administrators and assigns, covenant, promise and agree to and with the said plaintiff, his heirs (or executors, administrators, as in the lease), and assigns, that he the said defendant, his executors, administrators or assigns, should and would well and truly pay, or cause to be paid, to the said plaintiff, his heirs (executors, administrators), or assigns, the said yearly rent or sum of _____ dollars, at the several days and times aforesaid (let this be according to the words of the covenant). As by the said indenture, reference being thereunto had, will (amongst other things) more fully and at large appear. By virtue of which said demise, the

said defendant afterwards, to-wit, on, etc., entered into and upon all and singular the said demised premises, with the appurtenances, and became and was possessed thereof, for the said term so to him thereof granted as aforesaid. And although the said plaintiff hath always, from the time of making the said indenture, hitherto well and truly performed, fulfilled and kept all things in the said indenture contained, on his part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning of the said indenture, to-wit, at the city and in the county aforesaid, yet (protesting that the said defendant hath not performed, fulfilled or kept anything in the said indenture contained, on his part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof, the said plaintiff saith that after the making of the said indenture, and during the said term thereby granted, to-wit, on the _____ day of _____, in the year one thousand eight hundred and _____ (the day on which the rent fell due), at the city and in the county aforesaid, a large sum of money, to-wit, the sum of _____ dollars of the rent aforesaid, for (_____ years and a half), of the same term, ending on the day and year last aforesaid, became and was, and still is, in arrear and unpaid to the said plaintiff, contrary to the tenor and effect, true intent and meaning of the said indenture, and of the said covenant of the said defendant, by him in that behalf so made as aforesaid, to-wit, at the city and in the county aforesaid. And so the said plaintiff in fact saith that the said defendant (although often requested so to do), hath not kept the said covenant so by him made as aforesaid, but hath broken the same; and to keep the same with the said plaintiff hath hitherto wholly neglected and refused, and still doth neglect and refuse; to the damage of the said plaintiff of (one thousand dollars), (a sum sufficient to cover the real demand and interest, till the time of final judgment), and therefore he brings his suit, etc. Burr. App. 290, §357; 2 Chit. Pl. 549; Till. Forms 397.

B. Declaration for Rent on Demise and Use and Occupation.

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., de-

defendant in this suit, being in custody, etc., of a plea that he render to the said plaintiff the sum of (twelve hundred) dollars (the aggregate of the sums mentioned in the different counts), of lawful money of the United States of America, which he owes to and unjustly detains from him: For that whereas the said plaintiff heretofore, to-wit, on the (first day of May, in the year of our Lord one thousand eight hundred and forty-three), at (the city, and in the county of New York) aforesaid, demised to the said defendant a certain message, land and premises (or a certain message, buildings farms and lands, or otherwise as the case may be), with the appurtenances, situate, lying and being in the said (city and county of New York). To have and to hold the same to the said defendant for a certain term of years, to-wit, for and during, and until the full end and term of (three) years, then next ensuing, and fully to be complete and ended, yielding and paying therefor the yearly rent or sum of (two hundred) dollars, in equal quarter yearly payments, to-wit, on the first days of August, November, February and May, in each of the said years (or otherwise, according to the lease). By virtue of which said demise the said defendant entered into the said demised premises, with the appurtenances, and was possessed thereof from thenceforth, until and upon the first day of May, in the year of our Lord one thousand eight hundred and forty-six), when a large sum of money, to-wit, the sum of (six hundred) dollars for rent aforesaid, for the space of (three years) then elapsed, became and was due and payable from the said defendant to the said plaintiff, and still is in arrear and unpaid to the said plaintiff in this suit, to-wit, at the place aforesaid; whereby an action hath accrued to the said plaintiff, to demand and have of and from the said defendant the said sum of money last mentioned, parcel of the said sum of money above demanded. And whereas, also, the said defendant afterwards, to-wit, on the (first day of May, in the year of our Lord one thousand eight hundred and forty-six) aforesaid, was indebted unto the said plaintiff in the further sum of (six hundred) dollars, like lawful money as aforesaid, for the use and occupation of a certain message, land and premises (or otherwise,

as above), with the appurtenances of the said plaintiff, situate, lying and being in (the city and county of New York) aforesaid, by the said defendant, and at his special instance and request, and by the sufferance and permission of the said plaintiff, for a long time then elapsed, had, held, used, occupied, possessed and enjoyed, and to be paid by the said defendant to the said plaintiff, when the said defendant should be thereunto afterwards requested. Whereby and by reason of the said last mentioned sum of money being and remaining wholly unpaid, an action hath accrued to the said plaintiff, to demand and have of and from the said defendant, the said sum of (six hundred) dollars, parcel of the said sum of money above demanded: Yet the said defendant although often requested so to do, has not yet paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, the said defendant has hitherto wholly refused, and still does refuse; to the damage of the said plaintiff of (one hundred) dollars (a nominal sum), and therefore he brings suit, etc. Burr. App. 280. \$549; 2 Chit. Pl. 430; Yates' Forms 470.

C. Declaration for Rent Due on Agreement To Let.

A. B., plaintiff in this suit, by E. F., his attorney, comes into this court, according to the form of the statute authorizing the commencement of suits by declaration, and complains of C. D., defendant in this suit, of a plea of breach of covenant: For that whereas the said plaintiff heretofore, to-wit, on the (first day of May), in the year one thousand eight hundred and (forty-four), at the (city and in the county of New York), aforesaid, demised and let unto the said defendant, the (here describe the premises as in the agreement); and the said defendant then and there by a certain instrument in writing, made under his hand and seal, which the said plaintiff now brings here into court, the date whereof is on the same day and year last aforesaid, hired and took of and from the said plaintiff the premises above described, for the term of (two) years to commence the said (first day of May), one thousand eight hundred and (forty-four), at the yearly rent of (four hundred) dollars, payable quarterly; and then and there,

in and by the said instrument in writing, did covenant and promise to make punctual payment of the rent in manner aforesaid, and quit and surrender the said premises at the expiration of the said term, in as good state and condition as reasonable use and wear thereof would permit, damages by the elements excepted. By virtue of which said demise and letting, the said defendant afterwards, to-wit, on the said (first day of May), in the year aforesaid, entered into and upon all and singular the said demised premises, with the appurtenances, and became and was possessed thereof from thence and until the (first day of May), in the year one thousand eight hundred and (forty-six); at which time a large sum of money, to-wit, the sum of (four hundred) dollars, for rent of the said premises, became due and payable, and still is due and in arrear and unpaid to the said plaintiff, contrary to the tenor and effect, true intent and meaning of the covenant so made by the said defendant as aforesaid, to-wit, at the place aforesaid. And the said plaintiff in fact says that the said defendant has not made payment of the said rent, nor performed the covenant in the above mentioned instrument in writing mentioned, to be paid and performed by him, as aforesaid, but has made default therein, and that the said defendant (although often requested so to do), has not kept the said covenant so by him made as aforesaid, but has broken the same, and to keep the same with the said plaintiff, and to pay the said sum of money last mentioned, or any part thereof, the said defendant has hitherto wholly neglected and refused, and still does neglect and refuse; to the damage of the said plaintiff of (five hundred) dollars, and therefore the said plaintiff brings suit, etc. Burr. App. 292. §558.

II. Complaints.

A. *Complaint by Landlord, Having Paid Tax Which Tenant Had Agreed To Pay.*

I. That at _____, on or about the _____ day of _____, 18—, the plaintiff and the defendant entered into an agreement, of which the following is a copy (set forth agreement or lease, or say: an agreement by which the defendant hired of the plaintiff a house in _____, and further agreed, etc., reciting stipulation to pay tax).

II. That there was duly laid upon said premises for the year 18—, and while the covenants of the aforesaid agreement were in full force, and the defendant was in possession of the premises by virtue thereof, a tax of _____ dollars, which the defendant neglected to pay (and that said plaintiffs were not aware, until on or about the _____ day of _____, 18—, of such neglect).

III. That by reason thereof the plaintiff was, on the _____ day of _____, 18—, compelled to pay the said sum of _____ dollars, with _____ dollars arrearages of interest, amounting in the whole to _____ dollars.

IV. That no part thereof has been repaid. 1 Abb. Forms 169.

B. *Complaint on Promise To Pay for Surrender of Lease.*

I. That at the time hereafter mentioned, the plaintiff had a lease of a house and lot in the town of _____, for a term commencing on the _____ day of _____, 18—, and ending on the _____ day of _____, 18—, under which he was entitled to the possession of said house and lot.

II. That on the _____ day of _____, the defendant being the owner of (or having purchased) the reversion of said premises, subject to the unexpired term of the lease, promised the plaintiff that in consideration that he, the plaintiff, would surrender to the defendant the unexpired term and the possession, he would pay the plaintiff the sum of _____ dollars (on, etc.).

III. That the plaintiff thereupon accordingly surrendered the unexpired term and the possession to the defendant.

(Or III. That the plaintiff duly performed all the conditions thereof on his part.)

IV. That no part of said sum has been paid (except the sum of, etc.). 1 Abb. Forms 211.

C. *Complaint, Lessor Against Lessee, for Deficiency After Re-Entry by Lessor.*

I. That heretofore the plaintiff, by an indenture made between him and the defendant, bearing date the _____ day of _____, 18—, demised and leased to the defendant certain premises therein mentioned (or very briefly designate them), at the yearly rent of

_____ dollars, payable quarterly on, etc.; and further covenanted with the plaintiff that he would not (here state special covenant), and that in case of any breach on his part of said covenant, the plaintiff reserved full power which was thereby acceded to by the defendant to re-enter said premises, and eject the occupants thereof, and relet the same for the benefit of the defendant.

II. That the defendant, contrary to his covenant (here state the breach), and that the plaintiff for that cause re-entered the premises, and took possession thereof by virtue of the authority given herein in the lease, and as agent of the defendant, and not otherwise, and that he made diligent efforts to relet the premises for the defendant, but was unable to do so.

III. That thereby the plaintiff lost the sum of _____ dollars rent, which would have been payable to him on, etc. 1 Abb. Forms 310.

D. Complaint, Lessor Against Lessee for Rent.

I. That heretofore the plaintiff, by an indenture made between him and the defendant, bearing date the _____ day of _____, 18—, demised and leased to the defendant certain premises therein mentioned (or very briefly designate them), at the yearly rent of _____ dollars.

II. That the defendant thereby covenanted to pay said rent quarterly on the first day of, etc., in each year.

III. That the plaintiff has duly performed all the conditions thereof on his part.

IV. That the defendant has not paid the rent of the (quarter) ending on the _____ day of _____, 18—, amounting to _____ dollars. 1 Abb. Forms 310.

E. Complaint, Lessor Against Assignee for Rent.

I. That on the _____ day of _____, 18—, by a lease in writing, then made between this plaintiff and one M. N., under the hand and seal of said M. N. (of which a copy is annexed as part of this complaint), this plaintiff leased to said M. N. certain lands (or very briefly designate them), to have and to hold to said M. N. and his assigns, from the _____ day of _____, 18—, for the term of _____, then next ensuing, for the yearly rent of _____ dollars, pay-

able to this plaintiff on the (state days of payment), which rent said M. N. did thereby for himself and his assigns, covenant to pay to the plaintiff accordingly.

(II. That by virtue thereof, said M. N., on the _____ day of _____, 18—, entered into the demised premises, and was possessed thereof.)

III. That thereafter, and during said term, to-wit, on the _____ day of _____, 18— (naming a day before the breach), all the estate and interest of said M. N. in said term, by an assignment then by him made, became vested in the defendant, who thereupon entered into the demised premises, and became possessed thereof (and continued so possessed from thence hitherto, or until, etc.).

IV. That during the time the defendant was so possessed of the premises, to-wit, on the _____ day of _____, 18—, the sum of _____ dollars of said rent, for the quarter ending on that day (or otherwise), became due to the plaintiff from the defendant; but no part thereof has been paid. 1 Abb. Forms 311.

F. Complaint, Lessor Against Executors.

I. That on the _____ day of _____, 18—, by a lease in writing, then made between the plaintiff and one M. N., under the hand and seal of said M. N. (of which a copy is annexed as part of this complaint), the plaintiff leased to said M. N. certain lands (or very briefly designate them), to have and to hold to said M. N., and his executors, administrators and assigns, from the _____ day of _____, 18—, for the term of _____, then next ensuing, for the yearly rent of _____ dollars, payable to his plaintiff on the (state days of payment), which rent said M. N. did thereby for himself and his executors, administrators and assigns, covenant to pay to the plaintiff, accordingly.

II. (That by virtue thereof said M. N., on the _____ day of _____, 18—, entered into the demised premises, and was possessed thereof.)

III. That thereafter and during said term, said M. N. died, to-wit, on the _____ day of _____, 18—, leaving a will appointing the defendants his executors.

IV. That the defendants, by an order or determination of the surrogate

of the county of ———, duly made on the ——— day of ———, 18—, were appointed, and now are, the executors of his said will.

V. That as such executors the defendant took possession of, and occupied the premises under said lease.

VI. That the sum of ——— dollars of said rent for the quarter ending on (a day before the lessee's death), became due on said day to the plaintiff from said M. N., but no part thereof has been paid.

VII. For a further breach the plaintiff alleges that after the death of said M. N., and while the defendants were so in possession, the sum of ——— dollars of said rent for the quarter ending on, etc., on that day became due to the plaintiff from the defendants, but no part thereof has been paid. 1 Abb. Forms 312.

G. Complaint, Grantee of Reversion, Against Lessee for Rent.

I. That one M. N., being the owner in fee of certain premises (or very briefly designate them), did, on the ——— day of ———, 18—, by a lease in writing then made between him and the defendant, under the hand and seal of the defendant (a copy of which is annexed as part of this complaint), lease to the defendant said premises from the ——— day of ———, 18—, for the term of ———, then next ensuing, for the yearly rent of ——— dollars, payable to said M. N., his heirs and assigns, on the (state days of payment), which rent the defendant did thereby covenant to pay to said M. N., his heirs and assigns, accordingly.

(II. That by virtue thereof, the defendant entered into the demised premises, and was possessed thereof.)

III. That thereafter, and on the ——— day of ———, 18—, said M. N., by his deed, under his hand and seal (a copy of which is hereto annexed), sold and conveyed to this plaintiff the demised premises (of which the defendant had due notice).

IV. That thereafter, to-wit, on the ——— day of ———, 18—, the sum of ——— dollars of said rent, for the quarter ending on that day (or otherwise), became due to the plaintiff from the defendant; but no part thereof has been paid. 1 Abb. Forms 313.

H. Complaint, Assignee of Rent Against Lessee.

(I and II as in preceding form.)

III. That thereafter, and on the ——— day of ———, 18—, said M. N. duly assigned to the plaintiff said covenant and all his right to the rent therein secured.

IV. (As in the preceding form.) 1 Abb. Forms 314.

I. Complaint, Heir of Reversioner Against Lessee.

I. That one M. N., now deceased, being in his lifetime the owner in fee of the tenements hereinafter mentioned, on (etc., state the lease and the covenants which were broken, as in the preceding forms).

II. That the said M. N., being seized of the reversion in said demised premises, afterwards, and during the said term, on (etc.), died so seized; whereupon the said reversion then descended to the plaintiff as his (son and only child and) heir; and thereby the plaintiff then became seized thereof in fee.

III. That thereafter, to-wit, on, etc., the sum of ——— dollars of said rent, for the quarter ending on that day (or otherwise), became due to the plaintiff from the defendant; but no part thereof has been paid. 1 Abb. Forms 314.

J. Complaint, Assignee of Devisee of Reversion and Rent Against Assignee of Part of Premises.

I. That one M. N., being the owner in fee of certain premises (or very briefly designate them), on the ——— day of ———, 18—, by lease in writing then made between him and one O. P., under the hand and seal of said O. P. (a copy of which is annexed as part of this complaint), leased to said O. P. said premises from the ——— day of ———, 18—, for the term of ———, then next ensuing, for the yearly rent of ——— dollars, payable to said M. N., his heirs and assigns, on the (state days of payment), which rent O. P. did thereby covenant to pay to said M. N., his heirs and assigns, accordingly.

II. That by virtue thereof the defendant entered into the demised premises, and was possessed thereof.

III. That thereafter, and during said term, to-wit, on the ——— day of ———, 18— (naming a day before the breach), said O. P. duly assigned all his interest in a divided part of the

land, equal in value to the residue of the demised premises, and thereby the defendant became tenant of such part.

IV. That on the ——— day of ———, 18—, said M. N. died, having by his last will and testament devised the (reversion and) rent to one Q. R., which said will was duly proved and recorded as a will of real estate before the surrogate of the county of ———, on, etc.

V. That Q. R., on the ——— day of ———, 18—, duly (conveyed and) assigned said (reversion and) rent to the plaintiff.

VI. That thereafter, to-wit, on the ——— day of ———, 18—, the sum of ——— dollars of said rent, for the quarter ending on that day (or otherwise) became due to the plaintiff from the defendant; but no part thereof has been paid. 1 Abb. Forms 314.

K. Complaint Against Tenant on Covenant To Keep Premises in Repair.

I. That on the ——— day of ———, 18—, by a lease in writing then made between the plaintiff and the defendant, under their hands and seals (or under the hand and seal of the defendant), the plaintiff leased to the defendant for one year from said date, at a yearly rent of ———, a certain dwelling house, with stable and sheds attached, in the village of ———, in the county of ———, the property of the plaintiff, the same being upon a part of the estate of M. N., deceased (or otherwise briefly designate the premises).

II. That said lease contained a covenant on the part of the defendant, of which the following is a copy (copy of the covenant).

(Or II. That the defendant in said lease covenanted that he would, during the said term of one year, at his own cost and expense, keep said dwelling house and premises in good repair, and at the expiration of said term leave the said dwelling house and premises in as good condition as he received the same, reasonable wear and tear excepted.)

III. That the defendant entered upon the premises and occupied the same during the said term of one year, under said agreement; but that he has failed to keep the said house and premises in good repair; but, on the contrary, he has left them in such condi-

tion that the fences are broken down, the walls and the roof admit the water, and in consequence the plastering has in many places fallen down, the window glass is broken (or other injuries), and the house and premises are otherwise injured by reason of the neglect of the defendant to keep them in good repair, pursuant to his said agreement, to the damage of the plaintiff ——— dollars. 1 Abb. Forms 348.

L. Complaint Against Landlord, Breach of Covenant To Keep in Repair, Special Damage.

I. That on the ——— day of ———, 18—, by a lease in writing, then made between the plaintiff and the defendant, under their hands and seals (or under the hand and seal of the defendant), the defendant leased to the plaintiff the premises known as No. ——— street, in the city of New York, for one year from that date, at the yearly rent of ——— dollars.

II. That said lease contained a covenant on the part of defendant, of which the following is a copy (copy of covenant to keep in repair).

III. That the plaintiff entered into possession of said premises under said lease, and used the same as a store and warehouse for storing and selling various articles of dry goods.

IV. That the defendant has failed to perform said covenant and keep the premises in repair, and has allowed the walls and roof to become and remain leaky, by means whereof the water has entered said premises and utterly ruined a portion of his said goods, and seriously injured others, to the damage of the plaintiff ——— dollars. 1 Abb. Forms 349.

M. Complaint Against Landlord for Breach of Covenant for Quiet Possession.

I. That on the ——— day of ———, the plaintiff and the defendant entered into an agreement under their hands and seals (or under the hand and seal of the defendant), whereby the plaintiff hired and the defendant leased for the term of ——— years from said date, at a yearly rent of ——— dollars (here briefly designate the premises).

II. That said lease contained a covenant on the part of the defendant, of which the following is a copy (copy of covenant for quiet possession).

(Or II. That the defendant in said

lease covenanted with the plaintiff that he should peaceably and quietly occupy and enjoy the premises aforesaid for the said term of _____ years.)

III. That the plaintiff has not been permitted peaceably to occupy and enjoy the possession of said premises; but, on the contrary, after the commencement of the term, and on the _____ day of _____, 18—, one M. N., who was at the time of making said lease, and thereafter, until the last mentioned day, the lawful owner (or lawfully entitled to the possession) of said premises, entered upon the same and ejected this plaintiff therefrom, and has ever since kept him out of possession of the same (or designate what part), to his damage _____ dollars.

IV. (Allege special damage, if any e. g., as follows): That the plaintiff, confiding in the covenant of the defendant aforementioned, had purchased a number of farming utensils and implements of husbandry for the cultivation of said premises, and had entered upon said premises and commenced to raise grain and fruit thereon, when he was so ejected; and that by reason of the defendant's failure to fulfil said covenant, said farming utensils and implements became of little or no value to him, and he was deprived of the result of his time and labors in cultivating said premises, to the damage of the plaintiff _____ dollars.

(Or IV. That the plaintiff was thereby prevented from continuing his business of a hatter at the place, and was compelled to expend _____ dollars in removing therefrom, and lost the custom of his said business by such removal, to his damage _____ dollars.) 1 Abb. Forms 350.

N. Complaint Against Landlord on Agreement To Complete Demised Premises Well.

I. That on the _____ day of _____, 18—, at _____, the said plaintiffs entered into an agreement in writing with the defendants, bearing date on that day, duly executed by the plaintiffs under the firm name of A. B. & Co., and by the defendants under the firm name of Y. Z. & Co.; of which agreement the following is a copy (copy agreement to complete unfinished warehouse, in the same manner as an adjoining building, and let it to the plaintiff, giving possession on a day named).

II. That after the making of this agreement, and on or about the _____ day of _____, 18—, the defendants delivered, and the plaintiffs took possession of the first floor and basement of said building, under and in pursuance of said agreement, no lease or other agreement having been made or executed between the parties; and that the plaintiffs took possession thereof upon the faith and assurance of the defendants, and the full belief thereof, that the said premises were finished in the same manner as the store then occupied by M. N., in the same street, and in accordance with the terms of said agreement.

III. That the said premises were not finished in the same manner as the store at the time of making such agreement, occupied by M. N., in the same street, but, on the contrary thereof, the roof of the building, and the gutters, watercourses, and leaders therefrom, were constructed and finished in a different and less perfect manner than those upon that store, and an obstruction was placed over the top of the leader that conducted the water from the said roof of the building, which obstructed and prevented the water from passing off from said roof, whereas no such obstruction was placed over the top of the leader, or gutter, or watercourse, from the roof of the store then occupied by said M. N., in the same street.

IV. That in consequence thereof, the water falling upon the roofs of said building mentioned in said agreement was obstructed and prevented from passing off through the gutters, watercourses, or leader, and was forced back upon and ran through the skylight in the roof, and down into the said first floor and basement, and upon the silks, goods and wares and merchandise of the said plaintiffs kept therein, and greatly injured the same, to the damage of the plaintiffs _____ dollars. 1 Abb. Forms 351.

O. Complaint, Sub-Tenant Against His Immediate Lessor.

I. That at the times hereinafter mentioned, the defendant held certain premises (very briefly designating them), as tenant thereof to one M. N., at a yearly rent of _____ dollars, payable by the defendant to said M. N., on the (state days of payment).

II. That on the _____ day of

_____, 18—, in consideration that the plaintiff then became the tenant to the defendant of said premises (or of _____, which premises were a portion of the above described premises), at a yearly rent of _____ dollars, payable to him by the plaintiff, the defendant gave to the plaintiff a written agreement to indemnify him, of which the following is a copy (or state its substance, e. g., thus): and thereby promised that he would, during the continuance of the tenancy of the plaintiff, indemnify him and save him harmless from and against the payment of the rent payable to M. N. as aforesaid; and from and against all costs, damages or expenses to which he might be put by reason of any default in the payment thereof).

III. That the defendant, contrary to his promise, omitted to pay the rent which became due from him to said M. N. on the _____ day of _____, 18—, which was during the tenancy of the plaintiff under said agreement.

IV. That by reason thereof said M. N., on the _____ day of _____, 18—, in the court of _____, commenced proceedings to recover possession of said premises, which were then occupied by the plaintiff under said agreement, for the non-payment of said rent; and thereby the plaintiff was obliged to pay, and on the _____ day of _____, 18—, did pay to said M. N., to the use of the defendant, the sum of _____ dollars, the amount of said rent, together with _____ dollars, the costs and charges of said proceedings; and was put to great trouble and inconvenience, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 364.

P. Complaint by Lessor Against Lessee for Injunction and Damages.

I. That the plaintiff, being then and ever since owner in fee simple of the premises hereinafter mentioned, on the _____ day of _____, 18—, by a lease in writing then made between the plaintiff and the defendant, under their hands and seals (or under the hand and seal of the defendant), the plaintiff leased to the defendant (designate term and premises, e. g., thus), for ten years from said date, at a yearly rent of \$1,000, a certain dwelling house, with stable and sheds attached, and ten acres of lawn and woodland, orchard and gar-

den, at _____, in the county of _____, the property of the plaintiff.

II. That said lease contained a covenant on the part of the defendant, of which the following is a copy (copy of the covenant as to waste or repairs).

(Or II. That the defendant in said lease covenanted that he would—stating the substance of the covenant.)

III. That the defendant took possession of the premises under said lease, the same being then in good repair and condition; but that they have since become ruinous and bad, and the lands very much deteriorated by the wilful mismanagement and improper cultivation thereof by the defendant; that he has ploughed up the garden, destroying the shrubbery and flowers therein, and has cut down ten ornamental and shade trees standing near the house, and has cut down ten apple trees in the orchard (or in like manner state other waste, according to the fact), and has otherwise suffered and committed great waste on the premises; by reason of which waste the premises are worth _____ dollars less, to be sold, than they were when the defendant took possession thereof; and it would cost _____ dollars to restore them.

IV. That the defendant threatens to cut down other of the ornamental, shade and fruit trees, and to remove the partitions in the first story of the house, and turn it into a workshop (or other threatened waste).

Wherefore the plaintiff asks judgment:

1. That the defendant may be required to (restore and) repair the premises.

2. That he pay the plaintiff _____ dollars damages done to and suffered by the premises (the plaintiff hereby waiving all forfeitures and penalties incurred in respect to said waste).

3. That he be required to keep the same in good repair and condition during the continuance of his interest therein, and to manage and cultivate the farm in a proper and husbandlike manner, according to the terms of the lease, and the custom of the country.

4. That he be enjoined from committing any further waste, and particularly from (stating particular act to be enjoined). 1 Abb. Forms 480.

III. Pleas.

A. Plea, No Rent in Arrear.

Because he says that no part of the

said rent in the said declaration mentioned is in arrear or unpaid, in manner and form as the said plaintiff hath above in his declaration in that behalf alleged, and of this he the said defendant puts himself upon the country, etc. 3 Chit. Pl. 993.

B. Plea of Assignment by Assignee Before Rent Became Due.

Because he says that after he the said defendant became assignee of the said demised premises, as in the said declaration mentioned (before any rent) became due and owing to the said plaintiff, to-wit, on, etc., at, etc. (venue), aforesaid, he the said defendant, by a certain indenture of assignment, then and there made, and duly signed by him the said defendant, and sealed with his seal, for the considerations therein mentioned, did, etc. 3 Chit. Pl. 994.

C. Plea of Assignment and Acceptance of Assignee.

Because he says that after the making the said demise in the said declaration mentioned, and before any part of the said rent in the said declaration mentioned became due and payable, to-wit, on, etc., at, etc. (venue), he the said defendant by a certain indenture of assignment, by him then and there made and duly signed by the said defendant, and sealed with his seal, for the considerations therein mentioned, did bargain, sell, assign, transfer and set over unto G. H., etc., all the right, title, interest, term of years then to come and unexpired, property, claim and demand whatsoever of the said defendant of, in and to the said several demised premises, with the appurtenances, to have and to hold, etc. (as the words of assignment), by virtue of which said indenture of assignment the said G. H. afterwards, to-wit, on the day and year last aforesaid, entered into the said demised premises, with the appurtenances, and became and was thereof possessed for the residue of the said term then to come therein and expired, whereof the said plaintiff on the day and year last aforesaid, at, etc. (venue), aforesaid, had notice; and the said defendant further saith that the said plaintiff, after the entry of the said G. H. into the said demised premises, with the appurtenances, under and by virtue of the said assignment, to-wit, on, etc., at, etc. (venue), aforesaid, did accept and receive of and from the said G. H. as tenant to the said plain-

tiff, a large sum of money, to-wit, the sum of £——— for the rent aforesaid, in form aforesaid, reserved and then made payable, and then and there accepted the said G. H. as his tenant of the said demised premises, with the appurtenances. And this, etc. 3 Chit Pl. 993.

D. Plea, Traverse of Assignment.

Because he saith that all the estate, right, title, interest and term of years then to come and unexpired, property, claim and demand whatsoever of the said E. F. of and in the said premises, with the appurtenances, by assignment thereof duly made, did not come to and vest in the said defendant in manner and form as the said plaintiff hath in his said declaration in that behalf alleged. And of this he the said defendant puts himself upon the country, etc. 3 Chit. Pl. 1019.

E. Plea of Eviction.

Because he says that the said plaintiff, after the making of the said indenture, and before any part of the said rent in the said declaration mentioned became due and payable to the said plaintiff, to-wit, on, etc., with force and arms, etc., entered into and upon the said demised premises, and then and there ejected, expelled, put out, and amoved the said defendant from the possession thereof, and kept and continued him the said defendant so ejected, expelled, put out and amoved from thence hitherto, to-wit, at, etc. (venue), aforesaid. And this, etc. 3 Chit. Pl. 993.

F. Plea That Lessor Was Seized for Life Only.

Because he saith that the said E. F., deceased, at the time of the making of the said indenture was seized only in his demesne, as of freehold, for the term of his natural life, of and in the said demised premises, with the appurtenances, and continued so seized thereof, until and at the time of his death, and that after the making of the said indenture, and before the expiration of the said term, to-wit, on, etc., at, etc. (venue), aforesaid, the said E. F. died; whereupon the said indenture, and the term thereby created, wholly ceased and determined; without this, and at the time of the making of the said indenture, the reversion of and in the said demised premises, with the appurtenances belonging to the said E. F. and his heirs, in manner and form as the said plaintiff hath above in his said

declaration in that behalf alleged. And this, etc. 3 Chit. Pl. 1019.

G. *Plea That Defendant Did Repair.*

Because he says that he well and sufficiently repaired, sustained and defended against the wind and rain, the tenement aforesaid, at his own costs and expenses, during the year elapsed of the term aforesaid. And of this he puts himself upon the country, etc. Burr. App. 361, §655; Yates' Forms 451.

H. *Plea, Premises Not Out of Repair.*

Because he says that (here deny the breach in the words assigned in the declaration, which may perhaps be thus): the said messuage and tenement, farm house, and out-houses thereunto belonging, were not, nor are, nor was, nor is any part thereof ruinous, prostrate, fallen down, or out of repair, in manner and form as the said plaintiff hath above thereof complained against him the said defendant, and of this he the said defendant puts himself upon the country, etc. 3 Chit. Pl. 1019.

I. *Plea That Defendant Was Unable To Obtain Possession of Leased Land.*

"And for a further plea in this behalf as to the supposed breaches of covenant in said declaration mentioned, these defendants say, *actio non*, etc., because they say that neither they nor their assignees have ever received possession of said premises, in and by said indenture stated to have been demised to them, and that at the time when said term, by said lease or indenture, admitted to be granted to these defendants, commenced, to-wit, on the first day of March, A. D. 1878, said defendants and their assigns were kept out of possession of said premises by the plaintiffs, and neither these defendants nor their assignees were able to obtain possession of said premises, by reason whereof said premises became of no use or value to these defendants or their assigns, and said indenture in said declaration mentioned was annulled, canceled, and set aside, and the said defendants, if ever bound thereby, were released therefrom; and this the defendants are ready to verify, etc." *Field v. Herrick*, 10 Ill. App. 591.

J. *Plea by Assignee of Tenant of Assignment of Lease.*

"And now comes the said defendant, by Charles W. Thomas, its attorney, and for a plea in this behalf says

action non, because it says that on the 28th day of November, 1887, it, the said defendant, by its instrument in writing of that date, under its corporate seal, did assign and set over to one Jacob Lasurs, of said county, the lease in the declaration mentioned as having been made and executed by plaintiffs, and all the leasehold interest and estate thereby conveyed, and did put the said Lasurs into possession of the mine and premises in said lease described, by virtue whereof said Lasurs became, and since said time hath been, the sole lessee of said mine and premises under said lease: without this, that the defendant has had the use, control and enjoyment of said mine and premises from, to-wit, the 20th day of September, 1891, to the 20th day of September, 1894, as is by the said declaration supposed; and this the defendant is ready to verify, wherefore," etc. *Consolidated Coal Co. v. Peers*, 166 Ill. 361, 46 N. E. 1105.

IV. *Answers.*

A. *Denial of Hiring Premises.*

That he did not hire said premises of the plaintiff (or execute, or accept said lease from the plaintiff), as alleged. 2 Abb. Forms 97.

B. *Denial of Use and Occupation of Premises.*

That he did not occupy the premises as alleged. 2 Abb. Forms 97.

C. *Denial by Assignee of Occupation.*

That said (lessee) did not hire the premises from the defendant as alleged; and that no assignment of any such lease was made to or accepted by the defendant, as alleged, and that the defendant did not occupy the premises under the lease. 2 Abb. Forms 97.

D. *Answer, Assignee's Assignment To Third Person.*

That before the rent claimed in the complaint became due, and on or about the ——— day of ———, 18—, the defendant assigned all his interest in said lease to one M. N., who then entered into possession, and so continued when said rent became due. 2 Abb. Forms 97.

E. *Answer, Tender of Rent Upon the Land.*

I. That he was present at the said demised dwelling house at the time when the said ——— dollars became due as aforesaid, to-wit, on the ——— day of ———, 18—, for a reasonable time, to-wit, the space of one hour

before sunset, and there continued until a reasonable time, to wit, one hour after sunset on the same day, and during all the interval of time aforesaid was there, ready to pay the said ——— dollars to the plaintiff.

II. That neither the said plaintiff, nor any other person on his behalf, during any part of said time, was there ready to receive the same.

III. That since the said day the defendant has always been, and still is, ready to pay the said ——— dollars to the plaintiff; and he now brings the said ——— dollars here into court, ready to be paid to the said plaintiff, if he will accept the same. 2 Abb. Forms 98.

F. Answer, Eviction.

I. That after the making of the lease (or after the letting) mentioned in the complaint, and before any part of the rent in the complaint demanded became payable, the plaintiff forcibly entered upon the premises, and removed the defendant therefrom (or from a part thereof, to-wit, describing the part), and kept him out of possession from thence until the ——— day of ———, 18— (or until after said rent became due). 2 Abb. Forms 98.

G. Answer, Surrender of Premises.

That before the rent claimed in the complaint became due (or before the alleged breaches, or the breaches by this defense answered), the defendant surrendered to the plaintiff the demised premises, and all the residue of the said term then to come, and unexpired therein; and the plaintiff then accepted such surrender, and took possession of the said premises. 2 Abb. Forms 99.

H. Answer, That Landlord Accepted an Assignee as His Tenant.

I. That before the rent (or the last instalment of rent) claimed in the complaint became due (or before the breaches alleged, or the breach hereby answered), the defendant duly assigned (by deed) all his estate and term of years then to come and unexpired in the demised premises to M. N., who then entered into the same, and was possessed thereof for the residue of said term.

II. That the plaintiff then had notice thereof, and afterwards accepted from the said M. N. rent under the lease (or agreement) mentioned in the complaint, and accepted the said M. N. as his tenant of said premises. 2 Abb. Forms 99.

LARCENY.

I. Indictments, 772

- A. *General Form*, 772
- B. *Stealing Hay*, 772
- C. *Stealing Sacks of Wheat*, 772
- D. *Oats, Chaff, and Beans, Mixed*, 772
- E. *Stealing Wool*, 773
- F. *Promissory Note*, 773
- G. *Stealing a Horse*, 773
- H. *Stealing Railroad Bonds*, 773
- I. *Indictment for Stealing Money, Currency*, 773
- J. *Indictment for Larceny From Person*, 773
- J. *Indictment for Larceny From Person*, 773
- K. *Information Charging Second Offense*, 774

I. Indictments.

A. *Indictment, General Form.*

Middlesex. The jurors for our lord the king, upon their oath present, that A. B., late of, etc., laborer, on, etc., with force and arms, at, etc., aforesaid, one silver spoon, of the value of ——— shillings, of the goods and chattels of one J. L., two brass candlesticks, of the value of ——— shillings, and two linen shirts of the value of ——— shillings, of the goods and chattels of one E. W., then and there being found, feloniously, did steal, take and carry away, against the peace of our said lord the king, his crown and dignity. 3 Chit. Cr. L. 959.

Note.—Value must be stated, otherwise conviction can only be had for petit larceny.

The value must be separately stated in each count. *State v. Wagner*, 118 Mo. 626, 24 S. W. 219.

B. *Indictment, Stealing Hay.*

(Commencement and conclusion as above.) A small quantity, to-wit, ——— pounds weight of hay, of the value of ———, of the goods and chattels of G. W., then and there being found, feloniously, etc. 3 Chit. Cr. L. 960.

C. *Indictment, Stealing Sacks of Wheat.*

(Commencement and conclusion as above.) Ten sacks of wheat of the value of ——— pounds, of the goods and chattels of one C. S., then and there being found, feloniously, etc. 3 Chit. Cr. L. 960.

D. *Indictment, Stealing Oats, Chaff and Beans, Mixed Together.*

(Commencement and conclusion as

above.) A certain mixture consisting of one bushel of oats, one bushel of chaff, and one bushel of beans, of one A. B., then and there being found, feloniously, etc. 3 Chit. Cr. L. 960.

E. Indictment, Stealing Wool.

(Commencement and conclusion as above.) — pounds weight of wool, of the value of — shillings, of the goods and chattels of one J. C. then and there being found, feloniously, etc. 3 Chit. Cr. L. 960.

F. Indictment for Stealing Promissory Note.

That A. B., late of, etc., on, etc., to-wit, with force and arms, at, etc., aforesaid, feloniously did steal, take and carry away, one promissory note, for the payment of the sum of — pounds, and of the value of — pounds, the said note at the time of committing the felony aforesaid, being the property of one C. D., and the said sum of — pounds, payable and secured by the same promissory note being then due and unsatisfied to the said C. D., the proprietor thereof against the form, etc., and against the peace, etc. 3 Chit. Cr. L. 974a.

G. Indictment for Stealing a Horse.

That A. B., late of, etc., on, etc., aforesaid, one gelding of the price of — pounds, of the goods and chattels of one J. D., then and there found and being, then and there feloniously did steal, take, and lead away, against the peace, etc. (Add a count for single larceny.) 3 Chit. Cr. L. 980.

Note.—In case of cattle say "drive away," instead of "lead away." Archb. Cr. Pl. 195.

H. Indictment for Stealing Railroad Bonds.

The grand jury of the city and county of New York by this indictment accuse William S. Roberts and Edward H. Walton of the crime of grand larceny in the first degree, committed as follows: the said William S. Roberts and Edward H. Walton, each late of the first ward of the city of New York, in the county of New York aforesaid, on the fourteenth day of February, in the year of our Lord one thousand eight hundred and eighty-four, at the ward, city and county aforesaid, with force and arms, ten written instruments and evidences of debt, to-wit: the bonds and written obligations issued by the Georgetown and

Lane's Railroad Company, a corporation duly existing under the laws of the state of South Carolina, and called "first mortgage bonds," in and by each of which the said railroad company acknowledged itself indebted to the bearer thereof in the sum of one thousand dollars, and which said sum the said railroad company thereby promised to pay on the first day of January, in the year of our Lord 1913, with interest, the same bearing date on the first day of January, in the year of our Lord, 1883, and being then and there each duly signed by the president and secretary of the said railroad company, and sealed with the seal thereof, and numbered, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, respectively, and being then and there in full force and effect, and wholly unsatisfied, and of the value of one thousand dollars each (a more particular description of which said bonds and written obligations is to the grand jury aforesaid unknown) of the valuable things, evidences of debt, goods, chattels, and personal property of the Bethlehem Iron Company then and there being found, then and there feloniously did steal, take and carry away, against the form of the statute in such case made and provided and against the peace of the people of the state of New York and their dignity. *Roberts v. Reilly*, 116 U. S. 80, 83, 84, 6 Sup. Ct. 291, 29 L. ed. 544.

I. Indictment for Stealing Money, Currency.

"Divers coins of the United States current as money in said commonwealth of the amount and of the value in all of three dollars." *Com. v. Collins*, 138 Mass. 483.

J. Indictment for Larceny From Person.

"The said Alex. Graham, Sophia Graham, John Daws and Hattie Dillon, on the 16th day of April, 1882, in the county aforesaid, seven \$100 notes, of the value and denomination of \$100 each, consisting of national bank notes, and national currency notes called greenbacks, and all of the aggregate value of \$700, then and there being the property of A. H. Hildebrand, and then on the person of the said A. H. Hildebrand, feloniously did steal, take and carry away, contrary

to law." *State v. Graham*, 65 Iowa 617, 22 N. W. 897.

K. Information Charging Second Offense.

"William A. Branyan, prosecuting attorney in and for the 28th judicial circuit of Indiana, now gives the Huntington Circuit Court to understand and be informed that David Randall, on the 31st day of April, A. D. 1892, at and in said county and State aforesaid, did then and there unlawfully and feloniously steal, take and carry away six dollars in money, of the value of six dollars, then and there, and being then and there the personal goods, money and chattels of William Powers. And the said Randall was heretofore convicted of petit larceny in the Wells Circuit Court, in Wells county, in said State, as William Powers has complained upon oath.

(Signed) William A. Branyan,
Prosecuting Attorney."

Randall v. State, 132 Ind. 539, 32 N. E. 305.

Note.—Held sufficient description of property under constitutional provision that the accused has the right "to demand the nature and cause of the accusation against him," and statutory provision that it is sufficient to describe money, etc., "simply as money, without specifying any particular coin, note, bill, or currency."

LEASE.—See **LANDLORD AND TENANT**.

LEGACIES.—See **WILLS**.

LEGATEES.—See **WILLS**.

LETTERS ROGATORY.—See **DEPOSITIONS**.

LEVY OF EXECUTION.—See **JUDGMENTS AND DECREES, ENFORCEMENT OF**.

LEWDNESS.

I. Indictment for Cohabiting as Man and Wife, 774

II. Indictment for Lascivious Cohabitation, 774

III. Indictment, Living in Fornication, 775

CROSS-REFERENCE:

DISORDERLY CONDUCT:

Indictment for Being a Street-Walker.

I. Indictment for Cohabiting Together as Man and Wife.

"One William Chandler, late of said county, on the 14th day of August, A. D. 1883, and on divers other days

and times, as well before as after that date, and previous to this presentment, at said county and State aforesaid, being a married man and having a lawful wife then living, and Grace Beeman, at the time being unmarried, Grace Beeman and said Chandler, not being married to each other, did then and there during said time unlawfully live and cohabit together as man and wife." *State v. Chandler*, 96 Ind. 591.

Note.—Held that the language of the indictment "cohabit as man and wife" was equivalent in meaning to the language of the statute "cohabit with another in a state of adultery."

II. Indictment for Lascivious Cohabitation (a).

"State of Missouri, county of Shannon. In the Shannon Circuit Court, April term, 1854.

The grand jurors for the state of Missouri, impaneled, etc., upon their oath present, that John Bess and Polly Bess (alias Polly Cox), both late of Shannon county, on the first day of May, in the year eighteen hundred and fifty-three, and on divers other days between that day and the time of the finding of this bill of indictment, with force and arms, at, etc., did then and there live in a state of open and notorious adultery, and did then and there lewdly and lasciviously abide and cohabit with each other; and were then and there guilty of open, gross lewdness and lascivious behavior, by then and there publicly, lewdly and lasciviously abiding and cohabiting with each other, contrary," etc. *State v. Bess*, 20 Mo. 419.

Indictment for Lascivious Cohabitation (b).

The indictment charges with sufficient allegation as to time and place, that the defendant and one Janet Lowery, did "unlawfully, openly and publicly, live, dwell and cohabit together, in lewdness and lasciviousness, they being unmarried to and with each other." *People v. Colton*, 2 Utah 457.

Indictment for Lascivious Cohabitation (c).

"Did then and there wrongfully, unlawfully and illegally, each with the other, live together in an open state of adultery, the said Herbert P. Crane, alias Bert Crane, being then and there a married man, having been previously married to one Jessie E. Doolittle, and

the said Lizzie B. Stiles, alias Lillian B. Stiles, being then and there a married woman, having been previously married to one Everell D. Stiles, contrary to the form of the statute in such case made and provided," *Crane v. People*, 168 Ill. 395, 48 N. E. 54.

Note.—Sustained under a statute providing that "if any man and woman shall live together in an open state of adultery of fornication, or adultery and fornication."

III. Indictment, Living in Fornication.

"The State of Alabama, Macon county. In the circuit court, at spring term, 1849.

"The grand jurors for the said State, sworn and charged to inquire for the said county, upon their oaths present, that John R. Lawson, a man, and Mary Swinney, a woman, both late of said county, on the first day of January, 1849, and continually from that day to the finding of this indictment, in the county aforesaid, did live together in fornication, against the peace and dignity of the state," etc. *Lawson v. State*, 20 Ala. 66.

Note.—Held sufficient for general charge of living together in state of fornication under statute. Questioned as to sufficiency as descriptive of single offense.

LIBEL AND SLANDER.

I. Declarations, 775

- A. *For Charging Perjury*, 775
- B. *For Charging Robbery*, 777
- C. *Irrelevant Libelous Statement in Pleading*, 777

II. Pleas, 778

- A. *Justification of Words of Perjury*, 778
- B. *Justification of Words of Theft*, 779
- C. *Slander of Plaintiff's Ship*, 779

III. Replication to Plea Justifying Words De Injuria, 779

IV. Complaints, 779

- A. *General Form, Words Libelous on Their Face*, 779
- B. *Libel Published in Newspaper*, 780
- C. *Relating to Business*, 780
- D. *Words Not Libelous on Their Face*, 780
- E. *Libel by Signs*, 780
- F. *Words Actionable in Themselves*, 780

G. *Slander of Trade With Special Damages*, 780

H. *Slander of Title*, 781

V. Answers, 781

- A. *Denial of Inducement*, 781
- B. *Justification of Charge of Perjury*, 781
- C. *Truth of Words*, 781
- D. *Justification and Denial of Malice*, 781
- E. *Justification and Mitigation*, 782
- F. *Privileged Communication*, 782
- G. *Privileged Communication to Employer*, 782
- H. *Fair Report of Public Proceedings*, 783

VI. Indictments, 783

- A. *Common Form*, 783
- B. *For Libel on Envelope in Mail*, 783
- C. *For Libel of Public Official*, 784
- D. *Indictment, Libel Contained in Handbill*, 786
- E. *Information, Libel With Innuendo Charging Crime*, 786
- F. *Indictment for Slander Charging Unchastity*, 787

I. Declarations.

A. *Declaration for Libel, Charging Perjury.*

For that whereas the said plaintiff now is a good, true, honest, just and faithful citizen of this state, and as such hath always behaved and conducted himself, and until the committing of the several grievances by the said defendant, as hereinafter mentioned, was always reputed, esteemed and accepted by and amongst all his neighbors, and other good and worthy citizens of this state, to whom he was in anywise known, to be a person of good name, fame and credit, to-wit, at, etc. And whereas also the said plaintiff hath not ever been guilty, or until the time of the committing of the said several grievances by the said defendant as hereinafter mentioned, been suspected to have been guilty of perjury or any other such crime. (If the slander do not amount to a charge of any specific offense, such as perjury or theft, etc., the inducement, instead of the words, "of perjury or any other such crime," should run thus: "of the offenses and misconduct hereinafter mentioned to have been charged and imputed to the said plaintiff, or of any other such offense or misconduct.") By means of which said premises, he the said plaintiff, before the committing of the said several

grievances by the said defendant, as hereinafter mentioned, had deservedly obtained the good opinion and credit of all his neighbors, and other good and worthy citizens of this state, to whom he was in anywise known, to-wit, at, etc. And whereas also, before the committing of the several grievances by the said defendant, as in the first and second counts hereinafter mentioned, a certain action had been depending in the supreme court of judicature of the people of the state of New York, before the justices thereof, at the _____ in the _____ of _____, wherein one J. K. was the plaintiff, and one L. M. was the defendant, and which said action had been then lately tried at the circuit court, in and for the county of _____, and on such trial the said plaintiff had been, and was examined on oath, and had given his evidence as a witness, for and on the part and behalf of the said J. K., to-wit, at, etc. Yet the said defendant, well knowing the premises, but greatly envying the happy state and condition of the said plaintiff, and contriving, and wickedly and maliciously intending to injure the said plaintiff in his said good name, fame and credit, and to bring him into public scandal, infamy and disgrace with and among all his neighbors, and other good and worthy citizens of this state, and to cause it to be suspected and believed by those neighbors and citizens, that he the said plaintiff had been and was guilty of perjury (or "of the offenses herein-after mentioned to have been imputed to him"), and to subject him to the pains and penalties, by the laws of this state made and provided against, and inflicted upon persons guilty thereof; and to vex, harass, oppress, impoverish and wholly ruin him the said plaintiff, heretofore, to-wit, on, etc. (the precise day is not material), at, etc., falsely, wickedly and maliciously did compose and publish, and cause and procure to be published, of and concerning the said plaintiff (it is necessary to state that the libel was of and concerning the plaintiff, and of the preceding inducements), and of and concerning the said action, which had been so depending as aforesaid, and of and concerning the evidence by him the said plaintiff given on the said trial, as such witness as aforesaid, a certain false, scandalous, malicious and

defamatory libel, containing, amongst other things (this allegation "inter alia" is sufficient; but if different parts of a libel not following each other be set out in the same count, it is inaccurate to describe it as an entire libel, and the part should be set forth thus: "in one part of which said libel there was and is contained the following false, etc., matter, of and concerning the said plaintiff, that is to say, etc." [stating that part of the libel, and then say]: "and in another part of which said libel there was," etc.), the false, scandalous, malicious, defamatory and libelous matter following, of and concerning the said plaintiff, and of and concerning the said action, and of and concerning the evidence by him the said plaintiff, given on the said trial as such witness as aforesaid (that is to say), he (meaning the said plaintiff) was forewarned on the trial, meaning the said trial, and thereby then and there meaning that he the said plaintiff, in giving his evidence as such witness on the said trial as aforesaid, had committed wilful and corrupt perjury.

And the said plaintiff further saith that the said defendant, further contriving and intending as aforesaid, heretofore, to-wit, on, etc., at, etc., falsely, wickedly and maliciously did publish a certain other false, scandalous, malicious and defamatory libel, of and concerning the said plaintiff, and of and concerning the said action, which had been so depending as aforesaid, and of and concerning the evidence by him the said plaintiff given on the said trial, as such witness as aforesaid, containing amongst other things the false, scandalous, malicious, defamatory and libelous matter following, of and concerning the said plaintiff, and of and concerning the said action, and of and concerning the evidence given by him the said plaintiff on the said trial as such witness as aforesaid, that is to say (vary the statement of the words and innuendos as may be advisable under the particular circumstances of each case).

And the said plaintiff further saith that the said defendant, further contriving and intending as aforesaid, afterwards, to-wit, on, etc., at, etc., falsely, wickedly, maliciously, wrongfully and unjustly did publish and cause and procure to be published, a certain other false, scandalous, malicious and defam-

atory libel, of and concerning the said plaintiff, containing amongst other things certain other false, scandalous, malicious, defamatory and libelous matters, of and concerning the said plaintiff as follows, that is to say, he (meaning the said plaintiff) is perjured! By means of the committing of which said several grievances by the said defendant as aforesaid, he the said plaintiff hath been and is greatly injured in his said good name, fame and credit, and brought into public scandal, infamy and disgrace, with and amongst all his neighbors, and other good and worthy citizens of this state, insomuch that divers of those neighbors and citizens, to whom the innocence and integrity of the said plaintiff in the premises were unknown, have, on occasion of the committing of the said grievances by the said defendant as aforesaid, from thence hitherto suspected and believed, and still do suspect and believe, the said plaintiff to have been, and to be a person guilty of perjury, and have by reason of the committing of the said grievances by the said defendant as aforesaid, from thence hitherto wholly refused, and still do refuse, to have any transaction, acquaintance or discourse with him the said plaintiff, as they were before used and accustomed to have, and otherwise would have had. And also by reason thereof, one J. K., who before and at the time of the committing of the said grievances, was about to retain and employ, and would otherwise have retained and employed, the said plaintiff as his servant, for certain wages and reward to be therefore paid to him the said plaintiff, afterwards, to-wit, on the day and year aforesaid, at, etc., wholly refused to retain and employ him the said plaintiff in the service and employ of him the said J. K., and the said plaintiff hath from thence hitherto remained and continued, and still is wholly out of employ; and the said plaintiff hath been and is by means of the premises otherwise greatly injured, to-wit, at, etc. To the damage, etc. Burr. App. 323, §592; 2 Chit. Pl. 620.

B. Declaration for Slander, Charging Robbery.

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea of trespass on the case: For that whereas the said plaintiff al-

ways was and is a good, true and honest citizen of this state, and never was guilty of the crimes hereinafter laid to his charge: Nevertheless the said defendant, well knowing the premises, but contriving and maliciously intending to injure, defame and slander the said plaintiff in his good name, to-wit, on the ——— day of ———, in the year of our Lord one thousand eight hundred and ——— (the day of speaking the words, or about it; the precise day stated need not be proved), at ———, in the county of ——— aforesaid, in a certain discourse which the said defendant then and there had with the said plaintiff, in the presence and hearing of divers good and worthy persons, did speak, publish and declare to, of and concerning the said plaintiff these false, iniquitous, scandalous and malicious words, to-wit, "you (the said plaintiff meaning) are a robber;" "you (the said plaintiff meaning) are perjured" (or according to the case). And whereas also the said defendant, with further malice towards the said plaintiff, afterwards, to-wit, on the same day and year, and the place aforesaid, in a certain other discourse which the said defendant then and there had, in the presence and hearing of divers other good people, of and concerning the said plaintiff, did falsely and maliciously speak, publish and declare, in the presence and hearing of those people these other false and scandalous words, of and concerning the said plaintiff, to-wit ("he [the said plaintiff meaning] is a robber," etc., as the case may require). By reason of the speaking, publishing and uttering of which said false, scandalous and malicious words, the said plaintiff is greatly prejudiced in his good name, fame, credit and reputation: Wherefore the said plaintiff says that he is injured, and has sustained damage to the amount of (five thousand) dollars, and therefore the said plaintiff brings suit, etc.

E. F., plff. atty.

Burr. App. 322, §591; see 2 Chit. Pl. 634, 641; 2 Humph. Prec. 772 et seq.

C. Declaration for Irrelevant Libelous Statement Contained in Pleading.

"And the plaintiff further says, that the said defendant made and published and filed and caused to be filed in the office of the clerk of the Supreme

Judicial Court in and for the county of Suffolk, and made a matter of public record in said court, a false and malicious libel concerning the plaintiff, a copy of which is hereto annexed, and therein falsely and maliciously charged the plaintiff with the crime of murder, in the words following, to-wit, 'and well knew that said McLaughlin' (meaning the plaintiff) 'caused to be put to death, immediately after its birth, an illegitimate child born to him' (meaning the plaintiff) 'by one Sarah Clark, of said Newton;' and by the same words falsely and maliciously accused the plaintiff of the crime of adultery by thus charging that an illegitimate child was born to the plaintiff by one Sarah Clark, the plaintiff being a married man and having a lawful wife alive, other than the said Sarah Clark; and the defendant, in said libelous paper, falsely and maliciously accused the plaintiff of said crimes of murder and adultery, and other crimes and felonies; and the plaintiff avers that said libelous paper was made and published and filed as aforesaid by the defendant, of his express malice and without color for making said imputations, and with a design to defame and slander the plaintiff." *McLaughlin v. Cowley*, 127 Mass. 316.

II. Pleas.

A. Plea, Justification of Words of Perjury.

(First plea, general issue.)

Because he says that before the speaking and publishing the said words of and concerning the said plaintiff (in the said ——— counts mentioned), to-wit, on, etc., at, etc. (venue), at the assizes then and there holden before ———, then chief justices of our said lord the king, assigned to hold pleas before the king himself, and ———, then one of the justices of our said lord the king, assigned to hold pleas before the king himself, justices of our said lord the king, appointed to take the assizes for the said county, according to the form of the statute in such case made and provided, a certain issue before then joined in an action brought and prosecuted in the court of our said lord the king, before ——— and his companions, then justices of our said lord the king of the bench at Westminster, in the county of Middlesex, by and at the suit of one

E. F., as the plaintiff, against one G. H., as the defendant, for the supposed breach of certain promises and undertakings alleged by the said E. F. to have been made to him by the said G. H. and not performed, came on to be tried in due form of law, and was then and there tried by a jury of the country in that behalf, duly taken and sworn between the parties aforesaid, and upon such trial of the said issue the said plaintiff appeared as a witness for and on behalf of the said E. F., the plaintiff in the said action, and the said plaintiff was then and there in open court at the said assizes holden as aforesaid, before the said ——— and ———, the justices aforesaid, duly sworn, and took his corporal oath upon the holy gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters in question in the said issue (they the said ——— and ———, then and there having sufficient and competent power and authority to administer the said oath to the said plaintiff in that behalf; and upon the said trial of the said issue, it then and there became and was material to ascertain the truth of the matters hereafter stated to have been sworn to by the said plaintiff. And the said defendant further says that the said plaintiff being so sworn as aforesaid, upon his oath aforesaid, then and there, to-wit, on, etc., aforesaid, at, etc. (venue), aforesaid, falsely, wickedly, wilfully, maliciously and corruptly, and by his own act and consent did say, depose, swear and give evidence, amongst other things, at and upon the said trial, to and before the said jurors so sworn, to try the said issue as aforesaid, and the justices aforesaid, that, etc. (here state that part of the plaintiff's evidence in which he committed perjury). Whereas in truth and in fact, etc. (here negative the plaintiff's evidence as in an indictment for perjury). And the said plaintiff did thereby in the said court at the said assizes so holden as aforesaid, upon his said oath upon the trial of the said issue, falsely, wickedly, wilfully and corruptly commit wilful and corrupt perjury; wherefore the said defendant, at the said several times when, etc., in the said ——— counts mentioned, at, etc. (venue), aforesaid, spoke and published of and concerning the said plaintiff, the said several words, in the said

counts mentioned to have been spoken and published by the said defendant of and concerning the said plaintiff, as it was lawful for him to do for the cause aforesaid. And this, etc. 3 Chit. Pl. 1033.

B. *Plea, Justification of Words of Theft.*

(First plea, general issue.)

And for a further plea in this behalf (if the plea is intended to justify the words in particular counts only, here say, "as to the speaking and publishing of the said several words of and concerning the said plaintiff, as in the — counts mentioned"), the said defendant by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, saith that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the said plaintiff, before the speaking and publishing of the said several words of and concerning the said plaintiff, as in the said (— counts of the said) declaration mentioned, to-wit, on, etc., at, etc. (venue), did feloniously steal, take and carry away certain goods and chattels, to-wit, — of one E. F., of great value, to-wit, of the value of £—. Wherefore he the said defendant afterwards, to-wit, at the said several times when, etc., in the (— counts mentioned), at, etc. (venue), aforesaid, did speak and publish the said words of and concerning the said plaintiff, as in the (said — counts of the said) declaration mentioned, as he lawfully might for the cause aforesaid. And this, etc. 3 Chit. Pl. 1031.

C. *Plea To Slander of Plaintiff's Ship.*

(First plea, general issue.)

And for a further plea in this behalf, as to the speaking and publishing the words following, parcel of the words in the said first count of the said declaration mentioned, to-wit, "I saw the ship, and the splice or scuff of the keelson was open, so that I could put my four fingers in edgeways;" and also as to the speaking the words in the said second count of the said declaration mentioned, to-wit, "the ship's back is broke," and also as to speaking and publishing the said words in the third count of the said declaration mentioned, he the said defendant, by leave,

etc. (actio non), because he says that before the time when the said words were by him spoken as aforesaid, he the said defendant had seen the said ship, and the splice or scuff of the keelson of the said ship was open, so that he the said defendant could put his four fingers in edgeways, and that the said ship's back was broke, to-wit, at, etc. (venue), aforesaid, by reason thereof the said defendant at the time in the said declaration mentioned, spoke and published the said words in the introductory part of this plea mentioned, as it was lawful for him to do. And this, etc. 3 Chit. Pl. 1040.

III. *Replication to Plea Justifying Words de Injuria.*

(Similiter to general issue.)

And as to the said pleas of the said defendant, by him (secondly and thirdly) above pleaded, the said plaintiff saith that he, by reason of anything by the said defendant in those pleas above alleged, ought not be barred from having and maintaining his aforesaid action against the said defendant, in respect of the grievances in the introductory part of those pleas mentioned; because he saith that the said defendant, at the said time when, etc., in the said (first and second) counts mentioned, of his own wrong, and without the cause by the said defendant in his said (second and third) pleas, or either of them respectively mentioned, did commit the said grievances in the introductory part of those pleas mentioned, in manner and form as the said plaintiff hath above thereof complained against the said defendant, to-wit, at, etc. (venue), aforesaid. And this the said plaintiff prays may be inquired of by the country, etc. 3 Chit. Pl. 1186.

IV. *Complaints.*

A. *Complaint, General Form, Where the Words Are Libelous on Their Face.*

I. That on the — day of —, 18—, the defendant maliciously (composed and) published concerning the plaintiff, in a newspaper called the — (or in a handbill which he caused to be circulated and posted), at —, the false and defamatory matter following, to-wit (copy of the article complained of; or say, a certain article, containing the false and defamatory matter following, to-wit, and give extracts from the arti-

cle, including all the objectionable matter).

II. That by means of said publication the plaintiff was injured in his reputation, to his damage _____ dollars. 1 Abb. Forms 489.

B. Complaint, Where the Libel Was Published in Defendant's Newspaper.

I. That at the time hereinafter mentioned the defendant was the editor, publisher and proprietor (or either, as the case may be; or the defendant W. X. was the editor, and the defendant Y. Z. was the publisher and proprietor) of the _____, a newspaper published at _____.

II. That on the _____ day of _____, 18—, the defendant maliciously composed and published concerning the plaintiff in said newspaper (or, if only the publisher is sued, maliciously published concerning the plaintiff in said newspaper; or, if both author and publisher are sued, the defendant W. X. maliciously composed for publication, and the defendant Y. Z. maliciously published in said newspaper), (continue as in preceding form from the *). 1 Abb. Forms 491.

C. Complaint for Libel Relating To Business or Profession.

I. That at the time hereinafter mentioned the plaintiff was a physician, practicing as such at _____, and was of good name and credit as such physician.

II. That on the _____ day of _____, 18—, the defendant maliciously (composed and) published concerning the plaintiff, in a newspaper called the _____ (or in a handbill which he caused to be circulated and posted), at _____, the false and defamatory matter following, to-wit (copy of the article complained of; or say: a certain article, containing the false and defamatory matter following, to-wit, and give extracts from the article, including all the objectionable matter).

III. That by means of said publication the plaintiff was injured in his reputation, and in his said good name and credit as a physician, and in his practice as such, to his damage _____ dollars. 1 Abb. Forms 491.

D. Complaint for Words Not Libelous on Their Face.

I. That at the time hereinafter mentioned the house of the defendant had

been burned down, and it was suspected that it had been feloniously set on fire.

II. That the defendant, knowing the premises, on the _____ day of _____, 18—, maliciously composed and published concerning the plaintiff the following false libel, to-wit: "He," meaning the plaintiff, "kindled the fire," meaning the fire in defendant's house, "and I can prove it," thereby meaning that the plaintiff had feloniously set fire to said house; to the damage of the plaintiff _____ dollars. 1 Abb. Forms 492.

E. Complaint for Libel by Signs.

That on the _____ day of _____, 18—, at _____, the defendant, contriving to injure the plaintiff in his reputation, and to bring him into public contempt and ridicule, did, in the public street (or square, or common) of said _____, wrongfully and maliciously make, and cause to be made, an effigy or figure intended to represent the person of the plaintiff, and hung up and caused to be hung up the said effigy, in the view of the neighbors of the plaintiff and of the public then and there assembled, by means of which the plaintiff has been greatly injured in his reputation, to his damage _____ dollars. 1 Abb. Forms 498.

F. Complaint, Where the Words Are Actionable in Themselves.

That on the _____ day of _____, 18—, at _____, the defendant, in the presence and hearing of one M. N. (or of a number of persons), maliciously spoke concerning the plaintiff the false and defamatory words following (set out the words complained of as accurately as possible); whereby the plaintiff was injured in his reputation, to his damage _____ dollars. 1 Abb. Forms 499.

G. Complaint for Slander Respecting Plaintiff's Trade, With Special Damages.

I. That at the time of the commission of the grievances hereinafter mentioned, the plaintiff was engaged in business as merchant (or otherwise), and had always maintained a good reputation and credit as such merchant.

II. That on the _____ day of _____, 18—, at _____, the defendant, in the presence and hearing of a number of persons, maliciously, and with intent to cause it to be be-

lieved that the plaintiff kept false and fraudulent books of account in his said business, spoke concerning this plaintiff and concerning his said business the false and defamatory words following, to-wit: "He keeps false accounts, and I can prove it" (or otherwise state the words complained of).

III. That by reason thereof, a number of persons, and in particular (name the persons referred to), who had theretofore been accustomed to deal with the plaintiff in his business aforesaid, ceased to deal with him, and the plaintiff was thereby deprived of their custom, and of the profits which he would otherwise have made by a continuance of such dealing, and was otherwise injured in his reputation, to his damage _____ dollars. 1 Abb. Forms 501.

H. Complaint for Slander of Title.

I. That the plaintiff being the owner in fee (or other estate) of a certain farm, situate in the town of _____, and county of _____ (briefly designate the property in question), caused the same, on the _____ day of _____, 18—, at _____, to be offered for sale (or to be put up and exposed for sale by public auction).

II. That the defendant, well knowing the premises, and maliciously (and without probable cause) contriving to cause it to be suspected that the plaintiff did not own said farm, and could not sell the same, and to prevent him from effecting a sale thereof (procured one M. N. to attend said sale, and maliciously procured said M. N. to state, and) did maliciously then and there publicly state (through the said M. N.), in the presence and hearing of O. P. (or of many persons then and there assembled for the purpose of bidding on said property and buying the same), concerning the plaintiff and his said property, the false and defamatory matter following, to-wit (set out the words complained of, with suitable innuendos).

III. That by reason thereof the said O. P. was (or various persons, and in particular, naming the persons referred to who attended on said auction sale for the purpose of buying thereat, were) dissuaded from bidding therefor, and refused and still do refuse to purchase the said property in consequence thereof; and the plaintiff has been unable to sell the same (and has been obliged to expend _____ dollars in

and about the attendance upon said auction), and has been otherwise greatly injured, to his damage _____ dollars. 1 Abb. Forms 502.

V. Answers.

A. Answer, Denial of Inducement.

That the plaintiff was not a physician, as alleged. 2 Abb. Forms 137.

B. Answer, Justification of Charge of Perjury.

That before the speaking (or publishing) of the words alleged in the complaint, and at a term of the _____ court, duly held at _____, in the month of _____, 18—, before one of the judges of the _____ court, upon the trial of an action there pending between one M. N. as plaintiff, and O. P. as defendant, A. B., the plaintiff in this action, appeared as a witness for and on behalf of the said M. N., and was then and there, in open court, duly sworn, and took oath to speak the truth, the whole truth, and nothing but the truth, touching and concerning the matters in question in the said issue.

II. That the plaintiff, being so sworn, falsely and maliciously deposed and gave evidence, among other things, that (here set forth that part of the plaintiff's evidence in which he committed perjury).

III. That in truth (here negative the plaintiff's evidence as in an indictment for perjury).

IV. That the truth of the matters hereinbefore stated were material and pertinent to the issue there tried. 2 Abb. Forms 140.

C. Answer, Truth of Words.

That on the _____ day of _____, 18—, at _____, the plaintiff (here briefly state the offense, e. g., thus): stole from the defendant one bale of hay, to which the defendant referred when speaking (or printing, or writing) the words stated in the complaint. 2 Abb. Forms 144.

D. Answer, Justification and Denial of Malice in Charge of Larceny.

I. That each and every article in the complaint mentioned as having been charged by defendant to have been stolen by the plaintiff had, at the time mentioned in the complaint, been taken and stolen from the defendant.

II. That the defendant is informed and believes that the plaintiff has been, and is, guilty of each and every charge

in said complaint alleged to have been made against her by the defendant; and that whatever the defendant has said of or concerning the plaintiff she has said in the full belief of its truth and verity, and in self vindication and warning to others, and not from any motives of malice towards the plaintiff. 2 Abb. Forms 144.

E. Answer, Justification and Mitigation in Publishing Account of Arrest.

First. For a defense:

That the publication complained of was true. (If the alleged libel was not specific in its charges, state the facts upon which it was founded.)

Second. As mitigating circumstances:

I. That on the _____ day of _____, 18—, the plaintiff accused one A. B. of a burglary at _____.

II. That thereupon an officer of the police of _____ took the said A. B. into custody, and conducted him to a station house.

III. That while at the station house the said A. B. made to the captain of police there in command a statement, which is fairly and truly reported in the publication complained of (or made a statement to the effect that the burglary with which he was charged was planned by the plaintiff, and was effected by him and the plaintiff in concert; that they quarreled over the division of the plunder, and that thereupon the plaintiff charged him with the robbery).

IV. That afterwards the plaintiff was arrested by a police officer, and conveyed before C. D., a police justice of the city of _____, and held to bail by the said justice to answer the charges of the said A. B.

V. That the publication complained of contained a fair and true statement of the preceding circumstances.

VI. That it was published in a newspaper belonging to the defendant, by his employes, without his knowledge or consent.

VII. That the persons publishing the same inserted it as an item of public news, without malice, believing the same to be true. 2 Abb. Forms 142.

F. Answer, Alleged Libel was a Privileged Communication.

That in the month of _____, 18—, at the city of New York, the plaintiff

brought an action against this defendant in the _____ court, for having as alleged maliciously and without probable cause prosecuted the said plaintiff on a charge of obtaining money by false pretenses, and this plaintiff was arrested in said action by an order of arrest issued therein.

II. That afterwards, on the _____ day of _____, 18—, at said city, this defendant did, by his attorney, procure an order from one of the justices of said court, requiring the plaintiff to show cause, at a certain day and place therein named, why this defendant should not be discharged from said arrest, or why the sum in which he was held to bail should not be reduced.

III. That said order was granted upon an affidavit of this defendant, made in answer to an affidavit made by the plaintiff upon which the order of arrest aforesaid was granted, and for the purpose of procuring this defendant's discharge or a reduction of bail as aforesaid.

IV. That the supposed libel in the complaint set forth is a part of said affidavit of this defendant, and was published by him by the presentation of said affidavit to the said court upon said motion, and not otherwise.

(V. This defendant denies that he published said supposed libel maliciously, or with the intent charged in the complaint.)

VI. That said supposed libelous matter was pertinent and relevant in said motion, and for the purpose of procuring the relief prayed for therein (or that this defendant had reasonable cause for believing, and did in fact believe, at the time of said publication, that the same was true and pertinent, etc., as above). 2 Abb. Forms 145.

G. Answer, Alleged Slander Was Privileged Communication To Employer.

I. That he was, at the time of uttering the words mentioned in the complaint, the confidential clerk of A. B.

II. That the said A. B. inquired of the defendant the character of the plaintiff (with a view to employing him as a clerk, or otherwise), and the defendant then stated to him the matter referred to in the complaint.

III. That the defendant had probable cause for believing, and did believe, the same to be true. 2 Abb. Forms 147.

H. *Answer, Alleged Libel Fair Report of Public Official Proceedings.*

I. That on the _____ day of _____, 18—, in the course of a certain trial then pending in the _____ court of _____, wherein O. P. was plaintiff, and R. S. was defendant, one M. N., counsel for said O. P., made a public statement or speech.

II. That the defendants, as publishers and proprietors of the _____, published in said newspaper a fair and true report of the judicial proceedings had upon such trial, and of the public statement or speech made as aforesaid in the course thereof, which publication is the same publication as that in the complaint set forth (or of which publication the supposed libelous article in the complaint set forth is part)

III. The defendants deny that they published the same maliciously, or with intent to injure the plaintiff, or with the intent charged in the complaint. 2 Abb. Forms 147.

VI. *Indictments.*

A. *Indictment, Common Form.*

The jurors for our lord the king, upon their oath, present that C. D., late, etc., being a person of an evil, wicked and malicious mind and disposition, and unlawfully, wickedly and maliciously devising, contriving and intending, as much as in him lay, to scandalize, vilify and defame one A. B., and to bring him into public scandal, infamy and disgrace, and to injure, prejudice and aggrieve him the said A. B., and to provoke the said A. B. to commit a breach of the peace, on, etc., with force and arms, at, etc., aforesaid, of his great hatred, malice and ill-will towards the said A. B., unlawfully and maliciously did compose and publish, and cause and procure to be composed and published, a certain false, scandalous, malicious and defamatory libel of and concerning the said A. B., containing therein amongst other things the false, scandalous, malicious, defamatory and libelous words and matter following of and concerning the said A. B., that is to say (here state

the libelous matter with innuendoes, and then proceed as follows): which said false, scandalous, malicious and defamatory libel he the said C. D., afterwards, to-wit, on, etc., aforesaid, at, etc., aforesaid, unlawfully, wickedly and maliciously did send, and cause to be sent, to one E. F., in the form of a letter addressed to the said E. F., and did thereby then and there unlawfully, wickedly and maliciously publish, and cause to be published, the said libel, to the great damage, scandal, infamy and disgrace of the said A. B., in contempt, etc., to the evil and pernicious example, etc., and against the peace of our said lord the king, his crown and dignity. And the jurors, etc., do further present that the said C. D., further contriving and intending as aforesaid, on the said, etc., with force and arms, at, etc., aforesaid, of his great hatred, malice and ill-will towards the said A. B., unlawfully, wickedly and maliciously did publish, and cause to be published, a certain other false, scandalous, malicious, defamatory libel, of and concerning the said A. B., containing therein amongst other things the following false, scandalous, malicious, defamatory and libelous matter of and concerning the said A. B., that is to say, etc. (here state libel with innuendoes, as in first count, and then conclude, "to the damage," etc., as in the first count). 3 Chit. Cr. L. 888.

B. *Indictment for Libel on Envelope in Mail.*

"State of Missouri, city of St. Louis, ss.: In the St. Louis court of criminal correction. St. Louis, March 29th, 1888. State of Missouri, plaintiff, v. A. G. Armstrong, defendant. Charged with criminal libel. Barnard Dierkes, assistant prosecuting attorney of the St. Louis court of criminal correction, now here in court, on behalf of the state of Missouri, information makes as follows: That A. G. Armstrong, of Mexico, Audrain county, Missouri, in the city of St. Louis, on the 27th day of March, 1888, and on divers days in said year, did wilfully and maliciously libel and defame one Mary Vincil, of the city of St. Louis, by causing to be published and issued in said city, and by having sent through the mails, and put before the eyes of divers people in said city, a certain envelope,

printing, writing, sign, representation, effigy, as follows:

Chicago, Ills.

March 26

6:30 p. m.

R. R.

BAD DEBT

Collecting Agency,
218 La Salle St.,
Chicago.

U. S.
Postage
Stamp

Mrs. Mary Vincil,
C/o Scruggs, Vandervoort & Barney,
St. Louis, Mo.

2 N. Beaumont Street.

Intending and meaning thereby to indicate to the public and to all persons seeing said writing, printing, sign, representation and effigy, that she the said Mary Vincil, was dishonest; that she did not pay her just debts; that she had been guilty of unfair dealing; that she was a 'dead beat,' tending to provoke the said Mary Vincil to wrath, to expose her to public hatred, contempt and ridicule, and to deprive her of the benefits of public confidence and social intercourse. That said envelope contained certain scurrilous, blackmailing and indecent allegations concerning said Mary Vincil, as follows:

439

" 'SPRAGUE'S

" 'Bad Debts

I " 'Collecting Agency.

" 'Agency's 4th Letter

" 'Chicago, 3-26, 1888.

" 'Mrs. Mary Vincil, 5.00

C/o A. G. Armstrong:

" 'We find that the account which we notified you some time ago is still unsettled. Can you afford have the public know that you refuse to pay this bill? You may need credit again some time, but as long as this account remains in this unsatisfactory manner it will be hard for you to obtain it. If you desire to have credit with the merchants in your locality, and maintain a reputation for honesty and fair dealing, you will adjust this claim. Call on or write the party, and make some kind of a settlement at once. If you will pay part of it now, and make some arrangements for the balance, we will not crowd you for a while. Have the party to whom the bill is due write us at once, stating what arrangements you have made, before we publish the delinquent list of your town.

Very respectfully,

" 'Sprague's Collecting Agency.

" 'Per.

" 'P. S. Should you positively re-

fuse to make any arrangements for a liquidation of this claim, we feel justified in advertising the same for sale in the newspapers, as well as to send you a statement regularly until the matter is settled. A delinquent list is published for the good and protection of the public, as well as a guide for business men in extending credit, as it contains the names of those who do not try to meet their obligation. Do not correspond with us. Settle the matter with the party to whom the account is due, whose name was given in our former letter.'

That said envelope was known by the public to contain said scurrilous and abusive matters, and said Armstrong intended, by causing said matter to be sent to said Mary Vincil through the mails, to advertise her as a 'dead beat,' as dishonest, as 'poor pay,' as unfit to be trusted, as unfit for public confidence; and said acts were done by said Armstrong to extort money from said Mary Vincil, under the pretense that she the said Mary Vincil was indebted to him, when such was not the fact, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state.

(Signed) "Bernard Dierkes,

"Asst. Pros. Atty., St. Louis Court of Criminal Correction."

"State of Missouri, city of St. Louis, ss.: Mary Vincil, being duly sworn, upon her oath says that the facts stated in the above information are true, according to her best knowledge and belief.

(Signed) "Mrs. M. B. Vincil.

"Sworn to and subscribed before me this 6th day of April, 1888.

(Signed) "Michael J. Kenefick."

State v. Armstrong, 13 Cr. L. M. 875.

C. *Indictment for Libel of Public Official*

"The grand jury of the county of Clinton, in the name and by the authority of the state of Iowa, accuse E. W. Conable of the crime of libel, committed as follows: The said E. W. Conable, on the 3d day of November, A. D. 1888, in the county aforesaid, being a person of an envious, vicious, evil and wicked mind, and wickedly, maliciously and unlawfully contriving and intending as much as in him lay to injure, oppress and vilify the good name, fame,

credit and reputation of Walter I. Hayes, a citizen of the state of Iowa, and at that time, and now, a member of the fiftieth congress of the United States of America for the second congressional district of the state of Iowa, and at that time a candidate for reelection as a member of the fifty-first congress of the United States from said district, and to bring him into contempt, infamy and public hatred, and to deprive him of the benefits of public confidence, and to defame, asperse, scandalize and vilify the character of said Walter I. Hayes, and to insinuate and cause it to be believed that the said Walter I. Hayes had been guilty of gross misconduct in his said office of member of congress as aforesaid, and that he had, as such congressman, corruptly received money, or attempted so to receive it, in consideration of recommending some person for appointment as postmaster at Wilton, in said congressional district, and that he was thereby an unfit person to be re-elected to said office, did unlawfully and maliciously, wickedly and scandalously, compose, write, print and publish, and did cause and procure to be composed, written, printed and published in a certain so-called public newspaper entitled the 'Clinton Morning News,' a certain false, wicked, mischievous and scandalous libel of and concerning the said Walter I. Hayes, and of and concerning his administration of the duties of his said office, while in the performance thereof, which said wicked, malicious, scurrilous, false, mischievous and scandalous libel contained the following: 'The attempted sale of the Wilton postoffice. A great deal of discussion has been indulged in of late, through the second district, and especially in Muscatine county, regarding an alleged attempt on the part of Congressman Hayes (meaning Walter I. Hayes) to sell the Wilton, Muscatine county, postoffice for \$500. It is claimed there are several witnesses to the transaction, and no doubt there are (meaning there were witnesses to a transaction in which Walter I. Hayes attempted to corruptly sell the position of postmaster at Wilton, in said congressional district); but for fear that an exposure would have a damaging effect on the Muscatine democratic ticket, those who held the proofs of guilt (meaning guilt upon the part of said Walter I. Hayes in selling or at-

tempting to sell the postoffice at Wilton), in the shape of correspondence, etc., are reticent about giving the evidence to the public. But the facts are generally known, and are the subject of universal comment among Muscatine citizens. It is not at all strange that Hayes should traffic in matters of this kind. It would not be because he possessed any conscientious scruples against doing such a thing that he would refrain, but simply for fear of being found out. In the case at hand, however, he seems to have given little thought as to consequences, trusting, no doubt, to his ability to bulldoze the thing through. The \$500 once in his pocket (meaning that said Walter I. Hayes had received or attempted to obtain \$500 for a sale of the postmastership of said Wilton), then he would trust to luck for means wherewith to deceive the people. That there are dozens of men in Muscatine county who have seen evidence that would convict Hayes of attempting to sell the Wilton postoffice there is not a shadow of doubt. (Meaning that said Walter I. Hayes had actually in fact attempted to sell the postmastership of said Wilton.) Voters of the second district, is this (meaning said Walter I. Hayes) the sort of men you want to represent you in congress? Is it creditable to you, democrats, to assume the responsibility of placing so corrupt an official (meaning said Walter I. Hayes) in a high office of honor and trust? Can you afford to let the stigma rest on you of sending such a man (meaning said Walter I. Hayes) to congress, knowing that he is wholly unworthy, and has grossly betrayed the confidence you have reposed in him? (Meaning that said Walter I. Hayes had, as a member of congress, as aforesaid, grossly betrayed his position, and corruptly sold, or attempted to sell, the postmastership at said Wilton.) Can you afford to do this? Look at the matter squarely in the face, and then ask yourselves if you can afford to do that which would reflect discredit and dishonor on each one of you, individually, who casts a vote for Walter I. Hayes for congressman. We have more faith in the integrity of the great majority that compose the Democratic party of the second district than to think for a moment that that majority desires to be represented by political corruptionists and traffickers in the confidences

of the people and of the spoils of the office. (Meaning that said Walter I. Hayes was politically corrupt as a member of congress, a trafficker in office.) Gentlemen, it is for you, for you, to say, on Tuesday next, whether you desire an honest or a dishonest may to represent you in congress.' And the grand jury aforesaid, upon their oath, do further present that, at the time the said E. W. Conable so wrote, printed and published the said false, scurrilous, scandalous and malicious defamatory libel, the same was false, against the form of the statute in such case made and provided, and against the peace and dignity of the state of Iowa." *State v. Conable*, 13 Cr. L. M. 89, 90-92.

D. Indictment, Libel Contained in Handbill.

"That one William E. Verry, at the county of Brown and state of Kansas, on the 12th day of March, 1886, did, unlawfully and wilfully, maliciously make, write, print, compose, dictate, publish and circulate, and procure to be made, written, printed, composed, published and circulated, among other things, certain false, scandalous, malicious and defamatory words, figures and language, of and concerning one A. H. Thomas, to provoke the said A. H. Thomas to wrath and expose him to public hatred, hate and ridicule, and deprive him of public confidence and social intercourse, as follows, to-wit: (insert statement alleged to be libelous).

"The said William E. Verry meaning thereby to charge and accuse the said A. H. Thomas with the crime of robbery and with the crime of grand larceny. The false, scandalous and defamatory words, figures and language, among other things, were contained in numerous printings in the form of circulars and handbills, of which the following is a copy: (insert copy of circular or handbill).

"Which said printing in the form of circulars and handbills the said William E. Verry then and there unlawfully, wilfully and maliciously published and circulated by means of placing them in the hands of Elias Moser, J. H. Scoulter, and numerous and divers other persons in the city of Hiawatha, Brown county, Kansas, and by distributing and leaving them at the store and places of business of L. R.

Yates, C. Meisenheimer, and numerous and divers other places of business and stores in said city of Hiawatha, to the great damage, disgrace, scandal and infamy of the said A. H. Thomas, and tending to provoke him to wrath and expose him to public hatred, contempt and ridicule, and to deprive him of public confidence and social intercourse contrary to the provisions of the statute in such a case made and provided." *State v. Verry*, 36 Kan. 416, 13 Pac. 838.

Note.—Indictment pronounced good by opinion, but case reversed on instructions.

E. Information, Libel With Innuendo Charging Crime.

"I, the undersigned county attorney, in the name, by the authority and on behalf of the state of Kansas, give information that on, to-wit, the 3d day of December, 1885, in the said county of Rice and state of Kansas, the said W. E. Carr, whose given name is unknown, did then and there unlawfully, falsely and maliciously make, compose and publish, and cause and procure to be composed and published, and did knowingly and wilfully aid and assist in making, publishing and circulating, in a certain newspaper called the *Ellinwood Express*, published and circulated in said county of Rice, in the state of Kansas, by the said W. E. Carr, the said W. E. Carr being the proprietor and editor of said newspaper, on, to-wit, the 3d day of December, 1885, and the said W. E. Carr did on said day publish and circulate in the said county of Rice a certain false, malicious, defamatory libel of and concerning John W. White, with the malicious intent to provoke him, the said John W. White, to wrath, and expose him to public hatred, contempt and ridicule, and to deprive him of the benefits of public confidence and social intercourse, with malicious and defamatory libel, so published as aforesaid, by him, the said W. E. Carr, contained, the false, malicious, mischievous and defamatory, and libelous words and matters, according to the tenor following, that is to say: 'When the antiquated, bow-legged fossil, who edits the only religious paper in the valley says that the *Express* (meaning the *Ellinwood Express*) desires to libel John White (meaning the said John W. White), (as if such a thing is pos-

sible!) he utters that which he, as well as everybody else, knows to be a lie. We said that John White (meaning the said John W. White) was tricky politically, and that if he were guilty of the charges stated by men who live near and know him well, it is due his constituency that he resign, as the people did not want to be represented by a man upon whom the faintest suspicion rests. We say so still (meaning that the said John W. White is guilty of said robbery, as stated in the first count of this information). When Mr. White (meaning the said John W. White) shall have cleared up this early-day transaction (meaning that the said John W. White is guilty of said robbery) of business satisfactorily, it will then be in order for him to state why he attempted, once upon a time, to down a Hutchinson man for \$400, and got most gloriously left (meaning that the said John W. White had, once upon a time, attempted to steal or embezzle \$400 from some Hutchinson man). Our advice to the editor of the penny-a-line journal is, to find out something about his protege before charging the Express (meaning the Ellinwood Express) with maligning him (meaning the said John W. White). A man who will do one dishonest thing is liable to do another when an opportunity presents itself (meaning that the said John W. White was guilty of said robbery). When Mr. White (meaning the said John W. White) produces the evidence of his innocence (meaning that the said John W. White is guilty of said robbery), the Express (meaning said Ellinwood Express) will see to it that its readers are made aware of the fact, and it won't be necessary for White (meaning the said John W. White) to say, 'Any expense incurred in relation to this matter, send me a bill of, and I will settle.' Said libel as aforesaid being to the great injury and defamation of the said John W. White: contrary to the statute in such cases made and provided, and against the peace and dignity of the state of Kansas." *State v. Carr*, 37 Kan. 421, 15 Pac. 603.

F. Indictment for Slander, Charging Unchastity.

"Did wilfully, wantonly, maliciously and falsely impute, orally, to one Catherine Eugenie Smith, then and there

an unmarried female in this State, a want of chastity, in this, namely, he the said Zene Patterson then and there stated to one Milton Vandegriff and one Scott Perkins, that he knew she the said Catherine Eugenie Smith was pregnant, and that he the said Zene Patterson and one Joseph Perkins had been having carnal intercourse with her the said Catherine Eugenie Smith for the space of about two years." *Patterson v. State*, 12 Tex. App. 458.

Note.—Under statute creating offense.

LIBEL IN ADMIRALTY.—See ADMIRALTY.

LIBERUM TENEMENTUM.

I. Plea, 787

II. Replications, 788

A. *Traverse*, 788

B. *Demise to Defendant*, 788

C. *New Assignment*, 788

III. Rejoinder, Notice To Quit, 788

IV. Surrejoinder, Notice To Quit Was Waived, 789

V. Rebutter, Denying Notice To Quit Was Waived, 789

I. Plea in Trespass Quare Clausum Fregit.

And for a further plea in this behalf as to the breaking and entering the said close, in which, etc., in the said declaration mentioned, and with feet in walking, treading down, trampling upon, consuming and spoiling, the grass and herbage then and there growing, the said defendant says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him; because he says, that the said close in the said declaration mentioned, and in which, etc., now is, and at the several times when, etc., was the close, soil, and freehold of him the said defendant. Wherefore he the said defendant at the said several times when, etc., broke and entered the said close in which, etc., and with feet in walking trod down, trampled upon, consumed, and spoiled the grass and herbage then and there growing, as he lawfully might for the cause aforesaid, which are the same trespasses in the introductory part of this plea mentioned, and whereof the said plaintiff hath above complained. And this the said defendant is ready to verify. Wherefore he prays judgment if the

said plaintiff ought to have or maintain his aforesaid action thereof against him. Steph. Pl. 315.

II. Replications.

A. *Replication, Traverse to Plea of Liberum Tenementum.*

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says, that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, because he says, that the said close in the said declaration mentioned, in which, etc., now is, and at the said several times when, etc., was the close, soil, and freehold of him, the said plaintiff, and not the close, soil and freehold of him, the said defendant, in manner and form as he the said defendant, hath above in his said (second) plea alleged. And this he, the said plaintiff, prays may be inquired of by the country, etc. Burr. App. 378, §690; 3 Chit. Pl. 1208.

B. *Replication to Liberum Tenementum, Demise to Defendant.*

Because he says, that whilst the said (dwelling-house) was the (dwelling-house) and freehold of the said defendant, and before the said time when, etc., to-wit, on, etc. (day of demise) at, etc. (venue) aforesaid, the said defendant demised the said (dwelling-house) with the appurtenances, to the said plaintiff, to have and to hold the same to the said plaintiff for and during and unto the full end and term of one year from thence next ensuing, and fully to be complete and ended, and so from year to year, for so long time as they the said plaintiff and defendant should respectively please (or if the demise be under an indenture of lease then set forth the lease and habendum); by virtue of which said demise, the said plaintiff afterwards, and before the said time when, etc., entered into the said (dwelling-house) and became and was possessed thereof, and continued so thereof possessed from thence, until the said defendant afterwards, and during the continuance of the said demise, to-wit, at the said time when, etc., of his own wrong, broke and entered the said (dwelling-house) and committed the said several trespasses in the introductory part of the said (second) plea mentioned, in

manner and form as the said plaintiff hath above thereof complained against the said defendant. And this, etc. (Conclude with a verification.) 3 Chit. Pl. 1209.

C. *Replication, New Assignment to Plea of Liberum Tenementum.*

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says, that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, because he says, that the said piece or parcel of land in which, etc., in the said first count of the said declaration mentioned, at the said several times, when, etc., was and is a certain close in the town aforesaid, called ———, abutting, etc. (state the abutments), which said close now is, and at the said several times, when, etc., was another and different close from the said close in the said last plea of the said defendant mentioned, and therein alleged to be the close, soil and freehold of the said defendant; and this he, the said plaintiff is ready to verify. Wherefore, inasmuch as the said defendant hath not answered the said trespasses by him committed in the said close in which, etc., above newly assigned, the said plaintiff prays judgment, and his damages on occasion of the committing of the said trespasses above newly assigned, to be adjudged to him, etc. Burr. App. 388, §715.

III. Rejoinder to Replication, Notice To Quit.

Because he says, that the said defendant after the making of the said demise, etc., gave due notice to, and then and there required the said plaintiff to quit and deliver up the possession of the said demised premises, with the appurtenances, unto the said defendant unto the said ——— day of ———, A. D. ———, then next following; and by means thereof, afterwards, and before either of the said times when, etc., to-wit, on the day and year last aforesaid, the said tenancy, and the estate and interest of the said plaintiff in the said demised premises, and the said place in which, etc., with the appurtenances, wholly ended and determined, to-wit, at, etc. (venue) aforesaid, and thereupon he the said defendant, after the said tenancy

was so ended and determined as aforesaid, to-wit, at the said several times when, etc., entered into the said (dwelling-house) in which, etc., and committed the said supposed trespasses in the introductory part of the said (second) plea mentioned, as he lawfully might for the cause aforesaid, to-wit, at, etc. (venue) aforesaid. And this, etc. (Conclude with a verification.) 3 Chit. Pl. 1232.

IV. Surrejoinder That Notice To Quit Was Waived

Because he says, that after the giving of the said notice in the said rejoinder mentioned, and before the expiration of the said tenancy, to-wit, on, etc., at, etc. (venue) aforesaid, the said defendant waived, relinquished, and abandoned the said notice, and then and there assented and agreed with the said plaintiff to the continuance of the said tenancy in the said replication mentioned, and the said tenancy did continue from thenceforth, until, and at, and after the said time when, etc., to-wit, at, etc. (venue) aforesaid. And this, etc. (Conclude with a verification.) 3 Chit. Pl. 1235.

V. Rebutter Denying That Notice To Quit Was Waived.

And the said defendant, as to the said surrejoinder of the said plaintiff, to the said rejoinder of the said defendant to the said replication to the said (second) plea of the said defendant, says, that the said plaintiff ought not, by reason of anything by him in that surrejoinder alleged, to have or maintain his aforesaid action against him in respect of the said supposed trespasses in the introductory part of the said (second) plea mentioned, because he says, that the said defendant did not waive, relinquish, or abandon the said notice, or assent or agree with the said plaintiff to the continuance of the said tenancy in the said replication mentioned, nor did the same continue in manner and form as the said plaintiff has above in his said surrejoinder in that behalf alleged. And of this the said defendant puts himself upon the country, etc. 3 Chit. Pl. 1236.

LICENSES.

I. Indictment, Not Having License as Pawnbroker, 789

II. Indictment, Failure To Take Out Business License, 789

III. Indictment, Practising Profession Without License, 789

IV. Demurrer, Action To Recover Back License Fee, 790

CROSS-REFERENCES:

HAWKERS AND PEDDLERS:

- Information, Peddling Without License;
- Indictment for Peddling Without License;
- Indictment, Selling Drugs and Medical Appliances Without License;
- Indictment for Peddling Without City License;
- Indictment for Peddling Without State License.

INTOXICATING LIQUORS:

- Indictment for Selling Liquors Without License (a, b).

PHYSICIANS AND SURGEONS:

- Information, Practicing Without License;
- Indictment, Illegal Practice of Medicine, Failure To Record Certificate.

I. Indictment, Not Having License as Pawnbroker.

"On the ninth day of October in the year of our Lord one thousand eight hundred and ninety-nine and on divers other days and times between that day and the day of making this complaint, at the City of Boston aforesaid, and within the judicial district of said Court (the said city being then and on said other days and times a city of more than ten thousand inhabitants) did engage in and carry on the business of loaning money upon mortgages, deposits and pledges of wearing apparel, jewelry, ornaments, household goods and other personal property; the said Danziger not being then and on said other days and times there duly licensed as a pawnbroker." *Com. v. Danziger*, 176 Mass. 290, 57 N. E. 461.

II. Indictment, Failure To Take Out Business License.

"Did then and there unlawfully deal as a merchant at a certain store, and did then and there sell divers goods, wares and merchandise, to-wit, one black coat, to John H. Lee, for the sum of six dollars, without then and there having a merchant's license, or any other legal authority therefor." *State v. Jacobs*, 38 Mo. 379.

III. Indictment, Practicing Profession Without License.

"Did engage in the business of prac-

tiating dentistry without having obtained a license from the board of dental examiners in the State of Alabama, and contrary to law," etc. *Nicholson v. State*, 100 Ala. 132, 14 So. 746.

IV. Demurrer, Action To Recover Back License Fee.

"The defendants above named, by their attorney, John P. Thompson, Jr., demur to the complaint herein upon the ground that it appears upon the face thereof that it does not state facts sufficient to constitute a cause of action:

"(1) In that it appears from the facts alleged therein that the mayor and aldermen of the city of Columbia were duly authorized by the general assembly of the state of South Carolina to exact of the plaintiff the payment of the license tax paid by it, and sought to be recovered in this action, and to pass the ordinance referred to in the complaint herein, providing for the imposition and collection of said license tax; and that it further appears from the facts alleged therein that a portion of the plaintiff's business is transacted entirely within the state of South Carolina and the city of Columbia, and that the plaintiff comes within the provisions of the said ordinance, and is liable for the said license tax; the same being imposed for the business done exclusively within the state of South Carolina and the city of Columbia, and not for any business done to or from points without the state, nor for any business done for the government of the United States, its officers and agents." *Florida Cent. & P. R. Co. v. City of Columbia*, 32 S. C. 266, 32 S. E. 408.

LIENS.

CROSS-REFERENCES:

LOGS AND LOGGING:

- Statement of Lien by Agent of Logger;
- Affidavit (Complaint) To Enforce Lien for Claimant in Own Right and as Agent;
- Affidavit of Attachment To Enforce Log Lien by Cook.

MECHANICS' LIENS:

- Complaint by Contractor for Building Materials;
- Complaint by Subcontractor, Against Owner and Contractor, for Labor;
- Complaint To Set Aside Fraudulent Lien;

- Notice of Lien by Subcontractor;
- Answer, Denial of Plaintiff's Employment;
- Answer, That Lien Was Not Filed Within Prescribed Time;
- Execution on Judgment in Mechanic's Lien.

LIFE AND ACCIDENT INSURANCE.
See INSURANCE.

LIFE ESTATES AND REMAINDERS.

CROSS-REFERENCE:

WASTE:

- Declaration in Waste, Voluntary;
- Declaration in Waste, Permissive;
- Judgment Record in Waste;
- Execution in Waste;
- Bill To Restrain Waste;
- Decree Awarding Injunction To Stay Felling of Ornamental Timber and Other Waste;
- Decree Awarding Injunction, Trees To Intercept View;
- Decree Awarding Injunction, Trees To Shade or Shelter;
- Complaint for Forfeiture and Eviction on Ground of Waste;
- Complaint by Lessor for Damages for Waste;
- Complaint by Devisee for Damages for Waste;
- Complaint by Heirs Against Doweress and Her Husband;
- Answer, Denial of Waste.

Note.—For forms for injury to inheritance, see **Reversions**.

LIMITATION OF ACTIONS.

I. Pleas, 791

- A. *Actio Non Accrevit*, 791
- B. *Non-assumpsit*, 791

II. Demurrer, Non-assumpsit Instead of Non Accrevit, 791

III. Replications, 791

- A. *To Action Non Accrevit*, 791
- B. *To Non-assumpsit*, 792
- C. *Of Set-Off*, 792
- D. *Imprisoned*, 792
- E. *Was Feme Covert*, 792
- F. *Was Out of State*, 792
- G. *Left State*, 792
- H. *Process Issued Within Six Years*, 792

IV. Rejoinder, 793

V. Verdicts, 793

- A. *For Plaintiff, Did Accrue*, 793
- B. *For Defendant, Did Not Accrue*, 793

- C. *For Plaintiff, Did Promise*, 794
- VI. **Complaints**, 794
 - A. *On Express Promise*, 794
 - B. *New Promise*, 794
- VII. **Answers**, 794
 - A. *Did Not Accrue*, 794
 - B. *Not Guilty Within Period*, 794
 - C. *Limitations From Date of Right To Demand*, 794
- VIII. **In Equity**, 794
 - A. *Raising Defense of Limitations*, 794
 - B. *Answer of Statute of Limitations*, 795

CROSS-REFERENCES:

EXECUTORS AND ADMINISTRATORS:

Replication to Plea of Statute of Limitations, Plaintiff Sued as Executor Within One Year of Decease.

INFANTS:

Replication to Plea of Statute of Limitations, Plaintiff an Infant.

PARTNERSHIP:

Count on Promise to Surviving Partner;

Count on Promise by Surviving Partner.

REPLICATION AND REPLY:

Reply of Statute of Limitations.

I. **Pleas.**

- A. *Plea of Actio Non Accrevit Infra Sex Annos (did not accrue within six years)*.

And the said C. D., defendant in this suit, by S. G. R., his attorney, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the said several supposed causes of action in the said declaration mentioned, did not, nor did any or either of them, accrue to the said plaintiff, at any time within six years next before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against him the said defendant. And this he the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 344, §630; 3 Chit. Pl. 941.

- B. *Plea of Non-Assumpsit Infra Sex Annos (did not promise within six years)*.

And the said C. D., defendant in this suit, by H. H., his attorney, comes and defends the wrong and injury

when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he the said defendant did not at any time within six years next before the commencement of this suit, undertake or promise in manner and form as the said plaintiff hath above thereof complained against him. And this he the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 344, §631; 3 Chit. Pl. 939.

II. **Demurrer To Plea, Non-Assumpsit Instead of Non-Accrevit.**

That although the said causes of action in the said first, second and third counts mentioned did not arise or accrue upon the making of the promises and undertakings in those counts mentioned, but on contingencies and on the happenings of events which occurred after the making of said promises and undertakings; yet the said defendant, in and by his plea, states that he the said defendant did not, at any time within six years next before the exhibiting of the bill of the said plaintiff in this behalf, undertake or promise in manner and form as he the said plaintiff hath above thereof complained against him, instead of pleading as to the said first, second and third counts, that the causes of action therein mentioned did not accrue within six years. 3 Chit. Pl. 1258.

III. **Replications.**

- A. *Replication To Plea of Action Non Accrevit.*

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant,* because he says that the said several causes of action in the said declaration mentioned, and each and every of them, did accrue to the said plaintiff within (six) years next before the commencement of this suit, in manner and form as he the said plaintiff hath above complained against the said defendant, to-wit, at, etc., aforesaid. And this he the said plaintiff prays may be inquired

of by the country, etc. Burr. App. 377, §688; 3 Chit. Pl. 1160.

B. Replication To Plea of Non-Assumpsit.

Because he says that the said defendant did, within six years next before the exhibiting of the bill of the said plaintiff in this behalf (or in C. P., or by original, "before the commencement of the suit"), undertake and promise in manner and form as he the said plaintiff hath above thereof complained against him, to-wit, at, etc. (venue), aforesaid. And this he the said plaintiff prays may be inquired of by the country, etc. 3 Chit. Pl. 1160.

C. Replication of Statute of Limitations To Set-Off.

(As in III, A, to the *, and then as follows): because he says that the said several supposed debts and causes of set-off in the said (last) plea mentioned, did not, nor did any or either of them, arise or accrue to the said defendant at any time, within six years next before the commencement of this suit, in manner and form as the said defendant hath above in his said (last) plea in that behalf alleged. And this, etc. (conclude with a verification). Burr. App. 383, §699.

D. Replication To Statute of Limitations, Plaintiff Was Imprisoned (a).

(As in III, A, to the *, then as follows): because the said plaintiff says that at the time the said causes of action accrued to him (or her) * he was imprisoned on a criminal charge * (stating the charge), to-wit, at, etc. And this, etc. Burr. App. 384, §704.

Replication To Statute of Limitations, Plaintiff Was Imprisoned (b).

(As in preceding form, substituting for the part between the **, the words, "he was in execution, under the sentence of a criminal court, for a term less than for his natural life;" stating when and where convicted, and for what crime.) Burr. App. 384, §705.

E. Replication To Plea of Statute of Limitations, Plaintiff Was Feme Covert.

(As in III, D, substituting for the part between the **, the words, "she was a married woman, to-wit, the wife of one A. B.") Burr. App. 384, §706.

F. Replication To Plea of Statute of Limitations, Defendant Was Out of State.

(As in III, A, to the *, and then as follows): because he says that the said defendant, before and at the time when the said several causes of action in the said declaration mentioned accrued to the said plaintiff, against the said defendant, was out of this state, to-wit, at, etc., and that he the said defendant, afterwards, to-wit, on, etc., returned into this state, which said return of the said defendant was his first return into this state after the accruing of the said several causes of action, to-wit, at, etc., aforesaid. And the said plaintiff further says that he commenced his suit against the said defendant, within (six) years after his the said defendant's first return into this state, after the accruing of the said several causes of action, to-wit, at, etc., aforesaid. And this, etc. (conclude with a verification). Burr. App. 385, §708; 3 Chit. Pl. 1162.

G. Replication to Plea of Statute of Limitations, Defendant Left State.

(As in III, A, to the *, and then as follows): because he says, that after the said causes of action accrued to him, to-wit, on, etc., the said defendant departed from, and resided out of this state from that time, for the space of (eleven months), next thereafter, when he first returned to this state, and hath ever since resided therein; and that the said plaintiff commenced his suit within (six years and eleven months), next after the making of the said promises and undertakings in the declaration aforesaid mentioned. And this, etc. (Conclude with a verification.) Burr. App. 385, §709; 2 Humph. Prec. 910.

H. Replication to Plea of Statute of Limitations, Process Issued Within Six Years.

(As in III, A, to the *, and then as follows): because he says, that the said causes of action in the said declaration mentioned, did respectively accrue to him, to-wit, on, etc. (the time) and that within six years next thereafter, to-wit, on, etc., at, etc., he caused a certain writ of *capias ad respondendum* to be issued out of this court, directed to the sheriff of the county of ———, in which county the said defendant then usually resided (or had

last resided), in good faith, and with intent that the same should be actually served; and such writ was afterwards duly returned, to-wit, on, etc., at, etc., by which said writ, the said sheriff was commanded (here recite the writ accurately). At which said day and place for the return of the said writ, to-wit, on, etc., at, etc., before the said court, came the said plaintiff, by E. F., his attorney, but the said defendant did not come; and the said sheriff then and there returned to the said court that (here state sheriff's return of non est inventus). Whereupon, on the prayer of the said plaintiff, and with the like good faith and intent, the said sheriff of the said county of _____ was again commanded by a writ issuing out of the said court, called an alias *capias ad respondendum*, that he should take (here recite the alias, making it returnable the term next after the first writ was returned). At which day and place (the return day of the alias), to-wit, on, etc., at, etc., before the said court came the said plaintiff by his attorney aforesaid, and the said sheriff did not return the said writ last mentioned, nor did he do anything thereupon, nor did the said defendant come. Therefore as before, and on the prayer of the said plaintiff, and with the like good faith and intent, the said sheriff was again commanded by a writ called a *pluries capias ad respondendum*, that he should take (here again recite the writ, generally a supposed writ, and so repeat from the word "therefore," from term to term, until the writ which is actually served on the defendant, be returned, which return is thus stated): At which day and place, to-wit, on, etc., at, etc. (the return day), before this court came the said plaintiff, by his attorney aforesaid, and the said defendant did also come and the said sheriff returned to the said court then there, the writ last mentioned, and with his return thereto, that he had (here set forth in substance, the sheriff's return of the service of the writ). And the said plaintiff further says, that the declaration aforesaid of him, the said plaintiff, was exhibited with the like good faith and intent by the said plaintiff, and filed of and upon the plea aforesaid, as of the said term in which the said writ was so returned. And this, etc. (Conclude with verification.) Burr. App. 385, §709a; Yates' Forms 318.

IV. Rejoinder to Replication to Plea of Statute of Limitations.

And the said defendant, as to the said replication of the said plaintiff, to the said (second) plea of the said defendant, says that the said plaintiff ought not, by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him, the said defendant, because he says, that by the course and custom of the said court here, a writ of *capias ad respondendum* sued out after the end of any term, is supposed to have been sued out of the said court here within the term next preceding. And the said defendant further saith, that the said writ of *capias ad respondendum*, in the said replication mentioned, was really and truly sued out of the said court here by the said plaintiff after the _____ day of _____, in said replication mentioned, being the last day of (October) term, in the year of our Lord one thousand eight hundred and _____, that is to say on the _____ day of _____, in that year. And the said defendant further says, that he did not promise or undertake, in manner and form as the said plaintiff hath above thereof complained against him, at any time within six years next before the said writ was so really and in truth issued as aforesaid. And this he, the said defendant, is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against the said defendant. Burr. App. 391, §722; Till. Forms 559.

V. Verdicts.

A. *Verdict for Plaintiff on Plea of Statute of Limitations, Action Did Not Accrue.*

That the said several causes of action in the said plaintiff's declaration mentioned, did accrue to the said plaintiff within six years next before the commencement of this suit, in manner and form as the said plaintiff hath above complained against the said defendant, and they assess, etc. Burr. App. 419, §783.

B. *Verdict for Defendant on Plea of Actio Non Accrevit in Assumpsit.*

That the said several causes of action in the said plaintiff's declaration mentioned, did not (nor did either of them) accrue to the said plaintiff with-

in six years next before the commencement of this suit, in manner and form as the said defendant hath above in that behalf alleged. Therefore, etc. Burr. App. 425, §811.

C. Verdict for Plaintiff on Plea of Statute of Limitations, Did Promise.

That the said defendant did, within six years next before the exhibiting of the bill of the said plaintiff against the said defendant, in this cause (or before the commencement of this suit), undertake and promise in manner and form as the said plaintiff hath above complained against him; and they assess the damages of the said plaintiff, etc. Burr. App. 418, §782.

VI. Complaints.

A. Complaint on an Express Promise in Consideration of Precedent Debt.

I. That on the _____ day of _____, at _____, the defendant being then indebted to the plaintiff in the sum of _____ dollars for (here state concisely the consideration, *e. g.*, goods heretofore sold and delivered by the plaintiff to the defendant), in consideration thereof promised the plaintiff that he would pay him said sum on the _____ day of _____ (or, on demand, or otherwise, as the case may be).

II. That no part thereof has been paid (except the sum of, etc.) 1 Abb. Forms 212.

B. Complaint on Debt Barred by Statute of Limitations, or a Discharge, and Revived by New Promise.

(Plead the original cause of action as in other cases, and continue.)

II. That thereafter on the _____ day of _____, in consideration of the foregoing facts, the defendant promised to the plaintiff that he would pay such indebtedness.

III. That no part of the same has been paid (except the sum of, etc.) 1 Abb. Forms 213.

VII. Answers.

A. Answer, Statute of Limitations, Did Not Accrue.

That the cause of action stated in the complaint (or, that as to _____ dollars, part of the cause of action stated in the complaint, the same) did not accrue within _____ years be-

fore the commencement of this action. 2 Abb. Forms 34.

B. Answer, Statute of Limitations, Not Guilty Within Period.

That the defendant was not guilty of the grievances alleged in the complaint (or in the first cause of action in the complaint) at any time within _____ years before the commencement of this action. 2 Abb. Forms 35.

C. Answer, Statute of Limitations From Date of Right To Make Demand.

Further answering, and, as a further and separate defense, the defendants allege that the cause of action contained in said complaint accrued more than six years before the commencement of this action, and that the right to make the demand necessary to maintain said cause of action was complete more than six years before the commencement of this action. Jex v. Mayor, 111 N. Y. 339, 19 N. E. 52.

VIII. In Equity.

A. Answer, Statement Raising Defense of Statute of Limitations.

The said G. S., deceased, did not, as we severally verily believe, at any time during the period he was so in possession or receipt of the rents and profits of the said mortgaged hereditaments as aforesaid, sign or give any acknowledgment in writing or otherwise, of the title of the said J. M. and T. M., or either of them, or of any person or persons claiming under them, or either of them to the said J. M. and T. M., or either of them, or to the plaintiffs in this suit or either of them, or to the defendant W. T., or to any person or persons whatsoever claiming any estate or interest in the said hereditaments, or to the agent or agents of the said J. M. and T. M., or of the plaintiffs or of the defendant W. T., or either of them; nor have or hath one or either of us, at any time or times subsequently to the decease of the said G. S., signed or given any acknowledgment, etc. (as above).

The said J. M. and T. M. have not nor hath either of them, nor have or hath the plaintiffs or the defendant W. T., or any or either of them, made any payment whatever, either in respect of interest of the said several mortgage securities or any or either of them, or of the principal moneys thereby secured, or any part thereof, sub-

sequently to the time when the said G. S., deceased, so entered into the possession or receipt of the rents and profits of the mortgaged hereditaments and premises as aforesaid.

We severally claim the benefit of the provision made in and by the statute passed in the session holden in the third and fourth years of the reign of his late majesty, William the Fourth, "For the Limitation of Actions, and suits relating to Real Property, and for simplifying the Remedies for trying the Rights thereto," in bar to the relief sought by the plaintiffs in this suit, in the like manner as if we had pleaded the same. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2143.

B. Answer of Statute of Limitations.

And the defendants, in addition to the foregoing answer, aver that the cause of action, if any there may be, arising to the plaintiffs on account or by reason of the several allegations and complaints in their said bill contained, did not accrue within six years before the said bill was filed, and this allegation the defendants make in bar of the plaintiff's bill, and pray that they may have the same benefit therefrom as if they had formally pleaded the same. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2144.

LIS PENDENS.

I. Notices, 795

A. *For Foreclosure*, 795

B. *For Partition*, 795

C. *In Attachment Affecting Real Property*, 795

D. *In Proceedings To Set Aside Fraudulent Conveyance*, 795

II. Affidavit of Filing Notice, 796

I. Notices.

A. Notice of Pendency of Action for Foreclosure.

Notice is hereby given that an action has been commenced in this court upon a complaint of the above named plaintiff against the above named defendants for the foreclosure of a mortgage, bearing date the _____ day of _____, executed by _____, of _____, to _____, of _____, to secure (here state the condition of the mortgage), which mortgage was recorded in the office of the clerk (or register) of the (city and) county of

_____, on the _____ day of _____, at _____ o'clock in the _____ noon; and that the mortgaged premises in the last mentioned county, affected by the said foreclosure, were at the time of the commencement of this action, and at the time of filing this notice, situated in the _____ ward of the city of _____, in the last mentioned county, and are described in the said mortgage as follows, to-wit (description of lands). 1 Abb. Forms 83.

B. Notice of Pendency of Action for Partition.

Notice is hereby given that an action has been commenced in this court, upon a complaint of the above named plaintiff, against the above named defendants,* for the purpose of obtaining a partition and division of the premises therein described among the owners thereof, or for a sale thereof, under the direction of this court, and for a division of the proceeds of such sale among such owners, according to their respective rights; which premises were, at the time of the commencement of this action, and the time of filing this notice, situated in the _____ ward of the city of _____, and are described in the said complaint as follows (description of premises). 1 Abb. Forms 83.

C. Notice of Pendency of Action in Which an Attachment Affecting Real Property Has Been Issued.

(As in preceding form to the *) upon a promissory note made by the defendant, in which action the plaintiff demands judgment thereupon for the sum of _____ dollars (or otherwise state object of action, and the relief demanded); and that a warrant of attachment, under ch. _____, title _____, part _____ of the (code of procedure), was on the _____ day of _____, 18____, at _____, duly issued in this action against the defendant Y. Z., by this court, and directed to the sheriff of the county of _____, and delivered to him for execution, whereby the following real property is intended to be affected (here describe the property). 1 Abb. Forms 84.

D. Notice of Pendency of Action in Proceedings To Set Aside Fraudulent Conveyance.

"Mathilda Rosenheim, Leo Levis, plaintiffs, v. Julia McQuarters, Jno.

McQuarters, Sarah A. Farr, defendants. In the Linn Circuit Court.

"To whom it may concern: Take notice that an action has been commenced in the circuit court of Linn county, writ returnable as to defendant, Sarah A. Farr, to December term, 1871, thereof, by said plaintiffs against said defendants, in which said action the following described premises are sought to be charged with the debt therein sued on, and certain fraudulent deeds among said parties defendant, affecting said land, set aside. Description of land as follows: The south half of the northwest quarter of section one (1), township fifty-seven (57), range nineteen (19), Linn county, Mo. Mathilda Rosenheim and Leo Levis, "By Torrance & Burgess, their attorneys.

"Linneus, Mo., Nov. 27, '71.

"Filed for record, Nov. 28, 1871.

"Thos. Kille, Recorder."

Rosenheim v. Hartsock, 90 Mo. 357
2 S. W. 473.

II. Affidavit of Filing Notice of Action Pending.

Q. R., plaintiff's attorney, being duly sworn, says that a notice of the pendency of this action, of which the annexed is a copy, was on the _____ day of _____, 18—, filed in the office of the clerk in the county of _____, in which county said premises are situated, and since the filing of said notice, the summons and complaint in this action have not been amended by making new parties to the action, or so as to affect property not described in said notice. 1 Abb. Forms §4.

LIQUORS.—See INTOXICATING LIQUORS.

LOCAL IMPROVEMENTS.—See SPECIAL ASSESSMENTS.

LODGING HOUSE KEEPERS.—See USE AND OCCUPATION.

LOGS AND LOGGING.

I. Affidavit To Enforce Lien in Own Right and as Agent, 796

II. Appointment of Agent To Prosecute Claim, 797

III. Statement of Lien by Agent of Logger, 797

IV. Affidavit of Attachment To Enforce Log Lien, 797

V. Declaration in Debt for Penalty, Converting Logs, 797

VI. Declaration, Injury to Mill-dam by Logs, 798

CROSS-REFERENCE:

WATERS AND WATERCOURSES:

Complaint, Action for Damages for Interfering With Floating Logs.

I. Affidavit (Complaint) To Enforce Lien for Claimant in Own Right and as Agent.

"State of Michigan, County of Chippewa, ss.:

"Thomas J. Martin, being duly sworn, deposes and says that he makes this affidavit for and in behalf of James Wiggins, and says that defendant in the annexed writ is indebted to James Wiggins, plaintiff named in the writ, in the sum of five hundred sixty-six and 28-100 dollars, as near as may be, over and above all legal set-offs, and the same is now due for work and labor performed by James Wiggins, Thomas Howie, Michael Meagher, George Baynes, and Archibald Hall, in scaling, hauling, swamping, time-keeping, and working in and about the property mentioned in the annexed writ, and that James Wiggins has been designated the agent of Thomas Howie, Michael Meagher, George Baynes, and Archibald Hall by each of said parties for the prosecution of their said liens; that the last day's work of said labor was done on the 5th day of April, 1890; and that the said property described in the annexed writ, or a portion thereof, is now situate in the county of Chippewa, State of Michigan; and that a statement of lien required by law was on the 12th day of April, 1890, duly filed with the clerk of the county of Chippewa, State of Michigan, where said labor was performed.

"Thomas Martin.

"Subscribed and sworn to before me this 5th day of May, 1890.

"A. Donaldson,

"Notary Public, Chippewa, county, Mich.

"Filed May 5, at 12 o'clock M., 1890.

"Wm. Webster, Clerk."

Wiggins v. Houghton, 89 Mich. 468,
50 N. W. 1005.

Note.—Held sufficient in connection with statement, but suggested that it would be better to have amount of each claim separately stated in affidavit.

II. Appointment of Agent To Prosecute Claim.

"We, the undersigned, having filed a statement and claim of lien on a certain quantity of saw-logs and timber reported to be owned by James Connolly, of Marquette, Michigan, with the clerk of Chippewa county, Michigan, and each of our claims for labor, etc., is less than one hundred dollars, and for the purpose of prosecuting our claim in the circuit court for Chippewa county, we do hereby designate and appoint James Wiggins, one of our number, our agent for prosecuting our said liens, or any suit necessary to enforce the same, in his name, and as fully as we, or each of us, could or might do.

Dated on this 1st day of May, 1890.

Thomas Howie,
Archie Hall,
Michael Meagher,
George Baynes,"

Wiggins v. Houghton, 89 Mich. 468, 50 N. W. 1005.

III. Statement of Lien by Agent of Logger.

"State of Michigan, county of Chippewa, ss.

"James Wiggins, of Marquette, in the county of Marquette, and State aforesaid, being first duly sworn, deposes and says that he is agent for and makes this statement of lien for work and labor performed by Michael Meagher, and this statement is made for and in behalf of said Michael Meagher in hauling and laboring, and in working in and about the following described property, to-wit, a quantity of board timber and boom timber and saw-logs. All of said timber and saw-logs are marked with the sign as follows, R, and gotten out by Robert Houghton, and reputed to be owned by James Connolly, of Marquette, Michigan; and said property is now situate in sections 27 and 35, in township 45 north, of range 7 west.

"That the last day's work of said labor was done on the 5th day of April, 1890; that Michael Meagher actually did said work and labor, and the same was performed in the county of Chippewa, in said State, and that the same described property, or considerable portion thereof, is now in the county of Chippewa, State of Michigan; that there is now due this Michael Meagher, claimant, for said work and labor, so

as aforesaid by him done and performed, over and above all legal set-offs, the sum of forty-five dollars (\$45.00), as near as may be, for which said sum this deponent claims a lien upon said described property; and this deponent has personal knowledge of the facts herein set forth.

James Wiggins, claimant.

Subscribed and sworn to before me this 2d day of April, 1890.

A. Donaldson,

Notary Public in and for Chippewa County."

Wiggins v. Houghton, 89 Mich. 468, 50 N. W. 1005.

IV. Affidavit of Attachment To Enforce Log Lien by Cook.

"Watson Brooks, being duly sworn, on oath says, that he is the above plaintiff; that the above defendant is indebted to the plaintiff in a sum of over \$5.00, and in the sum of \$90, over and above all set-offs; that said indebtedness is due for labor and services done and performed by the plaintiff for the defendant, in and about cooking for men driving pine logs in Oconto county, Wisconsin, between the 9th day of April, 1872, and the 24th day of May, 1872; and that said logs are now lying in the waters of the Oconto river and Peshtigo brook, in Oconto county, Wisconsin, and are marked as follows (here follows description of logs); and that the plaintiff, on the 19th day of June, 1872, duly filed his statement, or petition under oath, for a lien on said logs, in the office of the clerk of circuit court for the county of Oconto, Wis." Winslow v. Urquhart, 39 Wis. 260.

V. Declaration in Debt for Penalty, Converting Logs.

That the defendants "did take, carry away, saw, split, destroy, and convert to their own use one pine mill log, of the value of ten dollars, the property of the plaintiffs, put by them into the river called the Great Androscoggin, and marked by their mark, to-wit, etc., cut out therefrom, with an axe; which log the said—defendants—did take, carry away, saw, split, destroy, and convert to their own use, without the consent of the plaintiffs, and contrary to the form of the statute in such case made and provided; whereby they have forfeited and become liable to pay to the plaintiffs the sum of fifty dollars, and an action has

accrued," etc. *Prost v. Rowse*, 2 Me. 130.

VI. Declaration, Injury to Mill Dam by Logs.

"In a plea of the case, whereupon the plaintiff declares and says that he is, and has been for the last six years, the owner (and he and those under whom he owns the right have been for more than fifty years) of a mill-privilege, and a mill-dam built across Passumpsic River in the town of Burke, and of a saw-mill built on said dam, and has been all that time in the possession and use of the same for the purpose of sawing lumber for customers and making gains thereby; and the defendant has, during all that time, been engaged in the lumber business, and interested in saw-mills below the plaintiff's, on the same stream, and, on divers days and times between the 15th day of May, 1861, and the day of the date of this writ, and more especially at times of high water in spring, has run, driven and floated down said stream, from above the plaintiff's said mill, a large number of mill-logs at a single run or drive upon and over the plaintiff's said dam, thereby creating such force and pressure upon and against the plaintiff's dam as to settle, break, and carry away parts thereof, and render the plaintiff's mill of no use, or benefit; and these injuries have been often repeated in the manner aforesaid, during the time aforesaid, and the plaintiff has been compelled to let his mill be idle, and to expend money in repair of the dam to the amount of one hundred dollars, and until these injuries, so often repeated, have wholly destroyed and rendered said dam useless and good for nothing; and the same cannot be repaired or rebuilt without great expense, and expense unwarrantable, and disproportionate to all benefit to be derived from running said mill if the dam was rebuilt or repaired. Whereby the plaintiff has not only been deprived of the use of his said mill during the time aforesaid, and been compelled to expend a large sum in the repair of the dam, but has wholly lost said dam, and his said mill has been rendered of no value, all which is to the damage of the plaintiff, five

hundred dollars." *Coe v. Hall*, 41 Vt. 325.

LORD CAMPBELL'S ACT.—See **DEATH BY WRONGFUL ACT.**

LOST INSTRUMENTS.

- I. Decree, Order in Case of Lost Deed, With Injunction, 798**
- II. Decree, Order in Case of Lost Mortgage Deed, 798**
- III. Decree for Indemnity Against Lost Bill of Exchange, 799**

CROSS-REFERENCES:

BANKRUPTCY:

Affidavit of Lost Bill or Note.

DEMURRER:

Demurrer to a Bill for Relief on Lost Bond for Want of Affidavit of Loss.

- I. Decree, Order in Case of Lost Deed, With Injunction.**

After declaring plaintiff entitled to redeem, and making injunction to stay ejectment perpetual; and the plaintiff having paid the principal money, the defendant to reconvey and deliver all deeds, etc., and the defendant to repay interest paid to him without prejudice by the plaintiff, after six months' notice of paying off the mortgage. "And the Court doth order, that the defendants, at their expense, give to the plaintiff a good and effectual indemnity or security in respect of the loss of the several deeds, dated, etc., in, etc., mentioned, to indemnify the plaintiff, his heirs and assigns, and his and their estate and effects, and the mortgaged premises in the pleadings mentioned, from and against all loss, costs, charges, damages, and expenses, and other consequences, which the plaintiff, his heirs or assigns, or the said premises shall or may incur, sustain, or become liable to, for or by reason of, or on account or in respect of, the said loss of the said deeds in any manner howsoever; and that such indemnity or security be settled, etc." Defendant to pay plaintiff's costs of suit and at law.

1 *Seton Dec.* (Eng. ed. 1862) 630.

3 *Dan. Ch. Pl. & Pr.* (Perkins' ed.) 2270.

- II. Decree, Order in Case of Lost Mortgage Deeds.**

Direction to tax defendant's costs of suit, and raise and pay them out of fund in Court. And the Court doth order that "the plaintiff S., at her own

expense, execute to the defendant R., her bond to indemnify the said defendant against any demand which may be made upon him, in respect of the mortgage deeds in the pleadings mentioned; such bond to be settled, etc., in case the parties differ. And the Court doth further order, that, upon the due execution of such bond, such execution to be certified, etc., the residue of the said, etc., be transferred to the plaintiff S.; and thereupon, that the plaintiff reconvey and reassign the mortgaged premises to the defendant R., or as he shall direct, free and clear, etc., such reconveyance, etc., to be at the expense of the defendant R." Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2270.

III. Decree for Indemnity Against Lost Bill of Exchange.

The Court doth declare, that the defendant is bound to indemnify the plaintiffs (bankrupt's assignees) and the separate estate of the said bankrupt against all liability and loss in respect of the bill of exchange for \$—— in the pleadings mentioned; and decree the same accordingly; and doth order that the defendant G. on or before, etc., or within one week after service hereof, take up such bill and pay what is due in respect thereof; defendant to pay plaintiff's costs of suit to be taxed. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2271.

LOTTERIES.

- I. Indictment for Selling Lottery Ticket, 799
- II. Indictment for Having in Possession Lottery Ticket, 799
- III. Indictment for Setting Up Lottery, 799
- IV. Indictment for Permitting Setting Up of Lottery, 800
- V. Indictment for Publishing Advertisements for Lottery, 800
- VI. Information for Promoting Lottery, 800
- VII. Information for Selling Lottery Ticket, 800
- VIII. Information, Selling Prize Packages, 800

CROSS-REFERENCE:

POST-OFFICE:

Indictment for Sending Lottery Circular Through Mail.

I. Indictment for Selling Lottery Ticket (a).

"Did unlawfully and knowingly offer to vend and to sell and to barter and to furnish and to supply, and to procure and to cause to be furnished and procured to and for one Anthony Comstock a certain paper and instrument purporting to be a ticket of a certain lottery," etc. Read *v. People*, 86 N. Y. 381.

Indictment for Selling Lottery Ticket (b).

"A part of a ticket in a certain lottery not expressly authorized by law, commonly called 'The Louisiana State Lottery' . . . which part of a ticket is as follows, that is to say" (copy of ticket). *People v. Noelke*, 94 N. Y. 137.

Indictment for Selling Lottery Ticket (c).

"That Jesse Follet, of Concord, etc., on 1st December, 1829, with force and arms, at Concord, in the county of Merrimack aforesaid, unlawfully did sell to one F. E. a part of a ticket; that is to say, one quarter part of a ticket, at and for the price of fifty cents, in a certain lottery not authorized by the legislature of said state, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state." *State v. Follet*, 6 N. H. 53.

II. Indictment for Having in Possession Lottery Tickets.

That the defendants, on the 23d day of May, 1865, at Boston, "did have in their possession, with the intent to sell the same, and to offer the same for sale, a certain share of a ticket, to-wit, one-half ticket in a lottery for money, which said lottery was then and there set up in said commonwealth, to-wit, at said Boston, and was then and there called and known as the National Prize Distribution," etc. *Com. v. Harris*, 13 Allen (Mass.) 534.

III. Indictment for Setting Up Lottery.

The defendants did, on the 22d day of May, 1865, at Boston, "set up and promote a certain lottery, called the National Prize Distribution, and which said lottery was then and there for money, to-wit, for \$70,000." *Com. v. Harris*, 13 Allen (Mass.) 534.

IV. Indictment for Permitting Setting Up of Lottery.

“Did unlawfully and knowingly permit, in the dwelling house and building then and there actually used and occupied by him, the setting up of a lottery, in which certain articles of personal property and of value were disposed of, by the way of a lottery.” *Com. v. Horton*, 2 Gray (Mass.) 69.

V. Indictment for Publishing Advertisements for Lottery.

This was an indictment alleging that W. W. Clapp, of, etc., printer, on, etc., did advertise and cause to be advertised in a certain newspaper by him published, and called the *Evening Gazette*, lottery tickets and parts of lottery tickets for sale in lotteries not authorized by the laws of said commonwealth, against the peace, etc. *Com. v. Clapp*, 5 Pick. (Mass.) 41.

VI. Information for Promoting Lottery.

The recorders' court of the city of Detroit.

In the name of the people of the state of Michigan, George F. Robison, prosecuting attorney in and for the said county of Wayne, who prosecutes for and on behalf of the people of said state in said court, comes now here in said court, in the July term thereof, A. D. 1888, and gives the said court here to understand and be informed that William O. Elliott and Frank P. Johannes, late of said city of Detroit, heretofore, to-wit: on the second day of June, A. D. 1888, at the said city of Detroit, in the county aforesaid, unlawfully did set up and promote a lottery for money, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the state of Michigan.

George F. Robison,
Prosecuting attorney.

People v. Elliott, 74 Mich. 264, 41 N. W. 916, 16 Am. St. Rep. 640, 3 L. R. A. 403.

VII. Information for Selling Lottery Ticket.

“On the 28th day of June, 1878, and on divers other days, wrongfully and illegally did sell, and expose to sale, and keep on hand for the purpose of sale, and did advertise and cause to be advertised for sale, and did then

and there aid, assist and was concerned in the sale and exposure to sale of certain lottery-tickets, or shares or parts of lottery-tickets, in a certain lottery known as the Missouri State Lottery,” etc. *State v. McWilliams*, 7 Mo. App. 99.

VIII. Information, Selling Prize Packages.

“One H. A. Holoman, late of the county of Hunt, on the 8th day of December, A. D. one thousand eight hundred and seventy-six, with force and arms, in the county of Hunt and state of Texas, did then and there, under the pretense of selling and vending a certain article of merchantable personal property called candy, establish a lottery, which lottery was then and there set on foot for the purpose of unlawfully disposing of personal property, to-wit, money, rings, and other articles of jewelry, by chance, by then and there exposing to sale divers candy-boxes, at fifty cents each, which boxes were then and there represented by said H. A. Holoman to contain candy and prizes, one of said lot, not specified, being then and there represented by said Holoman to contain ten dollars, and others of said boxes being then and there represented by said Holoman as containing five dollars each. That said H. A. Holoman did then and there dispose of, by said lottery, to one Charley Thayer, ten dollars, same being personal property, and did then and there dispose of, by said lottery, to divers other persons, certain personal property, to-wit, certain prizes of money, rings, and other articles of jewelry, of value unknown to the said county attorney, contrary to the form of the statute,” etc. *Holoman v. State*, 2 Tex. App. 610.

LUNATICS.—See INSANE PERSONS.

MAIL.—See POST-OFFICE.

MALFEASANCE IN OFFICE.—See OFFICERS.

MALICIOUS MISCHIEF.

I. Indictments for Malicious Mischief, 801

- A. *Destroying Threshing Machine*, 801
- B. *Breaking Fish Pond*, 801
- C. *Drowning Mine*, 801
- D. *Destroying Steam Engine*, 801
- E. *Cutting Down River Bank*, 801
- F. *Injuring Bridge*, 801

- G. *Injuring Stock*, 802
- H. *Injury to Dam*, 802
- I. *Placing Obstructions on Railway Track*, 802
- J. *Destroying Wearing Apparel*, 802
- K. *Destroying Harness*, 802
- L. *Disfiguring Horse*, 802
- M. *Killing Fowls by Poison*, 803

CROSS-REFERENCE:

RAILROADS:

Indictment, Disturbing Fixture Attached to Switch on Railroad.

I. Indictment for Malicious Mischief.

A. *Indictment for Malicious Mischief, Destroying Threshing Machine.*

Middlesex, to-wit: The jurors for our lady the Queen, upon their oath present, that J. S., late of the parish of B., in the county of M., laborer, on the _____ day of _____, in the _____ year of the reign of our sovereign lady Victoria (or in the year of our Lord _____), at the parish aforesaid, in the county aforesaid a certain threshing machine of the value of _____, the property of J. N., then and there being found, feloniously, unlawfully, and maliciously did cut, break, and destroy; against the form of the statute in such case made and provided, and against the peace, etc. Archb. Cr. Pl. 327.

B. *Indictment for Malicious Mischief, Breaking Fish Pond.*

That A. B., late of, etc., being an evil disposed person, after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, to-wit, on, etc., with force and arms, at, etc., aforesaid, the head and mound of a certain fish pond in a certain orchard belonging to J. D., esquire, there situate and being, unlawfully, maliciously, feloniously, did break down, whereby the fish in the same pond then and there being were lost and destroyed, to the great damage of the said J. D., against the form of the statute, etc., to the evil example, etc., and against the peace, etc. 3 Chit. Cr. L. 1152.

C. *Indictment for Malicious Mischief, Drowning a Mine.*

(Commencement as I, A.)

In the county aforesaid, feloniously, unlawfully and maliciously did cause a quantity of water to be conveyed into a certain mine of J. N., there situate,

with intent thereby then and there feloniously to destroy (damage or hinder or delay the working thereof) the said mine; against the form of the statute in such case made and provided, and against the peace, etc. Archb. Cr. Pl. 328.

D. *Indictment for Malicious Mischief, Destroying a Steam Engine.*

(Commencement as in I, A.)

In the county aforesaid, a certain steam engine the property of J. N., for sinking, draining and working a certain mine of said J. N. there situate, feloniously, unlawfully and maliciously did pull down and destroy, against the form of the statute in such case made and provided, and against the peace, etc. Archb. Cr. Pl. 330.

E. *Indictment for Malicious Mischief, Cutting Down River or Sea Banks.*

(Commencement as I, A.)

In the county aforesaid, a certain part of the bank (any sea bank or wall, or the bank or wall of any river, canal or marsh) of a certain river called the river _____, there situate, then and there feloniously, unlawfully, and maliciously did cut down and break down, by means whereof certain lands were then and there overflowed and damaged (or were in danger of being overflowed and damaged); against the form of the statute in such case made and provided, and against the peace, etc. Archb. Cr. Pl. 336.

F. *Indictment for Malicious Mischief, Injuring a Bridge (a).*

(Commencement as in I, A.)

In the county aforesaid, feloniously, unlawfully and maliciously did (state the injury) a certain public bridge there situate, with intent thereby (with intent and so as thereby) then and there to render the said bridge (such bridge or any part thereof) dangerous and impassable; and that the said J. S. did thereby then and there render the said bridge dangerous and impassable; against the form of the statute in such case made and provided, and against the peace, etc. Archb. Cr. Pl. 339.

Indictment, Injuring a Bridge (b).

"Thaddeus Owens wilfully injured or destroyed, otherwise than by burning, a public bridge in said county, known and commonly called the Long

Bridge; said bridge being erected by authority of law on a road leading from Greenville to Andalusia, commonly called the 'Long Bridge Road,' against the peace," etc. *Owens v. State*, 52 Ala. 400.

Note.—Held that under the statute no averment of ownership or value was necessary.

G. Indictment for Malicious Mischief, Injuring Stock.

(Commencement as in I, A.)

In the county aforesaid, one gelding of the price of _____ of the goods and chattels of J. N., then and there being, feloniously, unlawfully, and maliciously did kill (maim or wound); against the form of the statute in such case made and provided, and against the peace, etc. *Archb. Cr. Pl.* 343.

H. Indictment, Injury to Dam.

That "at Belgrade, in said county of Kennebec, on the eighth day of June, in the year of our Lord one thousand eight hundred and fifty-four, did maliciously and wantonly break down, injure, remove and destroy a certain portion of a stone dam, then and there erected on Chandler stream, so called, the property of one Marcellus Chandler and of one Samuel Goodridge, of the value of five hundred dollars," etc. *State v. Burgess*, 40 Me. 592.

I. Indictment for Placing Obstruction on Railway Tracks.

Henry Kluseman, Frederick Schumacher and Albert Schlenz on the 16th day of June, A. D. 1891, at the township of Pleasant View, in the county of Norman and state of Minnesota, did wilfully, wrongfully, maliciously and feloniously place an obstruction, to-wit: five piles of large, heavy oak railway cross-ties, all of which piles being within a distance of seven hundred feet upon the track of a certain railway then owned by the St. Paul, Minneapolis & Manitoba Railway Company, a corporation duly organized, created and existing under the laws of the state of Minnesota, was then and there operating and running a train of railway cars consisting of seven passenger coaches and one mail car and one baggage car, and that the said railway and said trains were then and there being operated and run by steam by said Great Northern Railway Company as aforesaid, whereby and by reason whereof, the safety of many

persons was then and there endangered, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Minnesota.

Dated at the village of Ada, in the county of Norman, and state of Minnesota, this 10th day of November, A. D. 1892.

Jesse Barnes,

Foreman of the Grand Jury.

State v. Kluseman, 53 Minn. 541, 55 N. W. 741.

Note.—The omission of a comma after "feet" supplied by court.

J. Indictment, Destroying Wearing Apparel.

Did wilfully and maliciously injure four dresses and five skirts by wilfully and maliciously cutting and tearing each of them into many pieces, whereby they were all greatly damaged and injured. *Com. v. Sullivan*, 107 Mass. 218.

K. Indictment, Injury to Harness.

"At the township of Paris in the county aforesaid, a certain harness of the value of fifty dollars, of the personal property of one Edwin R. Wilson, then and there being found, feloniously, wilfully and maliciously, did then and there injure and destroy, by then and there cutting the lines and martingales of said harness, and raking the rings from said martingales, contrary to the statute," etc. *McKinney v. People*, 32 Mich. 284.

L. Indictment for Disfiguring Horse by Cutting Off Mane and Hair From Tail.

"One horse, the property of Harvey Baldwin, then and there being, unlawfully, wilfully, and maliciously did injure to the amount of seventy-five dollars, by then and there cutting from the neck of said horse, as close to the skin as the same could be cut and sheared, his entire mane, excepting only the roots, and about one inch in length of said mane above the skin; and also by then and there cutting and taking off nearly all the hair, about two feet in length, from the tail of said horse, and as close to the dock as the hair could be cut and sheared; which said horse was not then and there trespassing in any inclosure of" *Oviatt*, contrary to the statute, etc. *Oviatt v. State*, 19 Ohio St. 573.

M. Indictment, Killing Fowls by Poison.

That Mary E. Falvey, on July 28, 1870, at Lynn, "did unlawfully, wilfully and maliciously kill and destroy fourteen barn-door fowls, commonly called hens, of the value of twenty dollars, of the personal property of one Lewis J. Morrill, by then and there mixing with food a certain quantity, to-wit, two drachms, of a certain poison called rat poison, and by then and there causing the same to be taken and eaten by said fowls." *Com. v. Falvey*, 108 Mass. 304.

MALICIOUS PROSECUTION.

I. Declaration, 803

II. Complaints, 804

A. *Prosecution on Criminal Charge*, 804

B. *Where Nolle Prosequi Was Entered*, 805

C. *Arrest in Civil Action*, 806

III. Answer, Pleading Justification in Malicious Prosecution, 806

CROSS-REFERENCE:

FALSE IMPRISONMENT:

Answer, Denial of Arrest;

Answer, Justification of Arrest Upon Suspicion of Felony;

Answer, Justification by Officer of Arrest on Suspicion of Felony;

Answer, Justification by Officer of Arrest Under Criminal Process;

Answer, Justification by Officer of Arrest Under Civil Process;

Answer, Justification by Officer Under Order of Arrest.

I. Declaration for Malicious Prosecution.

(Title and commencement.) For that whereas the said plaintiff, now is a good, true, honest, just and faithful citizen of this state, and as such hath always behaved and conducted himself, and hath not ever been guilty, until the time of the committing of the several grievances by the said defendant, as hereinafter mentioned, been suspected to have been guilty of felony, or of any other such crime, by means whereof, he, the said plaintiff, before the committing of the said several grievances by the said defendant, as hereinafter mentioned, had deservedly obtained and acquired the good opinion and credit of all his neigh-

bors, and other good and worthy citizens of this state, to-wit, at, etc. (the venue), yet the said defendant well knowing the premises, but contriving and maliciously intending to injure the said plaintiff in his aforesaid good name, fame and credit, and to bring him into public scandal, infamy and disgrace, and to cause him, the said plaintiff, to be imprisoned for a long space of time, and thereby to impoverish, oppress and wholly ruin him, heretofore, to-wit, on, etc., at, etc., went and appeared before one J. K., Esq., then and there being one of the justices of the people of the state of New York, assigned to keep the peace of the same people, in and for the county of _____ and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, and then and there, before the said J. K., so being such justice as aforesaid, to-wit, at, etc., aforesaid, falsely and maliciously, and without any reasonable or probable cause whatsoever, charged the said plaintiff with having feloniously stolen a certain gold watch of him, the said defendant, and upon such charge, he, the said defendant, falsely and maliciously, and without any reasonable or probable cause whatsoever, caused and procured the said J. K., so being such justice as aforesaid, to make and grant his certain warrant, under his hand and seal, for the apprehending and taking of the said plaintiff, and for bringing him, the said plaintiff before him, the said J. K., or some other of the people's justices of the peace, in and for the said county of _____ to be dealt with according to law for the said supposed offence; and the said defendant, under and by virtue of the said warrant, afterwards, to-wit, on, etc., at, etc., wrongfully and unjustly, and without any reasonable or probable cause whatsoever, caused and procured the said plaintiff to be arrested by his body, and to be imprisoned and kept, and detained in prison for a long space of time, to-wit, for the space of _____ hours then next following, and until he, the said defendant, afterwards to-wit, on, etc., at, etc., falsely and maliciously, and without any reasonable or probable cause whatsoever, caused and procured the said plaintiff, to be carried and conveyed in custody before the said J. K. so being such justice as

aforesaid, and to be committed by the said justice, for a further examination, to a certain jail or prison of the said people, called _____ and there, to-wit, in the said jail or prison, he, the said defendant, then and there falsely and maliciously, and without any reasonable or probable cause whatsoever, caused and procured the said plaintiff to be imprisoned, and to be kept and detained in prison for a long space of time, to-wit, for the space of _____, then next following, and until he the said defendant afterwards, to-wit on, etc., falsely and maliciously, and without any reasonable or probable cause whatsoever, caused and procured the said plaintiff to be carried and conveyed in custody before one L. M., then and there being a certain other justice of the said people, assigned to keep the peace of the said people, and to hear and determine divers felonies, trespasses and other misdemeanors, committed in the same county of _____ to be examined before the said justice, touching and concerning the said supposed crime. (Which said last mentioned justice having heard and considered all that the said defendant could say or allege against the said plaintiff, touching and concerning the said supposed offence, then and there, to-wit, on, etc., last aforesaid, at, etc., aforesaid, adjudged and determined that the said plaintiff was not guilty of the said supposed offence, and then and there caused the said plaintiff to be discharged out of custody, fully acquitted and discharged of the said supposed offence); and the said defendant hath not further prosecuted his said complaint, but hath deserted and abandoned the same, and the said complaint and prosecution is wholly ended and determined, to-wit, at, etc.

And whereas also, the said defendant further contriving and maliciously and wickedly intending as aforesaid, heretofore, to-wit, on, etc., at, etc., falsely and maliciously, and without any reasonable or probable cause whatsoever, charged the said plaintiff with having committed a certain offence punishable by law, to-wit, felony; and upon such last mentioned charge, he, the said defendant, then and there, to-wit, on the same day and year last aforesaid, at, etc., falsely and maliciously caused and procured the said plaintiff to be arrested by his body,

and to be imprisoned, and to be kept and detained in prison for a long space of time, to-wit, for the space of _____ then next following, and at the expiration of which said time, he, the said plaintiff, was duly discharged and fully acquitted of the said last mentioned offence, to-wit, at, etc. By means of which said several premises, he the said plaintiff hath been, and is greatly injured in his said credit and reputation, and brought into public scandal, infamy and disgrace, with and amongst all his neighbors, and other good and worthy citizens of this state, and divers of those neighbors and citizens to whom his innocence in the premises was unknown, have on occasion of the premises, suspected and believed, and still do suspect and believe, that the said plaintiff hath been and is guilty of felony; and also the said plaintiff hath, by means of the premises, suffered great anxiety and pain of body and mind, and hath been forced and obliged, to lay out and expend divers large sums of money, in the whole amounting to a large sum of money, to-wit, the sum of six hundred dollars, in about the defending of himself in the premises, and the manifestation of his innocence in that behalf, and hath been greatly hindered and prevented, by reason of the premises, from following and transacting his lawful and necessary affairs and business for a long time, to-wit, for the space of _____, and also, by reason and by means of the said premises, he, the said plaintiff hath been, and is otherwise greatly injured in his credit and circumstances, to-wit, at, etc. Burr. App. 325, §593; Yates' Forms 386.

II. Complaints.

A. Complaint for Malicious Prosecution on a Criminal Charge.

I. That on the _____ day of _____, 18____, at _____, the defendant, maliciously intending to injure the plaintiff in his good reputation, appeared before _____, justice of the peace of said county (or, one of the police justices of said city), and, without any probable cause whatsoever, charged the plaintiff, before said justice, with having (feloniously stolen a certain gold watch of the defendant); and maliciously, and without probable cause, procured said justice to

grant a warrant for the arrest of the plaintiff upon the said charge.

II. That the said justice issued said warrant accordingly, and the plaintiff was arrested and imprisoned under the same for _____ hours and was obliged to, and actually did, give bail in the sum of _____ dollars).

III. That afterwards, and on the _____ day of _____, the plaintiff having been examined before the said justice for the said supposed crime, the said justice adjudged him not guilty thereof, and fully acquitted him of the same; and that since that time the defendant has not further prosecuted said complaint, but has abandoned the same.

(IV. That the said charge and the arrest of the plaintiff thereunder were extensively published in several public newspapers, among others, the _____, as the plaintiff believes, through the procurement of the defendant.)

V. That by means of the premises the plaintiff was injured in his person, and prevented from attending to his business, and was compelled to pay _____ dollars costs, counsel-fees in defending himself, and _____ dollars in obtaining bail; and in consequence of the arrest and detention he lost his situation as servant of _____; and many persons, hearing of the said arrest, and supposing the plaintiff to be a criminal, have refused to employ him; to his damage _____ dollars. 1 Abb. Forms 486.

B. Complaint for Obtaining Indictment, on Which a Nolle Prosequi Was Afterwards Entered.

I. That the defendant, maliciously intending to injure the plaintiff in his good name and credit, and to bring him into public disgrace, and to cause him to be imprisoned, and thereby to impoverish and injure him, on or before the _____ day of _____, 18____, procured M. N., then the district attorney in and for the county of _____, in this state, to issue subpoenas for the purpose of compelling and procuring the attendance of witnesses, among others, one O. P., at a court of oyer and terminer, held on the day last mentioned at _____, in said county, before the grand jury and persons serving as grand jurors at such court of oyer and terminer, for the purpose of procuring an indictment to be found against the plaintiff, as hereafter more fully stated.

II. That the defendant, at said court of oyer and terminer, complained of the plaintiff before the grand jury and falsely, and maliciously, and without any reasonable or probable cause whatsoever, charged the plaintiff to the grand jury with having, by means of false and fraudulent pretenses and representations, induced defendant to deliver to the plaintiff certain personal property of the said defendant.

III. That said charge was and is wholly false and untrue, which the defendant then and at all times since well knew.

IV. That defendant falsely, and maliciously, and without any reasonable or probable cause, procured the grand jury aforesaid to find and present to the said court of oyer and terminer an indictment against the plaintiff for said alleged false and fraudulent pretenses and representations.

V. That the defendant falsely, and maliciously, and without any reasonable or probable cause whatsoever, procured a warrant, directed to the sheriff or any constable of the said county of _____, for the arrest of the plaintiff upon the aforesaid indictment, to answer the charges therein made against him as aforesaid, to be issued by the said court of oyer and terminer, or by a justice of the supreme court, judge of the county court of said county of _____, or district attorney aforesaid; and afterwards, on or about the _____ day of _____, 18____, caused the plaintiff to be arrested and to be kept in custody, restrained of his liberty for the space of two days then next following, and afterwards caused him to be carried in custody before the county judge of said county, and to be then and there compelled to give bond to appear for trial therein.

VI. That the plaintiff did appear at the said court of oyer and terminer last above mentioned, held in and for the said county of _____, at _____, on the _____ day of _____, 18____, and other days, pursuant to said bond; whereupon the said defendant did falsely, and maliciously, and without any reasonable or probable cause whatsoever, procure the said court, by order entered in its minutes, to send the aforesaid indictment to the court of sessions of the said county of _____, to be proceeded on and tried therein; and, in like manner, procured the said court of oyer

and terminator to compel the plaintiff to enter into a recognizance to appear at such court of sessions, to answer and stand trial upon the aforesaid indictment against him.

VII. That the plaintiff did appear at the said term of said court of sessions, ready and willing to then and there stand trial upon the aforesaid indictment against him, pursuant to and as required by said recognizance. Whereupon the aforesaid district attorney, after consulting and advising with the defendant, and pursuant to his request and instructions, did then and there move the said court that the plaintiff be discharged out of custody, and fully discharged and acquitted of the said indictment and of the supposed offense therein charged against him, and be no further prosecuted thereon; whereupon the said court, having heard and considered all that the said defendant and the people, by the aforesaid district attorney, could say or allege against the plaintiff touching and concerning the said supposed offense, did then and there adjudge, order and determine that the plaintiff be discharged out of custody, and be fully discharged and acquitted of the said indictment, and be no further prosecuted thereon.

VIII. That the said indictment, complaint, and prosecution, and each of them, is wholly ended and determined in favor of plaintiff.

IX. (Allege special damage, if any.)
1 Abb. Forms 486.

C. Complaint for Arrest in a Civil Action.

I. That on the _____ day of _____, 18____, at _____, the defendant, maliciously intending to injure the plaintiff, and without probable cause, made affidavit, and procured one M. N. to make an affidavit, in an action then brought (or, depending) against this plaintiff by _____, in which he falsely and maliciously alleged (here set forth the grounds of the false arrest); and that upon said affidavits the defendant procured to be issued an order of arrest against this plaintiff, under which the plaintiff was arrested and imprisoned for the space of _____, and compelled to give bail in the sum of _____ dollars.

II. That thereafter said order of arrest was vacated by said court (or

judge), upon the ground that (here set forth briefly the grounds on which it was vacated).

(Or II. That, thereafter, such proceedings were had in such action, that it was finally determined in favor of this plaintiff, and judgment was rendered for him therein. 1 Abb. Forms 488.

III. Answer, Pleading Justification in Malicious Prosecution.

"And for further plea, defendants say that Mrs. Rachel Francis did prosecute the said J. W. Henderson before W. C. Horton and before the city court of Atlanta for the offense of larceny, and that she did also cause him to be arrested and imprisoned, and that said arrest, imprisonment and prosecution was upon probable cause and without malice. Mrs. Rachel Francis owned two houses on Ponder Alley that were in process of erection. A large amount of lumber was stolen from said houses, said lumber being, at the time of the larceny, the property of Mrs. Rachel Francis. The faith upon which said arrest, imprisonment and prosecution took place was substantially that Mrs. Rachel Francis saw said Henderson taking her lumber, and also was informed by several persons that they saw him taking the lumber. On the committing trial, a number of witnesses swore that they saw said Henderson taking the lumber, and the said Henderson did not deny the fact that he took it." Henderson v. Francis, 75 Ga. 178.

MALPRACTICE. — See ATTORNEYS; PHYSICIANS AND SURGEONS.

MANDAMUS.

I. Applications, 807

A. Notice of Motion for Mandamus, 807

B. Petitions, 807

1. For Writ To Draw Warrant, 807

2. For Writ Requiring Payment to Schools, 808

3. For Writ To Declare Relator Elected, 809

4. By Attorney General Requiring Stopping of Trains at Station, 810

II. Orders, 811

A. For Mandamus, 811

B. Denying Mandamus, 811

III. Alternative Mandamus, 812

- A. *Commanding Sealing Bill of Exceptions*, 812
- B. *To Admit Alderman Into Office*, 812
- C. *Directing Expenditure of School Money*, 812
- IV. *Return to Mandamus*, 813
- V. *Peremptory Mandamus*, 813
- VI. *Judgment Record on Mandamus*, 814
- VII. *Executions*, 814
 - A. *For Relator*, 814
 - B. *For Defendant*, 815

CROSS-REFERENCE:

DEMURRER:

Demurrer to Bill for Relief From Mandamus.

I. Applications.

A. *Notice of Motion for a Mandamus (a)*.

To (the party proceeded against).

Please to take notice, that upon the affidavit (or affidavits) with a copy of which you are herewith served, I intend to move the justices of the supreme court of judicature of the people of the state of New York, at the next term of the said court, to be held at, etc., on, etc., at the opening of the court on that day, or as soon thereafter as counsel can be heard, for a mandamus to be directed to (state whom) commanding him (or them), to (state the object of the writ). Dated, etc. Yours, etc.

E. F., attorney for A. B.

Burr. App. 536, §1068.

Note.—It has been held in some jurisdictions that a mandamus should not be entitled until the issuing of the alternative writ.

Notice of Motion for Mandamus (b).
To the Honorable George Oulton, controller of the state of California:

Sir: You will please take notice that on Tuesday, the 11th day of April, A. D. 1865, or as soon thereafter as counsel can be heard, I shall apply to the supreme court of the state of California, to issue a peremptory mandamus commanding you, that as controller of the state of California, you do forthwith draw your warrant on the treasurer of the said state, in favor of William C. Stratton, for the sum of one hundred dollars and eighty cents, due from the state of California to said Stratton, for his salary as state librarian, from the 17th to the 31st days of March, A. D. 1865.

The said application will be founded upon the affidavit of William C. Stratton, a copy of which affidavit is herewith served.

William C. Stratton.

Stratton v. Oulton, 23 Cal. 44.

B. Petitions.

1. *Petition for Writ, To Draw Warrant.*

To the honorable the justices of the supreme court, at the term begun and held at Ottawa on the second Tuesday of September, A. D. 1872.

Respectfully represents unto your honors, Norman L. Freeman, of the county of Sangamon, and state of Illinois, that on the first day of March, A. D. 1876, he was appointed by your honorable court reporter of the decisions thereof, which office was accepted by him and he duly qualified as such reporter, and which said office he still holds and performs the duties incident thereto; that, under the statute in such cases made and provided, it is the duty of your petitioner to deliver to the secretary of state of said state of Illinois, as soon as convenient after publication, such number of copies of the respective volumes of the reports of said court as may be necessary to enable said secretary to distribute the same in manner provided by law; that said number now required by law is five hundred and seventy-two; that upon such delivery of said volumes of said reports to said secretary it is the duty of said secretary to deliver to your petitioner a certificate, specifying the number of copies of the said reports which shall have been so delivered to him, and on presentation of said certificate to the auditor of public accounts of the said state of Illinois, it is, by the law in such cases made and provided, the duty of the said auditor to issue to your petitioner his warrant on the treasury of said State of said number of copies of said reports so delivered, at the price of six dollars per volume.

Your petitioner further represents that, as such Reporter, on the second day of September, A. D. 1872, he delivered to the said secretary of State ten copies or volumes of the fifty-fifth volume of said reports, which said ten volumes completed the number of said volume fifty-five, and not before then delivered, of the quality and style as

required by law, and which said copies were duly accepted by said secretary of State, and by whom a certificate was given therefor to your petitioner, in the manner required by law as aforesaid; that on the said second day of September, A. D. 1872, your petitioner presented said certificate to Charles E. Lippincott, auditor of public accounts of said state of Illinois, at his office, in the city of Springfield, in said state, and demanded that he issue to your petitioner his warrant in the treasury of said State for the sum of sixty dollars, being the price of said ten volumes at six dollars per volume, which said auditor refused then and there to do, and since wholly refused so to do, alleging that the law under which your petitioner has been delivering the said reports to the said secretary of State had been repealed by the 18th section of article 4 of the constitution of the said state of Illinois.

Wherefore, your petitioner prays your Honors to grant a writ of mandamus, under seal of this Court directed to the said Charles E. Lippincott, auditor as aforesaid, commanding him forthwith to issue and deliver to your petitioner his warrant on the treasury of said state of Illinois for the said sum of sixty dollars, for the price of said ten volumes of said reports so delivered as aforesaid, and for such other and further relief in the premises as to your Honors shall seem meet, and as to right and justice may appertain; and as in duty bound, your petitioner will ever pray, etc. *State v. Lippincott*, 64 Ill. 257.

2. *Petition for Writ of Mandamus
Requiring Payment to
Schools.*

To the honorable, the supreme court of the state of Ohio, within and for the county of Hamilton, in said state:

Your petitioners, Richard Phillips, John I. Gaines, William Beckley, Ishmael Keith, William Ferguson, and William A. Nelson, respectfully represent and state to the court, that they constitute the board of directors of common schools for the eastern and western districts of the city of Cincinnati, which schools are established by law for the education of the colored youth residing in said city; and that in pursuance of law, your petitioners

rented divers rooms, and established divers schools in said city, for the education of said youth, and employed competent and duly qualified teachers as instructors of said youth in the schools aforesaid.

And your petitioners further state, that heretofore, to-wit: on the 15th day of March, 1850, William Disney, in his capacity as treasurer of said city, received from the treasurer of Hamilton county, the sum of two thousand and one hundred and seventy-seven and sixty-seven hundredths dollars, for the use of your petitioners, and of the common schools for colored youth, so by them established, the same being the proportion of the public funds belonging to your petitioners, and to the schools under their charge, as the same was apportioned by the auditor of said county, in pursuance of law, which sum of money still remains in the hands of said treasurer, in the treasury of said city.

And your petitioners further represent, that on the first day of April, 1850, there became due from them for expenses incurred in the support of said schools the sums hereinafter set forth, as follows, namely: The sum of six dollars to the trustees of the New Street Church for two months' rent of school room; the sum of seven dollars to the trustees of the Union Baptist Church, for one month's rent of school room; to Martha S. Whipple, the sum of twenty dollars, for one's month's salary as teacher; to Peter Clarke, the sum of twenty dollars, for one month's salary as teacher; to William R. Casey, one month's salary as teacher, the sum of twenty dollars, and to O. J. B. Nickens, the sum of sixty dollars, for two months' salary as teacher in said schools; and that, thereupon, afterwards, to-wit: on the fifth day of April, 1850, your petitioners duly certified to the city council of said city the correctness of said several accounts, together with the several accounts, respectively, and desired the city council to pass an order directing the treasurer of said city to pay the same out of the funds of your petitioners in his hands, to the persons entitled to receive the same; but your petitioners state that the said city council, afterwards, on the first day of May, 1850, utterly refused to pass any order in relation to the payment of said accounts, and they now claim

that they have no power, jurisdiction or authority to make any order in the premises.

And your petitioners further represent, that afterwards, to-wit: on the 10th day of May, 1850, they caused said accounts to be presented to the said William Disney, treasurer of said city, and payment thereof was then and there demanded of said Disney, as treasurer, and the said Disney then and there utterly refused and still doth refuse to pay the same, or any part thereof, although the said Disney then had and now has in his hands, as treasurer, as aforesaid, the whole of said sum of two thousand one hundred and seventy-seven and sixty-seven hundredths dollars, and which said sum is held by said Disney, as treasurer of said city, for the use of your petitioners, and of the schools so by them established; he, the said Disney, pretending that he has no power to disburse any of the funds in the city treasury, without the order of said city council, signed by the city clerk, first being and had and obtained.

And your petitioners further state, that by reason of said refusal by said city council to pass the orders aforesaid, and of said treasurer to pay said accounts, the teachers employed by your petitioners are deprived of the compensation, which is justly due them for the services, and the schools so by your petitioners established have been suspended for want of means to carry on the same, although a fund amply sufficient to sustain said schools has been provided by law, and is now in the hands of said Disney, as treasurer of said city.

And your petitioners further state, that they are entirely without remedy in the premises, unless it be afforded by the interposition of this honorable court; and they therefore pray that writs of mandamus may issue against the city of Cincinnati, the city of Cincinnati, and William Disney, treasurer of said city; that said city and city council be commanded to pass an order directing said treasurer to pay said accounts, out of said fund, and that the said Disney, as treasurer, be commanded to pay the same to the order of your petitioners, and that such other order may be had in the premises, as justice may require.

By Ball & Hoadley.

Their Solicitors.

The State of Ohio, Hamilton County,
ss.:

Richard Phillips, one of the petitioners above named, and president of the board of directors of common schools for the eastern and western districts of the city of Cincinnati, being duly sworn, saith, that the several matters and things in the foregoing petition stated, are true in substance and in matter of fact, to the best of his knowledge, information and belief.

Richard Phillips.

Sworn to and subscribed before me, notary public under the act of 1849. Given under my hand and seal of office, at Cincinnati, this fifteen day of May, A. D. 1850.

Geo. Hoadley, Jr.,
Notary Public.

(L. S.)

State r. Cincinnati, 19 Ohio 178.

3. *Petition for Writ. To Declare Relator Elected to Office.*

"To the honorable justices of the supreme judicial court now holden at Portland within and for the county of Cumberland.

"Francis Bacon of Buxton, in the county of York, esquire, respectfully represents, that on the sixteenth day of November last past, the qualified electors of the county of York (which said county constituted a registry district) gave in their votes at the several town and plantation meetings, holden on that day in pursuance of the warrants of the county commissioners, for the choice and election of a register of deeds for said county and registry district; that prior to the twenty ninth day of December last past, the clerks of the respective towns and plantations in said county, caused to be delivered into the office of the clerk of the county commissioners, fair copies of the lists of votes aforesaid, attested by the selectmen and clerks of said towns, and by the assessors and clerks of said plantations, and duly sealed up in open town or plantation meeting, to be by the said commissioners opened and compared with the like returns from the several towns and plantations in said county; on the said twenty-ninth day of December last past, the county commissioners aforesaid of said county of York, which county commissioners were, and now are, Moses Swett, John Bailey and Timothy Shaw, Jr., assembled at Al-

fred, in said county, to open and compare the said returns of the lists of votes, given in as aforesaid in the several towns and plantations in said county; and that they did proceed to open and compare said returns as aforesaid.

"And your petitioner further represents that by the returns of the lists of votes aforesaid, duly signed, attested, sealed up and returned as aforesaid, it then and there appeared, that your petitioner had received a majority of the votes, so given in by the electors aforesaid, for a person to fill the office of register of deeds for said county, and was then and there entitled to be declared register of deeds for said county, and then and there personally appeared before the said commissioners and requested and demanded of the said commissioners to be declared register of deeds of the said county; and then and there offered and was ready to file the bond and take the oath required by law of the register of deeds.

"Yet the said commissioners, unmindful of their duty in this behalf, and of the requirements of the statute in such case provided, and disregarding the rights of your petitioner, wholly refused and neglected to declare your petitioner register of deeds as aforesaid, and still refuse and neglect so to do, and did decide and declare that no person had a majority of the votes so returned as aforesaid, and that there was no election of any person to said office.

"By reason of which acts, doings and omissions your petitioner is greatly aggrieved; and is wrongfully deprived and kept out of said office and the emoluments thereof.

"Wherefore he prays this honorable court that a rule of this court may issue to the said county commissioners of the county of York, commanding them to appear before this honorable court and show cause, if any they have, why the said county commissioners refused and neglected to declare your petitioner register of deeds as aforesaid, and why a writ of mandamus should not issue from this court, commanding the said commissioners to declare him register as aforesaid.

"Francis Bacon."

"Cumberland, ss. Portland, January 1, A. D. 1847.

"Personally appeared Francis Bacon,

above named, and made oath that the foregoing petition was true, according to his best knowledge and belief. Before me,

"G. F. Shepley, Justice Peace."

Bacon v. York County Comrs., 26 Me. 491.

4. *Petition by Attorney General for Writ, Requiring Stopping of Trains at Particular Station.*

"To the honorable superior court, now in session at New Haven, within and for the county of New Haven.

Comes Eleazer K. Foster, the attorney for the state of Connecticut, within and for New Haven County, and respectfully represents that the New Haven & Northampton Company is, and for more than thirty years last past has been, a corporation duly created by the laws of the state of Connecticut, and that said company has an office for the transaction of business and is located in the town and county of New Haven, and that said corporation, by an act of the general assembly passed May session, 1846, was duly authorized to construct a railroad from said New Haven, northerly along the line of the said company's canal, to the town of Farmington, in Hartford county, and that said company, in accordance with the terms and provisions of said act, did construct and put in operation a railroad from said New Haven to said Farmington, passing through the town of Cheshire in New Haven county, which road has been operated by said corporation since the 1st day of June, 1848, to the present time.

"And the said attorney avers that said corporation, in the year 1848, established a station, for the purpose of the reception and delivery of passengers and freight, commonly called 'Brooks' Station,' at a point on and along the line of the railroad in said Cheshire, and that said corporation, and all persons operating said railroad, with its consent, have from the 1st day of July, 1848, to the 1st day of August, 1869, continued said station, so established as aforesaid, and have during all that period received and delivered passengers and freight at said station.

"And the said attorney further avers, that on the 1st day of August, 1869, and ever since that day hitherto, the said corporation has abandoned

said station, contrary to the statute in such case made and provided, and has ceased to stop its trains, running over said road, at said station, to the great discomfort, annoyance and inconvenience of the public.

"And the said attorney avers that the railroad commissioners have never approved of such abandonment of said station by said company, nor has a public hearing been had by them to approve of such abandonment.

"Wherefore the said attorney moves this honorable court to issue a writ of mandamus requiring and enjoining the said corporation to discontinue its abandonment of said station, and to stop its trains, passing over said railroad, and by said station, at said station, for the reception and delivery of passengers and freight, or to signify cause to the contrary thereof to this court. And your petitioner will ever pray. Dated at New Haven, the 11th day of November, 1869." *State v. New Haven & N. Co.*, 37 Conn. 153.

II. Orders.

A. Order for Mandamus (a).

The People ex. rel. *A. B. v. C. D.*

On reading and filing the affidavits of A. B. and others in this cause, and on motion of E. F., of counsel for the relator, it is ordered that a mandamus issue out of, and under the seal of this court, directed to the said C. D., commanding him forthwith to deliver to the said A. B. all books and papers, and everything appertaining to the office of (clerk of the county of ———); or that he show cause before the justices of this court, at, etc., on the ——— day of ——— next, why he should not deliver the same. Burr. App. 579, §1134a.

Order for Mandamus (b).

The honorable John C. Watrous, district judge of the United States for the district of Texas, having filed a return to the rule granted at the last term in this case, requiring him to appear and show cause, if any he had, why a mandamus should not be awarded, requiring and commanding him to cause the decree rendered by the said court, on the 25th day of February, A. D. 1854, in a certain cause therein then depending, between the said Union Bank of Louisiana, as complainant, and Josiah S. Stafford and Jeannette Kirkland Stafford, his wife, as defend-

ants, to be at once carried into execution, according to the terms thereof, notwithstanding the appeal from said decree, taken by the said defendant to this court, and the order of the said court that the appeal bond filed by the said defendants, on the said appeal, operated as a supersedeas to the said decree of the said court.

And the cause shown appearing in the following statement returned by the said district judge, namely: (here was inserted return of respondent).

And after due deliberation thereupon, had, it appearing to the court that it was the duty of the judge, in allowing the appeal, to take security on the appeal in the sum decreed, and not having done so, that the appellant was not entitled to a supersedeas of any process necessary to carry the decree into execution, and that the judge was bound to issue the proper process on the application of the complainant. It is therefore now here directed and ordered by this court that a mandamus be awarded to the district judge of the United States for the district of Texas, requiring and commanding the said judge forthwith to carry the aforesaid decree of the said district court of the 25th of February, A. D. 1854, into effect. *Stafford v. Union Bank*, 17 How. (U. S.) 275, 15 L. ed. 101.

B. Order Denying Peremptory Writ of Mandamus.

"This day came again the parties by counsel, and the court having maturely considered the petition of the plaintiff, the demurrer and answer of the defendant, and argument of counsel, is of opinion that where the corporation court has, under the provisions of sec. 666 of the code, as amended by Acts of 1897-8, p. 343, decided that an additional survey need not be made because a sufficient description of the lot can be obtained from the records, there is no necessity for a report by the city engineer, since any report made by him without a survey would only show what the court has, by dispensing with the survey, declared sufficiently appears by the record. It is therefore considered that the prayer of said petition for a mandamus be denied, and the petition dismissed, and that the defendant recover against the plaintiff his costs by him about his defense herein expended." *Glenn v. Cutshaw*, 96 Va. 677, 33 S. E. 1015.

III. Alternative Mandamus.

A. *Alternative Mandamus to Court of Common Pleas, Commanding Sealing of Bill of Exceptions.*

The people of the state of New York, to the judges of the court of common pleas for the county of (Westchester), greeting:

Whereas it has been lately represented to us, in our supreme court of judicature, before our justices thereof, on the part and behalf of J. K., that at a court of common pleas, held in and for the county of (Westchester), at, etc., on, etc., a certain suit, then and there pending in the said court of common pleas, before you, the said judges, wherein J. K. was appellee and S. K., appellant, was argued before you, and a judgment of nonsuit rendered therein by you the said judges; and that the said J. K., by his counsel learned in the law, did then and there except to the opinion of you the said judges, in the said suit, and to the judgment therein by you so rendered as aforesaid, and did then and there write his exceptions, and tender the same to you, and request you to affix your seals to the same; to which said exceptions you, the said judges, refused to affix your seals: Whereupon we, being willing that justice should be done in the premises, do command you, that you, the said judges, do affix your seals to the said bill of exceptions according to the statute in such case made and provided; or in default thereof, that you make known to us in our supreme court of judicature, before our said justices thereof, at the capitol in the city of Albany, on the _____ day of _____ next, why you have not done the same. And have you then there this writ. Witness, Greene C. Bronson, esquire, our chief justice at the (court-house in the city of Rochester), the _____ day of _____, in the year, etc. Burr. App. 534, §1058.

B. *Alternative Mandamus to a Corporation, To Admit an Alderman Into Office.*

The people of the state of New York, to the mayor, aldermen and commonalty of the city of _____, greeting:

Whereas A. B. was duly elected one of the aldermen of the _____ ward of the said city, to-wit, on, etc., at, etc., and by the said mayor or recorder of the said city in presence of you,

the said aldermen and commonalty, ought to be admitted and sworn into the said office of alderman; nevertheless, you, not being ignorant of the premises, but disregarding your duty therein, have not only refused (though thereto required by the said A. B.) to cause the said A. B. to be sworn and admitted into the said office of alderman, in manner aforesaid, but yet do refuse so to do, in contempt of us and to the great damage of the said A. B., as by his complaint we have understood: We therefore, being willing that speedy justice should be done in this behalf, do command and firmly enjoin you, that immediately after the receipt of this writ, you do cause the said A. B. to be duly sworn and admitted into the said office of alderman; or to signify the cause to us why you cannot, or will not cause the said A. B. to be so sworn and admitted as aforesaid; lest in your default complaint should again come to us. And how you shall have executed this our writ make known to our justices of our supreme court of judicature, at the (capitol in the city of Albany), on the _____ Monday (or Tuesday) of _____ next. And have you then there this writ. Witness, Greene C. Bronson, esquire, our chief justice at, etc. (teste in the usual form).

E. F., attorney.

_____, clerks.

Burr. App. 534, §1058a.

C. *Alternative Writ of Mandamus Directing Expenditure of School Moneys.*

The state of Ohio, Hamilton county. To the city of Cincinnati, and the city council thereof, greeting:

Whereas, it has been suggested to us, that you have refused to issue an order directing the treasurer of the said city to pay certain sums of money, alleged to be due as follows, to-wit: The sum of six dollars, to the trustees of New Street Church, for two months' rent of school room; the sum of twenty dollars, to the trustees of North Church, for two months' rent of school room; the sum of seven dollars to the trustees of the Union Baptist Church, for one month's rent of school room; to Martha S. Whipple, the sum of twenty dollars, for one month's salary as teacher; to Peter Clarke, the sum of twenty dollars, for one month's salary as teacher; to William R. Casey, one

month's salary as teacher, the sum of twenty dollars; to O. J. B. Nickens, the sum of sixty dollars, for two months' salary as teacher; the correctness of which several sums of money had been certified to you by the board of directors of common schools for the eastern and western districts of the city of Cincinnati. Now, therefore, we being willing that full and speedy justice should be done in the premises, do command you that you issue an order directing the treasurer of said city to pay the said several sums of money, so certified, as herein before stated, or that you appear before the judges of our supreme court, sitting within and for the said county of Hamilton, at the court-house in said county, on the 18th day of May, 1850, at nine o'clock a. m. of said day, to show cause why you refuse to do so.

Witness, Isaac G. Burnet, clerk of our supreme court, at Cincinnati, this 16th day of May, A. D. 1850.

Isaac G. Burnet, clerk.

Per S. G. Burnet, deputy.

(L. S.)

State v. Cincinnati, 19 Ohio 178, 182.

IV. Return to Mandamus.

The answer of the mayor, aldermen and commonalty of the city of _____ within mentioned.

We, the said mayor, aldermen and commonalty do humbly certify to the justices within mentioned, that the within named A. B. was not elected an (alderman) as by the within writ is within alleged; and therefore we could not cause him to be sworn nor admitted, as by that writ we were within commanded.

C. D., mayor (seal).

Burr. App. 578, §1131.

Return to Writ of Mandamus (b).

"To the honorable supreme court of the state of Texas:

"The district judge of the twenty-second judicial district of the state of Texas, for return to the alternative writ of mandamus heretofore issued by said court against him on application made by the bakers, says (here insert facts upon which respondent relies for refusing request of petitioner).

"Wherefore this respondent prays that the honorable court will make such order in the premises as shall be

required by the law, and that this respondent may be hence dismissed.

"G. H. Noonan, respondent."

Garza v. Baker, 58 Tex. 483.

V. Peremptory Mandamus.

(Where a peremptory mandamus has been allowed after an alternative writ, the form will be the same as that of the first writ, adding after the words "as by his complaint we have understood" (or are here informed), the following: "and which complaint we have adjudged to be true, as appears to us of record;" omitting also the alternative clause to show cause. Where a peremptory writ is granted in the first instance, it is issued in the following form):

The people, etc., to the (judges of the court of common pleas, for the city and county of New York), greeting:

Whereas E. M. B. lately recovered a judgment for the sum of _____ dollars, against one I. G., which said judgment was entered of record in the said court of common pleas on the _____ day of _____ last; and upon which said judgment a writ of fieri facias was issued; and afterwards a levy made by virtue of the said fieri facias upon the goods and chattels of the said I. G., to-wit, on the _____ day of _____; and whereas we have been informed from the complaint of the said E., that a rule was granted by you during the last _____ term of the said court of common pleas, setting aside the said fieri facias, to the great damage and grievance of the said E.: We, therefore, being willing that due and speedy justice should be done to the said E. in this behalf, as it is reasonable, do command you, firmly enjoining you, that immediately after the receipt of this our writ, you do, without delay, vacate and cause to be vacated, the said rule granted by you at the said last _____ term of the said court of common pleas, that the same complaint may not, by your default, be again repeated to us; and how you shall have executed this our writ make known to us before our justices, at, etc., on, etc., next (the return day), then and there returning this our writ, upon peril that may fall thereon. Witness, etc. (teste as in the alternative writ).

_____, clerks.

E. F., attorney.

Burr. App. 535, §1059.

VI. Judgment Record on Mandamus.

Pleas before the justices of the supreme court of judicature of the people of the state of New York, at the (capitol in the city of Albany), of the term of (January), in the year one thousand eight hundred and (forty-six).

Witness _____, esquire, Chief Justice.

_____, clerks.

State of New York, ss.: The people of the state of New York, sent to (the mayor, aldermen and commonalty of the city of _____) their writ close in these words, to-wit: The people of the state of New York, etc. (here copy the mandamus, including the signatures, and then the return as follows):

The answer of the mayor, aldermen and commonalty of the city of _____ within mentioned.

We, the said mayor, aldermen and commonalty, do humbly certify to the justices within mentioned, that the within named A. B., was not elected an (alderman) as by the within writ is within alleged; and therefore we could not cause him to be sworn nor admitted, as by that writ we were within commanded.

C. D., mayor (Seal).

(If the relator pleads to the return, and an issue in fact is produced thereon, the entries on the record will be as follows):

And now at this day, to-wit, on, etc., before the justices aforesaid, at, etc., come as well the said A. B., by E. F., his attorney, as the said mayor, alderman and commonalty, by G. H., their attorney. And the said A. B. by his said attorney says, that he was duly elected an (alderman of the _____ ward of the said city), as in the said writ is above alleged; and this the said A. B. prays may be inquired of by the country. And the said mayor, aldermen and commonalty, by their said attorney, do the like, etc.

Therefore the issue above joined is ordered by the said supreme court to be tried at, etc. (usual order for trial at the circuit).

Afterwards, to-wit, etc. (the postea is here entered in the usual form, to the words, "say upon their oaths;" after which the record proceeds as follows): that the said A. B. was duly elected an (alderman), in manner and form as by the said writ of mandamus is within alleged; and they as-

sess the damages which the said A. B. hath sustained by reason of his not being sworn and admitted into the said office, as alleged in the said writ, over and above his costs and charges, by him about his suit in this behalf expended, at (five hundred) dollars, and for those costs and charges to six cents. Whereupon the said A. B. prays judgment, and also the people's writ of peremptory mandamus to be directed to the said mayor, aldermen and commonalty, commanding them to cause the said A. B. to be sworn and admitted into the said office of alderman, etc.

Therefore it is considered that the said A. B., recover against the said mayor, aldermen and commonalty, his damages aforesaid by the jurors aforesaid, in form aforesaid found, and also _____ dollars and _____ cents for his cost and charges, by the court now here adjudged of increase to the said A. B. and with his assent; which said damages, costs and charges, in the whole amount to _____ dollars and _____ cents; and it is further considered that the people's writ of peremptory mandamus do forthwith issue, directed to the said mayor, aldermen and commonalty, commanding them, upon pain and peril that shall fall thereon, to cause the said A. B. to be immediately sworn and admitted into the aforesaid office of alderman, according to the command of the said former writ of alternative mandamus, etc.

(If, instead of pleading, the relator demurs to the return, the record will resemble that on an ordinary demurrer.) Burr. App. 523, §1047.

VII. Executions.**A. Execution on Mandamus for Relator.**

The people, etc., to the sheriff, etc., greeting:

We command you, that of the goods and chattels of, etc. (the parties against whom the writ issues) in your county you cause to be made _____ dollars and _____ cents, which lately in our supreme court of judicature, before our justices thereof, were adjudged to A. B. as well for his damages by him sustained by reason of his not being sworn and admitted into the office of (an alderman of the _____ ward of the city of _____), (or otherwise, according to the case), as for his costs and charges by him laid

out and expended in and about the prosecution of our certain writ of mandamus in that behalf issued; and whereof the said (the parties proceeded against), are convicted, as appears to us of record; and if sufficient goods and chattels of the said, etc., cannot be found, then (of the real estate, etc., as in the ordinary *fi. fa.* to the end). Burr. App. 518, §1039a.

B. Execution for Defendant on Mandamus.

The people, etc., to the sheriff, etc.:

We command you, that of the goods and chattels of A. B. in your county, you cause to be made ——— dollars and ——— cents, which lately in our supreme court of judicature, before our justices thereof, were adjudged to (the parties against whom the writ was issued), for their costs and charges by them laid out and expended in and about their defense, to our certain writ of mandamus, and whereof the said A. B. is convicted, as appears to us of record: and if sufficient goods, etc. (as in the ordinary *fi. fa.*). Burr. App. 519, §1039b.

MANDATE.

- I. Mandate, United States Supreme Court to State Court, 815**
- II. Mandate, Appellate Court to Common Pleas, 816**
- III. Mandate, United States Supreme Court to District Court, 816**
- IV. Mandate of State Supreme Court, 816**
- I. Mandate, United States Supreme Court to State Court.**

“The United States of America, ss. The president of the United States of America, to the president of the senate of the state of New York, the senators, chancellor and justices of the supreme court of the said state, being the judges of the court for the trial of impeachments and correction of errors, holden in and for the said state of New York, greeting:

“Whereas, lately, in the court for the trial of impeachments and correction of errors, holden in and for the state of New York, before you, or some of you, in a cause between Charles A. Davis, plaintiff in error, and Isaac Packard, Henry Disdier, and William Morphy, defendants in error;

the judgment of the said court for the trial of impeachments and correction of errors was in the following words, to-wit: ‘Therefore, it is considered by the said court for the correction of errors, that the judgment of the supreme court aforesaid be, and the same is hereby in all things affirmed. It is further considered that the said defendants in error recover, against the plaintiff in error, their double costs, according to the statute in such case made and provided, to be taxed in defending the writ of error in this cause, and also interest on the amount recovered, by way of damages,’ as by the inspection of the transcript of the record of the said court for the trial of impeachments and correction of errors, which was brought into the supreme court of the United States by virtue of a writ of error, agreeably to the act of congress in such case made and provided, fully and at large appears. And whereas, in the present term of January, in the year of our Lord one thousand eight hundred and thirty-three, the said cause came on to be heard before the said supreme court, on the said transcript of the record, and was argued by counsel; on consideration whereof, it is the opinion of this court that the plaintiff in error, being consul-general of the king of Saxony, exempted him from being sued in the state court; by reason whereof, the judgment rendered by the court for the trial of impeachments and correction of errors is erroneous. Whereupon, it is ordered and adjudged by this court that the judgment of the said court for the trial of impeachments and correction of errors be, and the same is hereby reversed; and that this cause be, and the same is hereby remanded to the said court, with directions to conform its judgment to the opinion of this court.

“You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and in conformity to the opinion and judgment of said supreme court of the United States, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

“Witness, the honorable John Marshall, chief justice of said supreme court, the second Monday of January,

in the year of our Lord one thousand eight hundred and thirty-three.

William Thomas Carroll,

"Clerk of the supreme court of the United States."

Davis v. Packard, 8 Pet. (U. S.) 312, 8 L. ed. 957.

II. Mandate, Appellate Court to Common Pleas.

"District court, September Term, A. D. 1874.

"This day this cause came on to be heard upon the petition, transcript and record, and errors assigned, and was argued by counsel, and the court being fully advised in the premises, do find that there is error, and do order and adjudge that the judgment in the court of common pleas in favor of Elizabeth Morris, against the said David Stevenson and Elizabeth Stevenson, be, and the same is hereby, reversed and held for naught. And it is further ordered that this cause be remanded to the court of common pleas for further proceedings." *Stevenson v. Morris*, 37 Ohio St. 10.

III. Mandate from United States Supreme Court to District Court.

Mandate supreme court United States. United States of America, ss. To the president of the United States of America, to the honorable the judge of the district court of the United States for the northern district of California, greeting:

Whereas lately, in the district court of the United States for the northern district of California, before you, in a cause between the United States, appellants, and John C. Fremont, claimant and appellee; the decree of the said district court was in the following words, namely:

This cause coming on to be heard at the above stated term, on appeal from the final decision of the commissioners to ascertain and settle private land claims in the state of California, under the act of congress approved March 3, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which said decision was founded, and also upon the testimony and depositions taken before this court, and the arguments of counsel for the United States and for the claimant being heard, it is ordered, adjudged, and decreed, that the decision of the said commissioners be in all things reversed and annulled, and that the said

claim be held invalid and rejected, "as by the inspection of the transcript of the record of the said district court which was brought into the supreme court of the United States, by virtue of an appeal agreeably to the act of congress in such cases made and provided, fully and at large appears.

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty-four, the said cause came on to be heard before the said supreme court on the said transcript of the record, and was argued by counsel, on consideration whereof it is the opinion of this court that the claim of the petitioner to the land as described and set forth in the record is a good and valid claim. Whereupon it is now here, ordered, adjudged, and decreed, by this court, that the decree of the said district court in this case be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court for further proceedings to be had therein, in conformity to the opinion of this court.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity to the opinion and decree of this court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, chief justice of said supreme court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-four.

Wm. Thomas Carroll,
Clerk Supreme Court of the United States.

Indorsed: Filed, June 4, 1855. John A. Monroe, clerk. By W. H. Chevers, deputy.

United States v. Fremont, 18 How. (U. S.) 30, 15 L. ed. 302.

IV. Mandate of State Supreme Court.

"And now, at this day, this cause being called, and having been heretofore argued and submitted, and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by Field, C. J., Cope, J., concurring, to the effect that the judgment of the court below be reversed, with direc-

tions to enter judgment for the plaintiff upon the special findings for the premises in controversy, pursuant to the prayer of the complaint.

"Whereupon it is now considered, ordered, adjudged and decreed by the court here, that the judgment of the district court of the fourth judicial district, in and for the county of San Francisco, in the above-entitled cause, be and the same is hereby reversed with costs, and said court is directed to enter judgment for the plaintiff, upon the special findings for the premises in controversy, pursuant to the prayer of the complaint." *Leese v. Clark*, 28 Cal. 26.

Mandate of State Supreme Court (b).

"This cause having been presented for argument at the November term, eighteen hundred and sixty-six, of this court, and the case having been read, and as well the arguments of the counsel of the respective parties heard thereon, and the record and proceedings in the court below, together with the assignment of errors to this court having been duly considered and diligently examined, and time having been taken to determine the same, and mature deliberation having been had thereon, and this court being of opinion that, in the giving of judgment in this cause in the court below error exists—it is, therefore, at the present March term of this court ordered, adjudged and decreed, that the said judgment of the Hunterdon circuit court in this cause must be reversed, and judgment rendered for the plaintiff for the amount of the check, with interest from the death of the testator; and that the writ, return, and record to this court, and the proceedings therein had, be remitted to the said circuit court; and that the costs in this court be taxed."

On motion of

B. Van Syckel,

Attorney of plaintiff in error.

Horner v. Webster, 33 N. J. L. 387.

MARINE INSURANCE.—See INSURANCE.

MARITIME JURISDICTION.—See ADMIRALTY.

MARRIAGE, ANNULMENT OF.

Note.—The jurisdiction to annul marriages was vested in ecclesiastical courts, and has been conferred by stat-

ute upon courts exercising equity jurisdiction. The practice has been closely assimilated to that of divorce and sometimes treated as a part of that subject. Forms for divorce proceedings can be easily adapted. Regard must be had to the fact that the action is based upon the theory that no valid marriage ever existed.

For forms, see **Divorce**, and particularly II, A, 4.

MARRIED WOMAN.—See HUSBAND AND WIFE.

MARSHALING ASSETS.

Bill for Marshaling Assets.

Humbly complaining show unto your honors your orators, A. B. and C. D., of, etc. (creditors of S. M., late of, etc., deceased) on behalf of themselves, and all other unsatisfied creditors by simple contract of the said S. M., who shall come in and contribute to the expense of this suit. That the said S. M. was in his lifetime, and at his death, indebted to your orators, as co-partners, in the sum of \$———, for business done by your orators for him, as his agents. And the said S. M. was also at his death, indebted to several other persons by simple contract or otherwise, in several other sums of money. And your orators further show unto your honors, that the said S. M. was, in his lifetime, and at the time of his decease, seised in fee simple of divers real estates, situate at —— (subject, as it is alleged, to an annuity of \$——— payable to E. the wife of I. C. of, etc., who, together with her said husband, are two of the defendants hereinafter named); and was also possessed of considerable personal estate, and being so seized and possessed, duly made and published his last will and testament in writing, bearing date the —— day of —— (executed by him the said S. M., and attested in such manner as by law is required for devising real estates, whereby he devised all his said real estates to the said E. C. then E. F., for her life, with remainder to R. B. of, etc. (another defendant hereinafter named) then, and now an infant under the age of twenty-one years, his heirs and assigns forever; and the said testator thereby gave all his personal estate, after payment of his funeral and testamentary expenses and

debts, with which he charged all his said personal and real estates, to the said I. C., who he thereby appointed sole executor of his said will, as by the said will and the probate copy thereof respectively, reference being thereunto had, will more fully appear. And your orators further show unto your honors, that the said testator departed this life on or about _____, without altering or revoking his said will, leaving I. M. of, etc., another defendant hereinafter named, his uncle and heir at law, and also leaving the said E. C., then E. F., and I. C. him surviving; and the said I. C. soon after the decease of the said testator, duly proved the said will in the proper court, and took upon himself the execution thereof, and under and by virtue of such probate, possessed himself of all, or most of the personal estate of the said testator. And your orators further show unto your honors, that the said E. C. upon, or soon after the death of the said testator, entered upon, and took possession of all his said real estates, and continued in possession thereof, until her marriage with the said I. C. (which happened some time ago), and ever since that time, the said I. C. in right of the said E. C. hath been, and now is, in the possession or receipt of the rents and profits of all the said estates devised to the said E. C. for her life. And your orators further show unto your honors, that the whole of your orators' said debts remain due and owing to them respectively, and they have therefore frequently requested the said I. C. to account with your orators, and such other unsatisfied creditors as aforesaid, for the personal estate of the said testator, and to apply the same in payment of their respective demands; and your orators hoped that the said personal estate would have been duly applied towards payment of the said debts, so far^{et}s the same would extend, and that any deficiency therein would have been supplied out of the said real estate: But now so it is, may it please your honors, the said I. C. combining with the said E., his wife, R. B. and I. M. (charge confederacy) has absolutely refused to pay any part of the said debts due to your orators as aforesaid, or the demand of such other unsatisfied creditors as aforesaid, pretending that all the said testator's personal estate received by

him was not sufficient to satisfy the bond, and other specialty debts owing by the said testator, at the time of his death; and that he hath applied the same in discharge of such debts. Whereas, your orators charge, that the said testator's personal estate was more than sufficient to satisfy all his funeral and testamentary expenses and debts, as well those by specialty as by simple contract, and that it would so appear, if the said I. C. would set forth such account thereof as hereinafter required, but which he refuses to do; and your orators further charge, that if the said personal estate be insufficient for the payment of the specialty and simple contract debts of the said testator, then that the said specialty debts ought to be paid out of the said testator's real estates; and if the said personal estate, or any part thereof, has been applied in payment of any such specialty debts, then that your orators, and the other creditors by simple contract of the said testator, are entitled in equity to stand in the place of such specialty creditors against the said real estates, and to have a satisfaction thereout, for so much of the personal as has been, or shall be exhausted by payment of such specialty debts, and to have the said real estates, or a sufficient part thereof sold for that purpose, and also for the purpose of supplying any deficiency in the said personal estate, for the payment of any of the debts so charged by the said testator on his said real and personal estate as aforesaid: But the said I. C. and E., his wife, not only refuse to join in any such sale, but the said I. C. in right of the said E., his wife, claims to be interested in the said real estates, under the said devise thereof, unto the said E. C. for her life, and also on account of the said annuity of \$_____ payable to the said E. C. as aforesaid, and oppose a sale of any part thereof, for the purposes aforesaid. And the said R. B. alleges that he is an infant, and therefore cannot join in any such sale as aforesaid; and the said I. M. as heir at law of the said testator, disputes the validity of the said will, and refuses his concurrence, if necessary, in any such sale as aforesaid. (Interrogate to the material parts of the statement and charges of this bill.) And that the said defendants I. C. and E., his wife, may

set forth in manner aforesaid, a particular rental or account, of all and singular the real estates of which the said S. M. was seized of or entitled to at the time of his death; and where the same and every part thereof are, or is situate, and to whom let, and at what yearly, or other rent or rents; and also a particular account of the rents and profits of the said estates, received by or for the use of them, or either of them, since the death of the said testator. And that the said defendant I. C. may also set forth an account of the said testator's personal estate, and the amount and particulars thereof possessed by him, and what part thereof is now in his hands, and how much thereof has been disposed of by him in payment of the said testator's funeral and testamentary expenses and debts; and what debts, and to what amount, still remain unsatisfied; and whether they are debts by simple contract or specialty. And that an account may be taken, by and under the decree of this honorable court, of the said debt so due to your orators as such copartners as aforesaid, and all other debts which were owing by the said testator at the time of his death, and which still remain unpaid. And that an account may also be taken of the said testator's personal estate and effects received by, or for the use of the said I. C. as such executor as aforesaid; and that the personal estate and effects of the said testator may be applied in payment of his said debts in a due course of administration: And that so much thereof as shall remain, after payment of the said testator's debts by specialty, may be applied in or towards the payment of the said debt so due to your orators as aforesaid, and the debts, of all other unsatisfied creditors of the said testator, by simple contract, who shall come in and contribute to the expense of this suit, in proportion to their respective demands; and in case it shall appear, that the whole, or any part of the said testator's personal estate, has been exhausted, or applied in or towards the payment of his specialty debts, and that the residue thereof is not sufficient to answer the debts of your orators, and the said testator's other debts on simple contract; then that it may be declared that your orators and the other creditors by simple contract of the said testator, ought

to stand in the place of the said testator's creditors by specialty, who have had, or shall have a satisfaction for their debts out of the said personal estate, and may have satisfaction out of the said real estate for so much of their respective debts as his personal estate shall be deficient to answer, by reason of the same having been exhausted or applied, in or towards the payment of his debts by specialty; and that the same may be decreed accordingly; and that the said real estates may be sold or mortgaged for that purpose; and that all proper parties may be decreed to join in such sale or mortgage; and that the money to arise from such sale or mortgage may be paid to your orators and the said other creditors by simple contract accordingly. And that your orators and the said other unsatisfied creditors by simple contract of the said testator, may have such further and other relief in the premises as to your honors may seem meet, and the circumstances of this case require. May it please, etc. (End by praying process of subpoena against I. C. and E., his wife, R. B. and I. M.) Curtis' Eq. Precedents 47.

MASTER AND SERVANT.

- I. Declaration for Negligence, Not Providing Safe Place, 820
- II. Declaration for Salary, Wrongful Discharge, 820
- III. Complaint, Injured by Defective Machinery, 820
- IV. Complaint, Breach of Agreement To Employ, 820
- V. Complaint for Salary on Wrongful Discharge, 821
- VI. Complaint Against Third Person, Wrongfully Procuring Plaintiff's Discharge, 821
- VII. Complaint, Wrongful Discharge, Agreement to Employ on Release for Personal Injuries, 821
- VIII. Notice of Injury, 823
- IX. Indictment, Enticing To Leave Employer, 823
- X. Indictment, Intimidation of Employee, 823

CROSS-REFERENCE:

INJURIES TO PERSONS:

- Declaration, Injury to Employee Using Defective Appliances;
- Complaint, Injury to Employee by Defective Appliance.

I. Declaration, Negligence in Not Providing Safe Place for Employee.

That the plaintiff while in the employ of the defendants and in the exercise of due care, "sustained personal injury because of the falling in and upon him of the roof of said tannery and the piping and fixtures connected therewith and placed thereunder. And the plaintiff says that at the time aforesaid the condition of said tannery and the roof thereof was defective and unsafe, and that said defective and unsafe condition of said tannery and roof had not been discovered and remedied owing to the negligence of the defendants and of the person in the service of the defendants entrusted by them with the duty of seeing that said tannery and roof were in proper condition." *Dolan v. Alley*, 153 Mass. 380, 26 N. E. 989.

II. Declaration, Action for Salary Upon Wrongful Discharge.

"For that whereas, heretofore, to-wit, on the 10th day of October, A. D. 1892, at the city of Grand Rapids, the said plaintiff, at the defendant's request, entered into an agreement with the said defendants, whereby said plaintiff bargained to work for said defendants as a traveling salesman for the term of one year from the 10th day of October, 1892, and said defendants, in consideration of such services, agreed to pay said plaintiff for his said services the sum of \$800 a year's services in monthly installments of \$66.66 a month.

"And that whereas, the said plaintiff entered into the employment of the said defendants according to said agreement on the said 10th day of October, 1892, and faithfully and energetically performed his duty as such salesman for four months, and that said defendants on, to-wit, the 18th day of February, 1893, disregarding the terms of their said contract, wrongfully and unjustly discharged said plaintiff from their employment, and that, though said plaintiff has been willing and ready, and now is ready, to continue in said employment, and carry out his contract with said defendants, yet said defendants have refused, and still do refuse, to allow said plaintiff to do so, to his damage \$300, and therefore he brings suit." *Reynolds v. Reeder*, 104 Mich. 265, 104 N. W. 355.

Note.—Reversed and new trial.

granted for variance, no question as to sufficiency.

III. Complaint by Servant of Railroad Injured by Defective Machinery.

I. That at the time hereinafter mentioned, the defendants, a corporation duly organized under the laws of this state, were the owners of a certain railroad, known as _____ Railroad, together with the track, cars, locomotives, and other appurtenances there-to belonging.

II. That the plaintiff, on the _____ day of _____, 18____, at the time of the committing of the grievances hereinafter mentioned, was in the employment of the defendants, as fireman upon a locomotive engine, the property of the defendants, driven by steam upon their road; and it was the duty of the defendants to provide a good, safe, and secure locomotive, with good, safe, and secure machinery and apparatus.

III. That yet the defendants, not regarding their duty, conducted themselves so carelessly, negligently, and unskilfully in this behalf, that they provided and used an unsafe, defective, and insecure locomotive, of which they had notice.

IV. That for want of due care and attention to their duty in that behalf, on the day and at the place aforesaid, and while the said locomotive was in the use and service of the defendants upon their said railroad, and while the plaintiff was on the same, in the capacity aforesaid, for the defendants, the boiler connected with the engine of the said locomotive, by reason of unsafeness, defectiveness, and insecurity thereof, exploded, whereby large quantities of steam and water escaped therefrom and fell upon the plaintiff.

V. That by reason thereof the plaintiff became, and for a long time remained, ill; and was obliged to, and did, expend about the sum of _____ dollars in attempting the cure of himself, and was for a number of weeks prevented from pursuing his business, and was otherwise injured, to his damage _____ dollars. 1 Abb. Forms 454.

IV. Complaint Against Employer for Breach of Agreement To Employ.

"And the plaintiff says that he is a machinist of great skill and long

experience; that he was employed in business at Wailuku in the Sandwich Islands; that the defendant engaged him to abandon his said business and leave Wailuku and come to said Chicopee to take the position of a foreman in the employment and in the manufacturing establishment of the defendant as soon as he, said plaintiff, should reach Chicopee; that he, the plaintiff, in consequence of such engagement and by agreement with the defendant for such position as foreman at a good salary, did abandon his said business and come to Chicopee, and offered himself to the defendant ready to take the position as agreed upon, but the defendant utterly refused to employ him and would not receive him but turned him away, whereby the plaintiff lost much valuable time, was put to great expense and lost his business, which was of great value and profit to him." *Noble v. Ames Mfg. Co.*, 112 Mass. 492.

V. Complaint, Action for Salary and Expenses on Wrongful Discharge.

"Comes now the plaintiff and for amended cause of action states that the defendant is a corporation doing a general clothing business in the city of Cincinnati, in the state of Ohio; that on the 1st day of December, 1894, the defendant entered into a written contract with plaintiff by which it agreed to employ the plaintiff for a period of one year from said date as a traveling salesman to sell defendant's goods, and agreed to pay plaintiff as a salary therefor \$1,200 per year and agreed to pay the same monthly at \$100 per month and to pay his traveling expenses incurred while transacting the business of defendant, which contract is filed herewith and made a part of this statement; that plaintiff entered upon the discharge of his duties under said contract and worked for the defendant from the 1st day of December, 1894, and up to the 14th day of November, 1895, as traveling salesman for the defendant in the sale of its goods in the territory assigned to him by the defendant; that on said 14th day of November, 1895, the defendant discharged plaintiff and ordered him to send in his samples and notified him that his services were no longer wanted by defendant; that plaintiff was ready and willing at all times to fulfil his contract with defendant, but was pre-

vented from doing so by defendant as aforesaid; that defendant paid to plaintiff for his services so rendered, the following amounts, to-wit: (here follows an itemized statement of credits, being the same as set out in the amended statement filed with justice with the addition of the item 'By voluntary credit \$50') leaving a balance due from defendant to plaintiff for the last three months' services in the sum of two hundred and fifty dollars (\$250) for which amount he asks judgment and for costs." *Hansard v. Menderson Cloth. Co.*, 73 Mo. App. 584.

VI. Complaint, Action Against Third Person for Wrongfully Procuring Plaintiff's Discharge.

That the plaintiff, on August 23, 1890, was employed as a laborer by Waldo L. Pevear at Lynn; and that the said Pevear was entirely satisfied with the services rendered by him, and that the said defendant maliciously and wilfully, and with intent to prevent said plaintiff from having employment, influenced, persuaded, and induced said Pevear to discharge plaintiff from his said employment, thereby materially injuring the plaintiff in his business and prospects, and wrongfully deprived him of the means of obtaining a living." *Lombard v. Lennox*, 155 Mass. 70, 28 N. E. 1125.

VII. Complaint for Wrongful Discharge After Agreement To Employ in Consideration of Release for personal Injuries.

"The plaintiff James Dolan complains of the defendant, the Pennsylvania Company, and for cause of action says that the defendant company was, on the days and times of the grievances hereinafter mentioned, a railroad corporation duly organized and existing under the laws of the State of Indiana, owning, using and operating a line of railroad known as the Jeffersonville, Madison and Indianapolis Railroad, together with its locomotives, cars, switches, side-tracks and other appurtenances thereto belonging, at the county of Clark, in said State; that on the 9th day of January, 1890, the plaintiff was in the service of the defendant, in the capacity of yard brakeman, at said county; that the defendant required of him, as a part of his duties as such brakeman, to couple and uncouple cars and assist in removing

and transferring them from place to place on the defendant's track, in defendant's yard, and in the coupling and uncoupling of said cars the duties of plaintiff required him to pass in between them while they were in motion; that while the plaintiff was then and there engaged in the services of defendant in the line of his employment, and in the act of coupling defendant's cars, he received a permanent injury of his right hand, causing the loss of his thumb and forefinger, and, as a result thereof, permanently lost the natural and proper use and strength of his right hand and arm, and caused him thereby to suffer great pain in body and mind, and put him to great expense for medical and surgical aid and nursing in trying to cure himself of said injuries; that said injury was caused by the negligent failure of the defendant in knowingly allowing and permitting the draw-heads and dead-woods attached to said cars to become broken and out of repair, and also in allowing and permitting the dead-woods to be and remain in uneven height on said cars, thereby rendering it very dangerous and hazardous to couple the same, which facts were well known to the defendant and unknown to the plaintiff; that said injury was caused by the negligence of the defendant, and without any fault or negligence on the part of the plaintiff; that by reason of said injury the defendant became liable to plaintiff in damages in the sum of five thousand dollars (\$5,000); that at the time of receiving said injury plaintiff was earning and receiving from the defendant for his services the sum of two dollars per day for his said services; that the said injury rendered the plaintiff unfit and unable to continue in the service of the defendant as yard brakeman, and he was, for that reason, discharged from the service and pay of the defendant by the defendant; that thereafter, to-wit, on the 31st day of January, 1890, the plaintiff called on the defendant and demanded of defendant the amount due him for said injuries, and requested the payment thereof; that defendant then promised and agreed to pay plaintiff therefor in full settlement and satisfaction for said debt and injury the sum of one hundred dollars in money and receive him back into their service, and re-employ him and give him a job of steady and

permanent employment, and pay him therefor an amount per day for his services equal to the amount he was earning and receiving at the time of his severe injury; that said sum of one hundred dollars would be paid at once, and that he should be employed as soon as he was sufficiently recovered from his severe injuries as to be able to work; that the defendant required, as a condition to said promise and agreement, and as a further consideration therefor, the plaintiff should sign and execute a release to defendant, releasing defendant from all liability for damages and all claims and rights whatever growing out of said injury, and relinquishing all claims and rights to bring suit therefor; that the defendant promised and agreed that all the said promises and agreements would be faithfully and honestly carried out and performed by defendant in the event that the said promises, agreements and conditions were accepted by plaintiff. It was further provided and agreed by the parties that the said promises and agreements, when carried out and performed by defendant, should operate and be in full satisfaction and payment to plaintiff of all debts, damages and causes of action growing out of, or which might arise by reason of, said injury in any way. The plaintiff then accepted of said promises, agreements and conditions in full satisfaction and payment of his injuries; that afterwards, to-wit, on the ——— day of February, 1890, in pursuance of said promises, agreements, conditions and acceptance thereof as aforesaid, the plaintiff and defendant, at the office of the defendant, in the city of Jeffersonville, in said county, and the defendant then and there, for the purpose of carrying out the said promises and agreements, paid to plaintiff the sum of one hundred dollars as a partial payment of the same, and the plaintiff then and there accepted of defendant the said sum of one hundred dollars as a partial payment and satisfaction of the promises and agreements of the defendant as agreed, and the plaintiff then and there signed and executed to defendant the release required by the defendant and agreed to by the parties as aforesaid, and to the full and complete satisfaction of the defendant, which release was received and accepted by defendant and is now in its possession; that after-

wards, to-wit, on the first day of March, 1890, when plaintiff had sufficiently recovered of his said injuries as to be able to go to work, he called on the defendant and notified it of that fact, and demanded that the defendant re-employ him; whereupon defendant at once employed him and gave him a job of flagging its trains, in which employment defendant kept and retained him about three months, when, without any cause or fault on the part of the plaintiff, the defendant discharged him from its services and pay, without giving any cause or reason to plaintiff for so doing; that during all the time of said three months' re-employment the plaintiff honestly and faithfully and properly discharged all the duties assigned him; that ever since the discharge of the plaintiff last above named the defendant has refused, and now refuses, to receive the plaintiff back into its service and give him a job of steady and permanent employment, or give him employment of any kind, or pay him any money, though often requested by plaintiff to do so; that the plaintiff was able, ready and willing to continue in the service of defendant, at flagging trains, and is now, and has been at all times, able, ready and willing to flag trains, or do and perform any other service for defendant within his power to do, all of which facts, now and during all of said time, were well known to defendant; by reason of which facts and grievances plaintiff has, during all of said time, been out of employment and unable to earn any money, and has suffered great loss and damage thereby, in the sum of five thousand dollars; that the plaintiff has done and performed all the conditions, promises and agreements on his part to be done and performed by him in the premises as hereinbefore stated; that the defendant has failed and refuses to do and perform its promises and agreements in manner and form as above stated and set out. Wherefore," etc. *The Pennsylvania Co. v. Dolan*, 6 Ind. App. 109, 32 N. E. 802.

VIII. Notice to Employer of Injury.

"Please take notice that Charles Dolan, of Ayer, Mass., while at work in your employ was injured on the twelfth day of March, A. D. 1888, in the leach-room of your tannery at Ayer, Mass., by reason of the falling

in of the roof thereof and the falling of the steam pipes therein, said roof and steam pipes both falling upon said Dolan. Corcoran and Parker, Attorneys for Charles Dolan." *Dolan v. Alley*, 153 Mass. 380, 26 N. E. 989.

Note.—The question was on sufficiency of signature by attorneys.

IX. Indictment for Enticing Servant Under Contract To Leave Employer.

"The jurors upon their oath present, that H. L. Harwood and L. B. White, late of the county of Wayne, on the 19th day of August, in the year of our Lord one thousand eight hundred and eighty-nine, at and in the county aforesaid, unlawfully and wilfully did entice, persuade and procure Will Humphrey, Sam Womble and Wayland Tutor, servants, who had heretofore contracted with the Wayne Agricultural Works—a company incorporated under the laws of North Carolina—to serve said Wayne Agricultural Works as servants and laborers, which contract was then in force and subsisting, to unlawfully leave the service of the said Wayne Agricultural Works (the employers aforesaid of the said servants Will Humphrey, Sam Womble and Wayland Tutor), against the form of the statute in such cases made and provided, and against the peace and dignity of the State." *State v. Harwood*, 104 N. C. 724, 10 S. E. 171.

X. Indictment, Intimidation of Employee.

That the defendant, on July 13, 1879, at Fall River, "one Horace S. Andrews (did) unlawfully and wilfully (intimidate, and did seek to intimidate), and by force and intimidation did seek to prevent from continuing in the employment of a corporation, to-wit, the Weetamoe Mills, a corporation then and there duly incorporated under the laws of said commonwealth and having its usual place of business in said Fall River, he the said Horace S. Andrews being then and there employed by and in the employment of said corporation as a spinner in the mill of said corporation; against the peace of said commonwealth and contrary to the form of the statute in such case made and provided." *Com. v. Dyer*, 128 Mass. 70.

Note.—Opinion stated that the words

in parenthesis were unnecessary under the statute.

MASTER IN CHANCERY.—See EQUITY JURISDICTION AND PROCEDURE.

MAYHEM.

- I. Indictment for Mayhem at Common Law, 824
- II. Indictment for Mayhem Under Statute, Disfiguring Thumb, 824
- III. Indictment for Mayhem, Injury to Private Parts, 824
- I. Indictment for Mayhem at Common Law.

Essex, to-wit. The jurors for our lord the king upon their oath present that A. B., late of ———, in the parish of ———, in the county of ———, laborer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the ——— day of ———, in the ——— year of the reign of our sovereign lord George the third, by the grace of God of the United Kingdom of Great Britain and Ireland king, defender of the faith, with force and arms, at the parish of ——— aforesaid, in the county of ——— aforesaid, in and upon one C. D., in the peace of God and our said lord the king then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault. And that the said A. B., with a certain sword made of iron and steel, of the value of five shillings, which he the said A. B. then and there had and held in his right hand, the arm of him the said C. D. feloniously, wilfully, and of his malice aforethought, did strike and cut; and that the said A. B., with the sword aforesaid, by the striking and cutting aforesaid, did then and there the right hand from the arm of him the said C. D. cut and sever, and did him the said C. D., by the cutting and severing of the right hand from the arm of him the said C. D. aforesaid, then and there feloniously maim. And so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B. him the said C. D., in the manner and by the means (or in manner and form) aforesaid (or in the conclusion of a second or subsequent count, last aforesaid), feloniously, wilfully, and of his malice aforethought, did feloniously maim, against the peace of our said lord the king, his crown and dignity.

Compiled by writer from 3 Chit. Cr. L. 750, 751, 757, according to id. 357.

II. Indictment for Mayhem Under Statute, Disfiguring Thumb.

"In and upon one Walter Westlake, in the peace of God and of the people of the state, then and there being, wilfully and feloniously and with premeditated design, did make an assault, and that the said Owen Tully with the teeth of him, the thumb of him, the said Walter Westlake, then and there wilfully and feloniously and from premeditated design, did cut, bite, slit and destroy on purpose, with intent, then and there and thereby, in manner aforesaid, the said Walter Westlake then and there to maim and disfigure, against the form of the statute in such case made and provided," etc. Tully v. People, 67 N. Y. 15.

III. Indictment for Mayhem, Injury to Private Parts.

"For that the said Thomas J. Kitchens on the 30th day of May, in the year 1887, in the county aforesaid, did then and there, unlawfully and with force and arms, wilfully and maliciously injure, wound and disfigure the private parts of one Janie Toler, the said Janie Toler then and there being a female, with intention then and there to disfigure said private parts by then and there with a certain knife cutting said private parts." Kitchens v. State, 80 Ga. 810, 7 S. E. 209.

Note.—It is held to be unnecessary to do more than describe the offense in the language of the statute, or so plainly as to be easily understood by the jury.

MECHANICS' LIENS.

I. Complaint, 824

- A. By Contractor, 824
- B. By Subcontractor, 825
- C. To Set Aside, 826

II. Notice of Lien by Subcontractor, 826

III. Answers, 827

- A. Denial of Plaintiff's Employment, 827
- B. That Lien Was Not Filed in Time, 827

IV. Execution on Judgment on Mechanics' Lien, 827

I. Complaints.

- A. Complaint by Contractor for Building Materials.

The complaint of the plaintiff, filed

pursuant to an order of this court, made on the _____ day of _____, 18—, shows:

I. That on the _____ day of _____, 18—, at _____, this plaintiff, by virtue of a contract with the defendant, sold and delivered to the defendant certain building materials, consisting of _____, of the value of _____ dollars; the quantity and value of which is set forth in the bill of particulars herein.

II. That by the terms of said contract and sale, the said sum became due on the _____ day of _____, 18—, but the defendant has not paid the same.

III. That the said materials were used in erecting a building and appurtenances upon the following described premises, to-wit (describe the premises).

IV. That the said premises were, at the time of making said contract of sale, and until the filing the notice of lien hereinafter mentioned, the property of the defendant.

V. That on the _____ day of _____, 18—, and after performance of said contract, the plaintiff duly filed with the clerk of the city and county of New York (or clerk of _____ county), a notice of lien claimed upon said premises for the indebtedness aforesaid; which said notice was duly verified, and specified the amount of the claim as above stated, and specified the defendant as the person against whom the claim was made, and as the owner of said premises, which were therein described by the street (and number) of the building.

Wherefore the plaintiff prays judgment, directing a sale of the interest of the defendant, in the premises, building and appurtenances above described, to the extent of the right of defendant on the _____ day of _____, 18— (date of filing the notice of lien), and directing that the proceeds of such sale be applied to the payment of the costs of these proceedings, and to the payment of this plaintiff's claim aforesaid (and that the residue of such proceeds, if any, be paid to the clerk of the city and county of New York, to abide the further order of the court); and that if the proceeds of such sale shall not be sufficient to discharge the costs and claim aforesaid, this plaintiff have leave to docket a transcript of judgment against the defend-

ant for any such sum as may remain due. 1 Abb. Forms 522.

Note.—Compare form with present statutes.

Order in commencement mentioned is local practice only.

B. Complaint by Subcontractor, Against Owner and Contractor, for Labor.

The complaint of the plaintiff, filed pursuant to an order of this court, made on the _____ day of _____, 18—, shows:

I. That on the _____ day of _____, 18—, the defendant W. X. (contractor) entered into a contract with the defendant Y. Z. (owner) for the erection of a building and appurtenances upon the premises hereinafter described; by the terms of which contract it was agreed that (state substance of terms of contract; or say, which contract was as follows, to-wit: and give copy).

II. State performance of contract by contractor so far as to show indebtedness of owner to contractor, and aver such indebtedness, specifying its amount.

III. That between the _____ day of _____, 18—, and the _____ day of _____, 18—, the plaintiff, in pursuance of an agreement theretofore entered into by him with the defendant W. X. (contractor), and in conformity with the terms of the contract above mentioned, performed (state kind of labor performed), to the value of _____ dollars, the nature, amount, and value of which labor are set forth in the bill of particulars herein.

IV. That by the terms of the agreement between the plaintiff and the defendant W. X. (contractor) said sum became due on the _____ day of _____, 18—, but he has not paid the same.

V. That said labor was performed in erecting a building and appurtenances upon the following described premises: (describe premises).

VI. That the said premises were, at the time when said labor was performed, and until the filing the notice of lien hereinafter mentioned, the property of the defendant Y. Z. (owner).

VII. That on the _____ day of _____, 18—, the plaintiff duly filed with the clerk of the city and county of New York (or, clerk of _____ county), a notice of lien

claimed upon said premises for the indebtedness aforesaid, which notice was duly verified, and specified the amount of the claim as above stated, and specified the defendant (owner's name) as the person against whom the claim was made, and as the owner of said premises, which were therein described by the street (and number) of the building.

Wherefore the plaintiff prays judgment directing a sale of the interest of the defendant Y. Z. (owner), in the premises, building, and appurtenances above described, to the extent of the right of said defendant on the _____ day of _____, 18____ (date of filing the notice of lien), and directing that the proceeds of such sale be applied to the payment of the costs of these proceedings, and to the payment of the plaintiff's claim aforesaid (and that the residue of such proceeds, if any, be paid to the clerk of the city and county of New York, to abide the further order of the court); and prays judgment, in addition, against the defendant Y. Z. (contractor) for the sum of _____ dollars (the amount of the plaintiff's claim), with interest from the _____ day of _____, 18____, together with the costs of these proceedings. 1 Abb. Forms 524.

Note.—In preparing complaint on subcontractor's lien have regard to whether the statutes of the particular state give the lien by subrogation or as a direct lien.

C. Complaint To Set Aside Fraudulent Lien.

I. That on the _____ day of _____, 18____, the defendant Y. Z., conspiring with the other defendants before named to defraud the plaintiff, filed a notice of lien against said W. as owner, and said X. as the person against whom said claim is made, upon the said building and premises, and for the sum of _____ dollars.

II. That neither the said sum, nor any sum whatsoever, was or at any time will be owing to said Y. Z., as in said notice of lien pretended; and that said Y. Z. has been fully paid for all labor he has done or caused to be done upon said building and appurtenances, and he has no legal or just claim against the defendant X., or any other person for any labor done or materials furnished in or about the same; and that

said lien, if allowed to stand, would wholly defeat the claim and lien of the plaintiff.

Insert, in demand of relief: and that the lien filed by said Y. Z., on the _____ day of _____, 18____, be adjudged fraudulent and void, and be set aside; and that said Y. Z. pay the costs of this action. 1 Abb. Forms 525.

II. Notice of Lien by Subcontractor.

"I, Leonard A. Getchell, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, on oath do certify that I have performed and caused to be performed labor as a carpenter on a certain house situated in the Charlestown district of said Boston, said house being a double wooden house and situated on a lot of land (describing it by metes and bounds), being the premises conveyed to John P. Moran by Sampson Warren, by deed dated May 9, 1874, and recorded with Suffolk Deeds, book 1211, page 181; that the said lot and building are owned, or believed by me to be owned, by John P. Moran, of Chelsea, in said county. And I further certify that I have a claim and lien upon said house and the appurtenances thereto belonging, and the lot of land on which said house stands, and the interest of the owner or owners thereof, to secure the amount due me for labor performed, with interest, and all costs and expenses of enforcing said lien. And I further certify that said labor was performed in pursuance of a contract made by him with one J. H. Staples, of said Chelsea, and that said Staples was duly authorized to make said contract by said J. P. Moran; and I further certify that my contract with said Staples was to labor and furnish labor by the day on said house, and to receive therefor a just and reasonable sum per day; and in accordance therewith I performed and caused to be performed labor amounting to \$102, and there is due therefor the sum of \$72.

I further certify that I ceased to labor and cause labor to be performed on said house on the first day of August, A. D. 1874, and that the account hereto annexed is a just and true account, and that the credit therein given is the only credit." Getchell v. Moran, 124 Mass. 404.

III. Answers.

A. *Answer, Denial of Plaintiff's Employment.*

"He denies that he ever directly or indirectly employed the plaintiff, or had any contract relation, express or implied, with him or any one of the several persons named in the petition as assignors, to him of claims for work, or that he is in any manner indebted or liable to him or them for wages or anything else.

"Further answering he says, some days prior to April 19, 1893, this defendant became the owner of a valid claim against Mullen for the sum of \$82.00 then past due, and for the purpose and with the intent of getting payment and satisfaction of that amount he engaged Mullen to paint his building at the agreed price of \$80.00. Defendant had no knowledge or information that Mullen, being himself a working painter, would employ any other person to work on the job. After the work was done Mullen was not satisfied with the set-off, and refused to accept a satisfaction of the \$82.00 claimed against himself in payment of the \$80.00 claimed, though admitting the validity of the account and his obligation to pay, and thereupon set on foot schemes to avoid the set-off." *Stark v. Simmons*, 54 Ohio St. 435, 43 N. E. 999.

Note.—In case of sub-contractors, regard must be had to whether they take by subrogation or by direct lien.

B. *Answer, That Lien Not Filed Within Prescribed Time.*

"Deponent is informed and believes, and expects to be able to prove that the claimants furnished no materials of the nature and kind in said claim mentioned, namely, hardware, for and towards the erection and construction of the said house against which the said claim is filed, described in the said claim and the scire facias issued thereon, within six months of the time of the filing of said claim, but that the said hardware and materials were furnished for and towards the erection and construction of said house described in said claim and in the scire facias as aforesaid more than six months prior to the filing of said claim, to-wit, before the first day of January, A. D. 1891." *Shannon v. Broadbent*, 162 Pa. 194, 29 Atl. 865.

IV. Execution on Judgment on Mechanic's Lien.

"The state of Missouri, to the sheriff of Jackson county, greeting. Whereas, Joseph H. Fink and John H. Schmidt, on the 29th day of October, A. D. 1887, at our circuit court of Jackson county, at Kansas City, hath recovered judgment against O. L. Remick and John M. Stone for the sum of three hundred and forty-five 40-100 (\$345.40-100) dollars which to the said Joseph H. Fink and John H. Schmidt was adjudged as aforesaid and also for other costs, which said judgment is a special judgment in words and figures as follows, to-wit: This cause is submitted to the court and the court finds the allegations in the petition to be true and that defendant O. L. Remick and John M. Stone owe and are indebted to plaintiffs as set forth in the petition for the material had and used by them on five (5) two story buildings on lots three (3), four (4), and five (5), in block eight (8), Rice's Addition to Kansas City, Missouri, owned by Robert H. Hunt, for whom said Remick and Stone erected said buildings under a contract therefor with said Hunt, and further finds that plaintiffs have done all things required to secure a statutory lien for said debt on said property. It is therefore considered and adjudged that plaintiffs have a recovery of O. L. Remick and John M. Stone, three hundred and forty-five 40-100 dollars for their debt, together with the costs of this suit, and if no property of said Remick and Stone sufficient to satisfy said debt and costs be found, that the same or the residue thereof be levied upon and made out of lots three (3), four (4), and five (5), block eight (8), Rice's Addition to the City of Kansas, Jackson county, Missouri. These are therefore to command you that of the goods, chattels and real estate of the said O. L. Remick and John M. Stone, you cause to be made the sum aforesaid adjudged against them, together with the costs, and if no sufficient property of the said Remick and Stone can be found out of which to make the aforesaid judgment, you cause to be made out of the property charged with the lien thereof as aforesaid under a claim by R. H. Hunt and that you have the same before the judge of our said court on the first day of next January term thereof to satisfy the judgment and

costs aforesaid and that you certify how you executed this writ. Wherefore L. F. McCoy, clerk of our said court hath the seal thereof hereto affixed at office in Kansas City, this sixteenth day of November, A. D. 1887. L. F. McCoy, clerk, by D. M. McClanahan, deputy clerk." *Fink v. Remick*, 33 Mo. App. 624.

Note.—See judgment included in the above form.

MERITS.—See AFFIDAVITS OF MERITS AND DEFENSE.

MINES AND MINERALS.

I. Complaint To Recover Possession of Mine, 828

II. Complaint, Injury to Surface Support by Mine, 829

CROSS-REFERENCES:

INJUNCTIONS:

Injunction Against Working a Mine;

Injunction Against Tenant of Mine.

MALICIOUS MISCHIEF:

Indictment for Malicious Mischief,

Drowning a Mine.

I. Complaint To Recover Possession of Mine and for Damages After Ouster.

"For second amended complaint the plaintiff complains and alleges that it is a corporation organized and existing under the laws of the state of Ohio and is a citizen of the state of Ohio; that the defendants are and each of them is a citizen of the state of Colorado; and that the property in controversy exceeds the value of \$500.

"Plaintiff further alleges that on the 21st day of June, 1865, one Joseph Coley and one George C. Reeves, each being a citizen of the United States, went upon the public domain and the United States theretofore wholly unoccupied and unclaimed and located on said day a tunnel and tunnel site at the base of Glacier mountain, in Snake river mining district, county of Summit, state of Colorado.

"That afterwards and on the same day they marked the boundaries of their said location and commenced to run a tunnel into said Glacier mountain, and, after fully complying with the laws of the United States, the laws of the state of Colorado, and the local rules and regulations of the said Snake river mining district, they caused to be made out and recorded in the recorder's office of the county

of Summit aforesaid a location certificate of said tunnel claim, which said certificate described the location and boundaries of said tunnel claim.

"That from the day of said location until the ouster hereinafter set forth the said locators of said tunnel claim and their grantees remained continuously in possession of said tunnel claim, working and mining thereon, and have expended thereon more than the sum of \$5000.

"That the plaintiff is the owner of the said tunnel claim above described by location and purchase, and is now entitled to the quiet and peaceable and exclusive possession thereof by virtue of a full compliance on its part and on the part of its grantors with the laws, rules, and customs above set forth; that the plaintiff and its grantors have been in the peaceable and undisputed possession of said tunnel claim, by virtue of such location, occupation, preemption, and record, for more than five years prior to the ouster hereinafter complained of.

"That plaintiff and its grantors, for more than five consecutive years prior to the acts of the defendants hereinafter mentioned, paid all taxes legally or otherwise assessed upon said tunnel claim, and have worked and mined the same from said 21st day of June, 1865, up to the time of the acts of the defendants hereinafter set forth.

"That the said tunnel claim so located embraces many valuable lodes or veins which have been discovered, worked, and mined by the plaintiff and its grantors.

"That the said tunnel claim was by its locators named the Silver Gate tunnel claim, and is described more fully as follows: Commencing at the base of said Glacier mountain east of Bear creek, and running southeast and parallel with Coley tunnel through said mountain five thousand feet from the mouth or starting point of said tunnel at a stake marked and in or at the mouth of said Silver Gate tunnel and two hundred and fifty feet northeast and two hundred and fifty feet southwest from said stake or tunnel to its termination.

"Said tunnel site is situated on Glacier mountain, in Snake river mining district, county of Summit and state of Colorado, and is five thousand feet in length by five hundred feet in width.

"Plaintiff further alleges that while it was in the quiet and peaceful possession of said tunnel claim and every part thereof the defendants, wrongfully and without right and without consent of the plaintiff, to-wit, on or about the 2d day of July, 1883, entered upon the premises and into said tunnel so run by plaintiff and its grantors on said claim, and wrongfully and unlawfully ousted the plaintiff therefrom, claiming said tunnel as the War Eagle.

"That on or about said last mentioned date the defendants, without right, made a pretended location of a lode claim across said tunnel and within said tunnel claim, and therein wrongfully ousted the plaintiff therefrom, claiming that they had discovered a lode which they called the Tempest lode.

"That the defendants have been ever since hitherto unlawfully and wrongfully withheld the possession of the said premises and tunnel claim from the plaintiff, to its damage in the sum of \$1000.

"Wherefore plaintiff demands judgment against the defendants—

"(1) For the recovery of the possession of said Silver Gate tunnel, tunnel site, and claim.

"(2) For the sum of \$1000 damages for the wrongful withholding thereof.

"(3) For costs of suit." *Glacier, etc. Min. Co. v. Willis*, 127 U. S. 471, 8 Sup. Ct. 1214, 32 L. ed. 172.

II. Complaint, Injury to Surface Support Caused by Mine.

Said plaintiff is the owner of a tract of surface land, containing about fifty-one acres, and overlying the coal works or mines of the defendant, in Allen township, Washington county, Pennsylvania, on which tract of land, prior to the committing of the trespasses hereinafter complained of, there were a well and three never-failing springs of water. The surface of said tract was suitable for grazing and agricultural purposes and was so used by said plaintiff. There was also on said tract a two story brick dwelling house thirty-three by eighteen feet with cellar underneath, all in good repair and the walls perfectly sound. Plaintiff further states that said defendant negligently and carelessly mined out the coal underlying said tract of land, whereby the said well and springs thereon were taken away and destroyed,

the said surface cracked and damaged. Plaintiff also states that said defendant mined out the coal underlying said surface and took away the natural support thereof and allowed the same to be and remain without support, either natural or artificial, whereby the plaintiff's said surface has been caused to settle and crack, taking away and destroying the said well and three springs and leaving the said surface destitute of the water which is necessary thereon for domestic and grazing purposes; and rendering said surface unsafe for grazing purposes; and injuring and damaging said surface for agricultural and any other purposes for which the same is available. Plaintiff also states that by reason of the lack of support to said surface as aforesaid, the foundation and house walls of said dwelling house have been caused to crack in numerous places, whereby the said walls have been thrown out of plumb and said house rendered unsafe for use as a dwelling house and otherwise damaged. *Pringle v. Vesta Coal Co.*, 172 Pa. 438, 33 Atl. 690.

MISCEGENATION.

I. Indictments, 829

II. Complaint (Criminal), 829

I. Indictment for Miscegenation (a.)

The indictment charges that "Tony Pace, a negro or the descendant of a negro to the third generation inclusive, a man, and Mary Ann Cox, a white woman, did live together in a state of adultery or fornication." *Pace v. State*, 69 Ala. 231, 44 Am. Rep. 513.

Indictment for Miscegenation (b.)

The indictment in this case charges "that on March 18, A. D. 1875, in the county of Gregg and state aforesaid, one Charles Frasher, late of the said county, being then and there a white man, did then and there unlawfully, knowingly, and feloniously marry a negro, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the state." *Frasher v. State*, 3 Tex. App. 263, 30 Am. Rep. 131.

Note.—The indictment was approved but the case reversed for error in instructions. Indictment should name other party to marriage.

II. Complaint for Miscegenation.

"I, T. C. Miller, do solemnly swear, that Thomas Dodson and Mrs. _____

Dodson, in said county of Pulaski, did on the first day of March, 1891, live and cohabit together as husband and wife, he being a negro man and she being a white woman, in violation of the statutory laws of the state of Arkansas; and pray a warrant from T. W. Wilson, justice of the peace for said county, to apprehend and bring said Thomas Dodson before said justice, to be dealt with according to law." *Dodson v. State*, 61 Ark. 57, 31 S. W. 977.

MISJOINDER.

CROSS-REFERENCE:

DEMURRER:

Demurrer for Misjoinder of Actions.

MISNOMER.—See ABATEMENT, PLEAS OF.

MISTAKE.

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Denial of Error in Account.

BILLS AND NOTES:

Answer, Mistake in Amount of Note;

Complaint on Note Wrongly Dated.

BONDS:

Complaint on Bond for Stay of Proceedings, for Reformation and Judgment on Bond.

REFORMATION:

Complaint To Reform a Conveyance by Correcting Mistake in Boundary.

RESCISSION AND CANCELLATION:

Complaint for Rescission of Contract and Repayment of Advances on Ground of Fraud.

Complaint for Money Overpaid by Mistake.

I. That heretofore the parties having had frequent dealings with each other, the defendant, on or about the _____ day of _____, at _____, rendered their account to the plaintiff, which account set forth an indebtedness of the plaintiff to the defendant in the sum of _____ dollars.

II. That the plaintiff, supposing said account to be correctly stated, paid to the defendant said amount.

III. That the account was not correctly stated, but that it overcharged the plaintiff with the sum of _____ dollars, for (specifying the error). 1 Abb. Forms 175.

MONEY HAD AND RECEIVED.

I. Complaints, §30

A. *Lender Against Borrower*, §30

B. *Assignee of Lender Against Borrower*, §30

C. *Paid Debt of Another, To Be Repaid on Day Certain*, §31

D. *Paid Debt of Another, To Be Repaid on Demand*, §31

E. *Money Paid to Third Person at Defendant's Request*, §31

F. *Money Received*, §31

G. *Money Received Contrary to Statute*, §31

I. Complaints.

A. *Complaint, Lender Against Borrower.*

I. That on the _____ day of _____, 18____, at the city of _____, the plaintiff lent to the defendant the sum of _____ dollars, on condition that it should be repaid (with interest) upon demand (or, repaid on the _____ day of _____, 18____).

II. That thereafter and before this action (or, on the _____ day of _____, 18____), the plaintiff duly demanded payment of the same from the defendant, but no part thereof has been paid (or, if any payments have been made, no part thereof has been paid, except (state briefly the total of payments), and the defendant is now justly indebted therefor to this plaintiff in the sum of _____ dollars, with interest, from the _____ day of _____, 18____ (or, if it was to be repaid on demand, claim interest from the day of demand). 1 Abb. Forms 161.

B. *Complaint on Account by Assignee of Lender Against Borrower.*

I. That on the _____ day of _____, 18____, at the city of _____, the defendant was indebted to one M. N., in the sum of _____ dollars on an account for money lent by said M. N. to said defendant, and for money paid, laid out, and expended by said M. N. to and for the use of said defendant, and at his request.

II. That thereafter said M. N. duly assigned said indebtedness to this plaintiff, of which the defendant had due notice, but no part of the same has been paid, and there is now due and payable to this plaintiff thereon, from the defendant, the sum of, etc. 1 Abb. Forms 163.

C. Complaint, Paid Debt of Another, To Be Repaid on Day Certain.

I. That on the _____ day of _____, 18____, at _____, this plaintiff paid, to the use of the defendant, and at his request, the sum of _____ dollars, in paying to one M. N. the amount of a promissory note made by the defendant.

II. That defendant promised to repay said sum (with interest) to this plaintiff on the _____ day of _____, 18____, but has not paid any part thereof (except, etc.). 1 Abb. Forms 166.

D. Complaint, Paid Debt of Another, To Be Repaid on Demand.

I. That on the _____ day of _____, 18____ (at _____), this plaintiff paid to the use of the defendant, at his request, and on condition that the same should be repaid on demand, the sum of _____ dollars, in paying to one M. N. one quarter's rent of the house then occupied by the defendant (or, otherwise show what the debt was).

II. That this plaintiff, on the _____ day of _____, 18____, at _____, duly demanded payment of the same from the defendant, but no part thereof has been paid (or, no part thereof has been paid, except—amount of payment made, if any). 1 Abb. Forms 166.

E. Complaint, Paid Money to Third Person at Defendant's Request.

I. That on the _____ day of _____, 18____ (at _____), at the request of the defendant, the plaintiff paid to one M. N. _____ dollars.

II. That in consideration thereof, the defendant promised to repay the same to the plaintiff (on demand).

III. That (on the _____ day of _____, 18____, the plaintiff demanded payment of the same from the defendant, but) he has not repaid the same. 1 Abb. Forms 165.

F. Complaint, Money Received, Common Form.

I. That on the _____ day of _____, 18____, at _____ (or, at sundry times between the _____ day of _____, and the _____ day of _____, at _____), the defendant received from one M. N. (or, received from the plaintiff, and as his agent, or, otherwise) the sum of _____ dollars, to the use of the plaintiff.

II. That thereafter, and before this action, the plaintiff demanded payment thereof from the defendant.

III. That he has not paid any part thereof (except the sum of _____ dollars). 1 Abb. Forms 173.

G. Complaint for Money Received Contrary to Statute.

That defendant is (or, where he is sued as executor or administrator, the defendant's testator was, or, intestate was, before his death) indebted to the plaintiff in the sum of _____ dollars (the sum received, or, value of goods received), whereby an action accrued to the plaintiff, according to the provisions of the statute regulating the interest on money (or, against betting and gaming, or otherwise stating its subject). 1 Abb. Forms 175.

MONOPOLIES.

Declaration on the Case by Manufacturer Injured by Monopoly.

"That, for six years prior to the committing of the grievances complained of, plaintiff was a manufacturer and dealer in bricks, and was the owner and possessed of certain lands and buildings at Hobart, Indiana, which were in use by him as such manufacturer, and which had been acquired and equipped for said business of manufacturing brick at an expenditure of \$50,000; that during said period the plaintiff was engaged in the manufacture of brick and selling the same almost exclusively in Cook county, Illinois, and was in receipt of large profits, and especially from having a market for said brick in said Cook county; that during said time the Chicago Masons' & Builders' Association was a corporation in said Cook county and had among its members about two-thirds of all persons and firms then engaged in said county in the business of constructing brick and mason work and in purchasing and obtaining supplies of brick to be used in said county; that the membership of said corporation comprised substantially all the responsible and reliable persons or firms engaged in the business aforesaid in said Cook county; that during said period the members of said association constructed 95 per cent. of the brick and mason work in said county, and plaintiff made sales of substantially all of the brick of his manufacture, and all that could be manufactured at his

said plant, to members of said association, from which he derived profits of \$10,000 per year; that the defendant J. C. Thompson is and was a member and president of said association; that during said period there was in said county a voluntary organization of individuals known as the Brick Manufacturers' Association of Chicago, comprising 95 per cent. of the manufacturers of brick in said county; that the members of said association were manufacturers of, and dealers in, and sellers of brick in said county; that the defendants D. V. Purington, William H. Weekler, Adam J. Weekler, Frederick W. La Bahn, Louis Rehmer, P. J. Sexton, Edwin T. Harland, Charles Harmes, and William Schlake were during said period, and still are, members of said association and engaged in the business of manufacturing and selling brick; that during said period there was in said county a voluntary association known as the Bricklayers' Union, comprising 98 per cent. of the competent bricklayers of said county; that, while the plaintiff was lawfully conducting his business as a manufacturer of, and dealer in, brick, the defendants, wrongfully and unlawfully conspiring, etc., to injure the plaintiff in his business and to deprive him of the legitimate profits thereof, wrongfully and corruptly conspired and agreed among themselves, and caused to be agreed by said Masons' & Builders' Association and the members thereof, that such members should not purchase, nor be permitted to purchase, any brick to be used by them, or any of them, from any person, firm, or corporation, except as such as had subscribed to the rules and regulations of said Masons' & Builders' Association, to which said rules and regulations the plaintiff was under no obligations to subscribe; that said Bricklayers' Union wrongfully and corruptly took action assuming to bind and pledge its members not to handle or lay any brick manufactured by any person who had not subscribed to the rules and regulations of said Masons' & Builders' Association, which said action or pledge was accepted and acted upon by the members of said union and defendants; that after the making of said agreements and pledges, and with the unlawful purpose of injuring, etc., the plaintiff's business, and of preventing and precluding him from conducting

his said business in Cook county with profit, the defendants procured persons to go to customers of plaintiff, and to attend at the places where brick of the plaintiff were bought to be used in constructing buildings in said county, and then and there wrongfully represented to the said customers and said workmen employed to lay and work with brick of the plaintiff that, if said customers should purchase, or said workmen use, brick manufactured by plaintiff, such customers and workmen would be prevented from completing or proceeding with any building or structure upon which it was proposed to use the brick of plaintiff; that, in furtherance of their unlawful conspiracy in that behalf, the defendants have, by wrongful threats and the imposition of fines upon persons dealing in or using the brick of plaintiff in said county, prevented sundry customers of plaintiff from purchasing brick from plaintiff, and from completing contracts in which such brick would have been used, and have prevented workmen from laying or using plaintiff's brick, and have made wrongful and malicious threats, whereby customers of plaintiff have been deterred from buying or using plaintiff's brick; that, by means of said several agreements and said wrongful, unlawful, and malicious acts and interference of the defendants and the aforesaid unlawful conspiracy in that behalf, the plaintiff has been wholly deprived of the sales of brick in said county which he otherwise would have had, and has been and is unable to dispose of and sell his brick in said county, and has lost and been deprived of divers large gains and profits, etc., and, by means of the premises, the business of the plaintiff has been greatly damaged and rendered less profitable, and the value of his lands and buildings greatly depreciated, to the damage of the plaintiff in the sum of \$100,000." *Purington v. Hinchliff*, 219 Ill. 159, 76 N. E. 47, 2 L. R. A. (N. S.) 824.

MORTGAGES.

I. Foreclosure, 833

A. Bills, 833

1. *Mortgagor in Possession*, 833
2. *Against Surviving Mortgagor*, 834
3. *Prayer in Bill for Foreclosure and Sale*, 836

B. *Decrees*, 836

1. *At Hearing*, 836
2. *Final*, 836
3. *For Sale*, 837
4. *Mortgagee in Possession, Costs, Repairs, Infant, Etc.*, 837

C. *Order Enlarging Time for Payment*, 838D. *Affidavit of Having Attended To Receive Money*, 838E. *Final Order in Strict Foreclosure*, 838F. *Complaints*, 839

1. *Mortgagee Against Mortgagor and Junior Incumbrances, Default of Interest*, 839
2. *By Assignee Against Mortgagor and Mortgagee*, 840
3. *Allegation of Inadequacy of Security, Demand for Receiver*, 840
4. *Mortgagee in Possession, Strict Foreclosure*, 840
5. *On Note and Mortgage*, 841

G. *Answers*, 841

1. *Denial of Mortgage*, 841
2. *Denial of Having Assumed Mortgage*, 842
3. *Non-joinder of Owner of Equity of Redemption*, 842
4. *Purchaser of Part To Have Residue Sold First*, 842

H. *Order of Reference*, 842I. *Judgments*, 842

1. *No Defense, Whole Debt Due*, 842
2. *No Defense, Part of Debt Due*, 843
3. *No Defense, Part Due, Whole Property To Be Sold*, 844
4. *Recital Where Amount Is Computed by Court*, 845
5. *For Deficiency Against Surety*, 845
6. *Strict Foreclosure*, 845

II. *Redemption*, 845A. *Bills*, 845

1. *By Heir at Law*, 845
2. *Absolute Deed Taken as Security*, 846
3. *By Purchaser of Equity of Redemption*, 847

B. *Orders*, 849

1. *Inquiry as to Occupation Rent*, 849
2. *Account of Repairs and Improvements*, 849
3. *Profits To Be Applied*, 849
4. *Inquiry as to Deterioration*, 849
5. *As to Strip and Waste*, 849
6. *To Take Account of Insurance*, 849

C. *Decrees*, 850

1. *Redemption and Account*, 850
2. *Dismissal on Failure To Pay*, 850

D. *Complaints*, 850

1. *By Mortgagor*, 850
2. *By Lessee*, 851

E. *Order of Reference*, 851F. *Judgment for Redemption*, 852G. *Affidavit of Non-payment*, 852H. *Final Order Dismissing*, 852

CROSS-REFERENCES:

GUARANTY:

Complaint Against Guarantor of Mortgage To Recover Deficiency.

GUARDIAN AND WARD:

Petition for Leave To Mortgage Infant's Real Estate.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Indorsement on Execution, Where Judgment Is for Debt Secured by Mortgage.

JUDICIAL SALES:

Notice of Sale of Real Property Under Foreclosure, or Partition;
Referee's Report of Sale in Partition, Foreclosure, or Other Action;
Referee's Report of Sale in Partition, Foreclosure, or Other Action, Where Purchaser Has Not Completed His Purchase.

LIS PENDENS:

Notice of Pendency of Action for Foreclosure.

QUIETING TITLE:

Complaint To Remove Mortgage Which Is a Cloud Upon Title.

SPECIFIC PERFORMANCE:

Decree for Specific Performance of Agreement To Execute Mortgage.

SUBROGATION:

Substance of Complaint for Subrogation by Purchaser, Where Previous Foreclosure Was Set Aside;

Substance of Complaint for Subrogation by Vendor of Land Subject to Mortgage, Compelled To Pay.

I. *Foreclosure*.A. *Bills*.

1. *Bill for Foreclosure, Mortgagor in Possession*.

Humbly complaining, shows unto your honors your orator R. S., of, etc., that on the, etc., P. J., of, etc. (one of the defendants hereinafter named), being, or pretending to be, seized in fee of a certain parcel of real estate, situate, etc., and bounded, etc., and having occasion for the loan of a sum of money, applied to your orator to lend him the sum of \$———, and in order

to secure the repayment of the same, with interest, proposed to mortgage to your orator the said real estate. And your orator further shows unto your honors that your orator did comply with the request of the said P. J., and did accordingly lend him the said sum of \$———, and for securing the repayment thereof, with interest as aforesaid, by deed, bearing date on, etc., and made and executed by the said P. J., did grant, bargain, sell and convey unto your orator, the premises above described: to have and to hold unto your orator, his heirs and assigns, in fee simple forever, subject nevertheless to a proviso for the redemption of the said premises, on payment by the said P. J., his executors, administrators or assigns, to your orator, his executors, administrators or assigns, of the said sum of \$———, with lawful interest for the same, within one year from the date of said deed, as by the said deed, reference thereunto being had, will more fully appear. And your orator further shows that the said sum of \$———, or any part thereof, was not paid to your orator or to any person on his behalf, according to the said proviso in said deed at the time therein mentioned, and has not now been paid to your orator, but is still due and owing to him, together with a great arrear of interest thereon. And your orator well hoped that the said P. J. would either have paid your orator the said sum of \$———, and the interest thereon, or would have suffered your orator to have peaceably and quietly held and enjoyed the said premises, and for that purpose your orator has frequently applied to the said P. J., and requested him to pay the said sum of \$———, and the interest due upon the same, or else peaceably to deliver up possession to your orator of the said mortgaged premises, together with all deeds, evidences, writings, etc., relating to or concerning the same, and to release all his right, title and equity of redemption of, in and to the said premises, to your orator and his heirs, the said P. J. well knowing, as your orator charges the truth to be, that the said premises are a very scanty security for the principal and interest now due to your orator thereon. And your orator well hoped that the said P. J. would have complied with such your orator's reasonable request, as in justice and

equity he ought to have done. But now so it is, etc. (charge of confederacy). And the said defendant P. J. pretends that the said premises were mortgaged by him to, etc., whereas your orator charges that, etc. And at other times the said P. J. pretends, etc., whereas your orator charges, etc. All which actings, etc. (jurisdiction clause). And that the said P. J. may discover whether there is or are any other, and what incumbrance or incumbrances upon or affecting the said mortgaged premises, or if so, in whom the same is or are vested. And that an account may be taken, by and under the direction and decree of this honorable court, of what is due and owing to your orator for principal and interest moneys upon and by virtue of his said recited mortgaged securities, and that the said P. J. may be decreed to pay and satisfy to your orator what shall appear to be due and owing to him on the taking of the aforesaid account, by a short day to be appointed by this honorable court, together with your orator's costs. And in default thereof, that the said P. J., and all persons claiming under him, may be absolutely barred and foreclosed of and from all equity of redemption, or claim, in and to the said mortgaged premises, and every part thereof, and may deliver over to your orator all deeds, writings and documents whatsoever in his custody, possession or power, relating to or concerning the said premises, and every part thereof, etc. And that an account may be taken by and under the direction and decree of this honorable court, etc., etc. And that the defendant may be decreed to pay unto your orator, etc., etc. May it please, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1926.

2. *Bill for Foreclosure Against Surviving Mortgagor, Etc.*

Humbly complaining, shows unto your honors, your orator A. H., of, etc., esq., against S. M. C., of, etc., and G. R., of, etc., that J. S. C., now deceased, the said S. M. C. and the Reverend P. K., now deceased, being or alleging themselves to be seized of and entitled to the premises hereinafter particularly described, in trust for the benefit of the said J. S. C. and S. M. C., and having occasion to borrow the sum of \$5,500, applied to and requested your orator to lend them the sum of \$3 000, part of such sum of \$5,500, on

the security hereinafter mentioned, and that your orator complied with such request, and did accordingly lend and advance the sum of \$3,000 to the said J. S. C., S. M. C. and P. K. And that, thereupon, and in order to secure the repayment thereof with interest, the said J. S. C., S. M. C. and P. K. duly executed a certain indenture of mortgage, bearing date ———, and made or expressed to be made between the said J. S. C., S. M. C. and P. K., of the one part, and your orator of the other part. And that thereby, after reciting as therein mentioned, it was witnessed that for and in consideration of the said sum of \$3,000, to the said J. S. C., S. M. C. and P. K. paid by your orator, the receipt whereof they did thereby acknowledge, they the said J. S. C., S. M. C. and P. K., and each of them, did grant, bargain, sell and convey unto your orator, his heirs and assigns, all that capital messuage, etc., together with all and every the appurtenances, etc., to hold the said messuage, etc., unto your orator, his heirs and assigns, in fee simple forever, but subject to a proviso for redemption upon payment by the said J. S. C., S. M. C. and P. K., their heirs, executors, administrators or assigns, unto your orator, his executors, administrators or assigns, of the said sum of \$3,000, with interest after the rate of 5 per cent. per annum at or upon the ——— day of ———, then next ensuing; as in and by the said indenture, reference being thereto had, will more fully appear. And your orator further shows unto your honors that the said sum of \$3,000 was not paid to your orator at the time, for that purpose limited by the said indenture, for the payment of the same, and that thereby the estate of your orator in the said mortgaged premises became absolute at law. And your orator further sheweth unto your honors that in or about the year ——— the said J. S. C. died, having first made his will bearing date ———, whereby he devised all real estate, including his interest in the said mortgaged premises, to the said S. M. C. and P. K. and to G. R., of ———, and their heirs. And your orator further shows unto your honors that the said P. K. had no beneficial interest in the said mortgaged premises; and that he died some time since, leaving the said S. M. C. him surviving; and that the said S. M. C. alone

is now entitled to the equity of redemption of the mortgaged premises in trust, as to one moiety thereof, for his own use and benefit, and in trust, as to the other moiety, for the use and benefit of himself and the said G. R., as devisees of the said J. S. C. And your orator further shows that the said sum of \$3,000, together with a considerable arrear of interest accrued due thereon, is now due to your orator on the security of the said premises. And that your orator has frequently, and in a friendly manner, applied to the said S. M. C. and requested him to pay the same, and to release his equity of redemption of and in the said mortgaged premises. And your orator well hoped that such his just and reasonable requests would have been complied with, as in justice and equity they ought to have been. But now so it is, may it please your honors, that the said S. M. C., combining with the G. R., and contriving how to injure your orator in the premises, refuses so to do, although your orator charges that your orator did as aforesaid well and truly advance and pay the said sum of \$3,000 to the said J. S. C., S. M. C. and P. K., and that for securing the repayment thereof with interest, the said J. S. C., S. M. C. and P. K. duly made and executed to your orator such indenture as is hereinbefore mentioned; and that the whole of the said sum of \$3,000, together with a large arrear of interest accrued due thereon, is now justly due and owing to your orator on the security aforesaid. And your orator charges that the mortgaged premises are very scanty security for the repayment of what is due and owing to your orator or the security thereof. And your orator charges that the said G. R. is and claims to be interested in the said mortgaged premises, or some part thereof, and to be entitled to redeem the same, but he, and also the said S. M. C., refuses so to do. And your orator charges that the said defendants ought either to pay what is due to your orator as aforesaid, or otherwise to release their equity of redemption in the said premises, but they refuse so to do. All which actings, etc. (jurisdiction clause). And that the said defendant may answer the premises; and that an account may be taken by and under the direction and decree of this honorable court of what is due and owing

to your orator for principal money and interest on the security of the said mortgaged premises; and that the said defendants may be decreed to pay unto your orator what shall appear to be justly due and owing to him on the taking of the aforesaid account, together with his costs of this suit, by a short day to be appointed by this court for that purpose, your orator being ready and willing, and hereby offering, on being paid his principal money and interest and costs, at such appointed time, to reconvey the said mortgaged premises unto the said defendants, or unto either of them, as this honorable court shall direct. And in default of such payment, that the said defendants and all persons claiming under them may be absolutely barred and foreclosed of and from all right and equity of redemption in and to the said mortgaged premises, and every part thereof forever. And may deliver up to your orator all and every the deeds, writings and documents in their or either of their possession, custody or power, relating to the said mortgaged premises, and every part thereof. (And that an account, etc.; see preceding form.) May it please your honors, etc. (Pray subpoena against S. M. C. and G. R.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1928.

3. *Prayer in Bill for Foreclosure and Sale.*

That an account may be taken, by or under the direction of this honorable court, of what is due for the principal and interest on the said mortgage, and that the said defendants, or some one of them, may pay unto your orator the money which shall be found due to him, by a short day to be appointed for that purpose by this honorable court; or, in default thereof, that all the said defendants, and their respective heirs, executors and administrators, and all other persons claiming, or to claim by, from or under them, or any of them, may be absolutely barred and foreclosed of and from all right and equity of redemption of, in and to the said estates, and every part thereof; or, if on any account your orator is not entitled to such foreclosure, then that the said estates may be sold, and all proper parties may join therein, and that the money so due to your orator may be paid to him by and out of the money which shall be raised by such

sale, etc., etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1930.

B. *Decrees.*

1. *Decree for Foreclosure at Hearing, Mortgagor in Possession.*

The court doth order and decree that it be referred to A. B., esquire, master, etc., to compute what is due to the plaintiff, for principal and interest on his mortgage in the pleadings mentioned, and for his costs of this cause, such costs to be taxed, etc., and upon the defendant's paying to the plaintiff what shall be reported due to him for principal, interest and costs as aforesaid, within _____ months after the said master shall have made his report, at such time and place as said master shall appoint, it is ordered that the said plaintiff do reconvey (resurrender, reassign) the mortgaged premises free and clear of all incumbrances done by him, or any claiming by, from or under him (or by those under whom he claims), and deliver up upon oath all deeds and writings in his custody or power relating thereto, to the defendant, or to whom he shall appoint. But in default of the said defendant's paying to the plaintiff such principal, interest and costs as aforesaid, by the time aforesaid, it is ordered and decreed that the said defendant from thenceforth do stand absolutely debarred and foreclosed of and from all (right, title, interest and) equity of redemption of, in and to the mortgaged premises. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1922.

2. *Decree of Final Foreclosure (Strict).*

Upon motion, etc., by counsel for the plaintiff, who alleged that by the decree, dated, etc., it was ordered that it be referred to A. B., esquire, master, etc., to take an account, etc., that in pursuance of said decree the said master, on the _____ day of _____, made his report, and thereby certified that there would be due to the plaintiff for principal and interest on his said mortgage, and for his costs, etc., on the _____ day of _____, the sum of \$_____, which the said defendant was thereby appointed to pay to the plaintiff on, etc., at, etc., between, etc.; that it appears by the affidavit of the plaintiff, filed, etc., that he did attend on the said _____ day of _____, at, etc., from before the hour of _____ till after the hour of _____ of that day, in order to

receive from the defendant the said sum of \$———, but the said defendant did not, nor did any person on his behalf, attend to pay the said sum, and that the said sum hath not, nor hath any part thereof since paid to the plaintiff, but that the whole thereof still remains due and owing; and upon reading the said decree, report and affidavit, this court doth order that the defendant do from henceforth stand absolutely debarred and foreclosed of and from all (right, title, interest and) equity of redemption of, in and to the said mortgaged premises. (Take the words of the decree.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2224.

3. Decree for Sale in Default of Payment.

Usual account: Direction for payment to plaintiff, and reconveyance by him. "But in default of defendants paying to the plaintiff, etc., it is ordered and decreed that the said mortgaged premises, or a competent part thereof, be sold with the approbation of the master; and that the money to arise by such sale be applied in payment of what shall appear to be due to the plaintiff for principal, interest and costs, as aforesaid, and be in the meantime paid into, etc., to the credit of this cause." Adjourn, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2224.

4. Decree for Foreclosure, Mortgagee in Possession; Costs; Repairs; Improvements and Profits; Reconveyance; Default; Infant.

It is ordered that the plaintiff's bill do stand dismissed as against the defendant H. S., with costs, and that it be referred to, etc., of this court to tax the said costs; and it is ordered that the plaintiff R. H. do pay to the said defendant his costs when taxed, and what the plaintiff shall so pay is to be added to his own costs, to be taxed as hereinafter directed; and it is ordered that it be referred to G. F. C., esq., master, etc., to take the following accounts, that is to say: 1. An account of what is due for principal and interest on the security of the premises comprised in the indenture (or deed) dated, etc. 2. An account of all sums of money paid, laid out and expended by the said W. M. or the plaintiff (transferee of the mortgage) for fines, fees and costs, etc.; and of all sums of money paid, laid out or expended by the plaintiff in

necessary repairs and lasting improvements of the premises comprised in the said indenture (or deed) of mortgage of, etc.; and in taking the said account, interest is to be computed on the money paid for fines and fees on renewal, and the charges attending the same, and laid out in repairs and lasting improvements, after the same rate of interest as the said mortgage carried; and what shall appear to be due on the said account is to be added to what shall be found due for principal and interest on the said mortgage. 3. An account of the rents and profits of the premises comprised in the indenture (or deed) of, etc., or which without wilful default of the plaintiff might have been received; and what shall be found due from the plaintiff on taking the said account is to be deducted from what shall be found due to him for principal and interest as aforesaid; and in taking the said accounts, all just allowances are to be made.

And it is ordered that it be referred to the said ——— to tax the plaintiff his costs of this suit.

And it is ordered that upon the defendants or any of them paying to the plaintiff what shall be found to be due to him for principal and interest as aforesaid, together with his costs of this suit, within (six) months after the same shall have been certified, at such time and place as shall be appointed, the plaintiff do reconvey and reassign the mortgaged premises for all the plaintiff's interest therein to the defendants or such of them as shall redeem, free and clear of all incumbrances done by the said W. M., or the plaintiff, or any person claiming by, from or under them, or either of them, and to deliver up all deeds and writings in the custody or power of the plaintiff relating thereto, upon oath, to the said defendants, or such of them as shall redeem, or to whom they shall appoint.

But it is ordered that in default of the defendants paying unto the plaintiff such principal, interest and costs as aforesaid, by the time aforesaid, the defendants shall stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises comprised in the said indenture (or deed), etc.

And the said decree is to be binding on the infant defendant A. N., unless he, being served with a subpoena to

show cause against the same, shall within six months after he should attain his age of twenty one years, show unto this court good cause to the contrary. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2222. See Tripp's Forms 134.

C. Order Enlarging Time for Payment.

The report of the master to whom it was referred to compute and ascertain the amount due to the complainant in this cause for principal and interest on his bond and mortgage, and tax his costs in this suit, having been filed and duly confirmed, from which it appears that there will be due to the said complainant, for principal, interest and costs, the sum of \$——, on the —— day of ——, instant, which was the time appointed by the said master for the payment thereof, and on reading affidavits, and on motion of Mr. F. S. K., solicitor for the defendant, and on hearing Mr. W. C. N., solicitor for the complainant, in opposition thereto, it is ordered that upon the said defendant's paying to the complainant, on or before the —— day of —— instant, the sum of \$—— reported due to the complainant for interest and costs on his said mortgage, by the said master's report, the time for the defendant's redeeming the said mortgaged premises be enlarged for six months. And upon such payment, it is ordered that it be referred back to the said master to compute the complainant's subsequent interest, and tax his subsequent costs, including the costs of this application, and to appoint a new time and place for payment of what shall be found due to the complainant in respect thereof. But in default of the defendant's paying to the complainant the said sum of \$—— by the time aforesaid, the said defendant is to stand absolutely foreclosed. 2 Barb. Ch. Pr. 625.

D. Affidavit of Having Attended To Receive Mortgage Money.
City and county of Albany, ss.:

G. H., of said city, being duly sworn, deposes and says that on the —— day of ——, he did, under and by virtue of a certain power of attorney, duly executed by A. B., the complainant in this cause, bearing date the —— day of ——, and in pursuance of the report of D. B. G., one of the masters of this court, bear-

ing date the —— day of ——, personally attend and wait at the Merchant's Exchange in the city of Albany, from before the hour of —— of the clock in the —— noon of the said —— day of ——, until after the hour of —— at noon, being the time and place mentioned in the said master's report, in order to receive from the defendant in this cause the sum of \$——, by the said report reported due and directed to be paid to the said complainant for principal, interest and costs, in respect of his mortgage in question in this cause; at which time and place the said defendant did not, nor did any person or persons on his account or behalf, attend or pay to this deponent the said sum of \$—— or any part thereof; and that the said sum of \$—— still remains due and unsatisfied as he verily believes. 2 Barb. Ch. Pr. 626.

E. Final Order for Strict Foreclosure.

A decree having been made upon the hearing of this cause, on the —— day of —— last, by which it was referred to one of the masters of this court residing in the county of ——, to compute and ascertain the amount due to the complainant for principal and interest upon the bond and mortgage mentioned in the bill in this cause, and to tax the costs of the said complainant and add the amount thereof to the sum which should be found due to him from the defendant, and to fix a time and place for the payment of the said principal, interest and costs, and ordering that in default of the said defendants paying the sum thus reported due, by the time limited for that purpose, the defendant should stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises; and the said master having, in pursuance of the said decree, on the —— day of —— last, made and filed his report, which has been duly confirmed, whereby he certified the sum of \$—— to be due to the complainant, for principal, interest and costs on the said mortgage, which he appointed to be paid on the —— day of —— last, between the hours of —— of the clock in the forenoon and twelve o'clock at noon, at the Merchant's Exchange in the city of ——; at

which time and place G. H., being duly authorized by the complainant, attended for the purpose of receiving the said money, but neither the defendant nor any person on his behalf did then attend to pay, or have since paid or tendered the same, as by the affidavit of the said G. H. now read appears; on motion of W. C. N., solicitor for the complainant, and on hearing Mr. F. S. K., of counsel for the defendant, in opposition thereto, it is ordered and decreed that the said defendant C. D. do stand absolutely debarred and foreclosed of and from all right, title, interest, equity and benefit of redemption of, in and to the said mortgaged premises as they are described in the said mortgage and in the said decree of the _____ day of _____. 2 Barb. Ch. Pr. 626.

F. Complaints.

1. Complaint by Mortgagee Against Mortgagor and Junior Incumbrancers To Foreclose Upon Default in Interest, Insurance Paid by Mortgagee, Outstanding Judgment.

I. That on the _____ day of _____, 18—, the defendant (mortgagor) made his bond to the plaintiff under seal, and dated on that day, conditioned to pay to the plaintiff _____ dollars on (stating condition of bond); and thereupon he (together with the defendant, naming his wife) duly made and acknowledged his (or their) mortgage to the plaintiff, of even date therewith, as collateral, to secure the payment of said bond, a copy of which is annexed as a part of this complaint (or allege its legal effect as follows: and that by said mortgage he, or they) granted, bargained and sold to the plaintiff, his heirs and assigns, the following described premises (insert description of premises from mortgage), which conveyance was nevertheless upon the condition that (state condition of mortgage, with interest and insurance clauses).

II. That said mortgage was duly acknowledged, and on the _____ day of _____, 18—, duly recorded in the office of the clerk of _____ county, in book _____ of mortgages, page _____.

III. That the interest on said bond and mortgage, which became payable on the _____ day of _____, 18—, is still due and unpaid; that more than

_____ days have elapsed since said interest became due and payable, and the plaintiff elects to deem the whole principal sum to be immediately due and payable; and there is now justly due to him on said bond and mortgage _____ dollars, with interest from the _____ day of _____, 18—, at _____ per cent. per annum.

(Where plaintiff has paid insurance, etc.) IV. That the defendant (mortgagor) did not keep the premises insured (stating breach of the insurance covenant, e. g., thus), but wholly neglected so to do (or but on the contrary suffered the insurance to expire on the _____ day of _____); in consequence whereof the plaintiff caused them to be insured in the _____ company of _____ for the term of _____ from the _____ day of _____, 18—, and paid therefor the premium of _____ dollars.

(V. That no proceedings have been had, at law or otherwise, for the recovery of said moneys, or any part thereof (except that heretofore the plaintiff commenced an action in this court against the defendant to recover on a promissory note for _____ dollars, which formed a part of the indebtedness for which said bond and mortgage was given, and on the _____ day of _____, 18—, judgment of nonsuit was given against the plaintiff on the ground that the mortgage merged the note).

(Where plaintiff holds other liens.)

VI. That on the _____ day of _____, 18—, at _____, in the court of _____ (or before M. N., a justice of the peace in and for the town of _____), the plaintiff recovered a judgment, which was duly given by said court (or justice) against the defendant, for _____ dollars, in an action wherein this plaintiff was plaintiff (or defendant), and the defendant herein was defendant (or plaintiff); and which was on the _____ day of _____, 18—, duly docketed in the office of the clerk of said county, so as to become, and still remains, a lien on the mortgaged premises.

VII. That the defendants (subsequent incumbrancers) have or claim some interest in, or lien on, said mortgaged premises, accrued since the lien of said mortgage.

Wherefore the plaintiff demands judgment:

1. That each of the defendants, and

all persons claiming under them, or either of them, subsequent to the commencement of this action, may be foreclosed of all equity of redemption or other interest in said mortgaged premises.

2. That the same be sold, and the proceeds applied to the payment of the costs and expenses of this action, and the amount due on said bond and mortgage, and the amount of said premium of insurance (and of said judgment), with interest on said moneys up to the time of such payment.

3. That the defendant (mortgagor) may be adjudged to pay any deficiency that may remain after applying all of said moneys so applicable thereto. 1 Abb. Forms 597.

2. *Complaint by Assignee Against Mortgagor, Mortgagee Who Guaranteed Payment, Grantee of Equity of Redemption Who Assumed Mortgage and Junior Incumbrancers.*

I and II. As in preceding form, substituting the mortgagee's name for the words, "the plaintiff."

III. That on the _____ day of _____, 18—, the defendant (mortgagee), by an instrument in writing under his hand and seal, duly assigned said bond and mortgage to the plaintiff for value, and thereby (and for a consideration expressed therein) guaranteed to the plaintiff the payment of said bond and mortgage (or which assignment contained a covenant, of which the following is a copy, setting it forth).

IV. That on the _____ day of _____, 18—, the defendant (mortgagor) and (his grantee) entered into an indenture under their hands and seals, whereby the said (mortgagor) conveyed to said (grantee) the mortgaged premises, subject to said mortgage, and said (grantee) covenanted that he would pay off and discharge the same as a part of the consideration of said conveyance (or otherwise, as the covenant was).

Or, where the conveyance subject to the mortgage was not signed by the grantee. IV. That on the _____ day of _____, 18—, the defendant (mortgagor), by deed dated on that day, duly conveyed said premises, subject to said mortgage, to the defendant (owner of equity of redemption); which deed contained a covenant on the part of the latter, of which the following

is a copy (copy of covenant to assume mortgage). And said conveyance thereupon was accepted by said (grantee).

(Continue as in preceding form. 1 Abb. Forms 600.

3. *Complaint, Allegation of Inadequacy of Security and Demand for Receiver of Rents and Profits.*

Insert in either preceding form:

That the mortgaged premises consist of (briefly stating situation, c. g.), a single village lot, with a house thereon, which is old and out of repair, and rapidly deteriorating; and the present value of the premises is about _____ dollars, and they are subject to a prior mortgage, on which about _____ dollars is due. That they are a scanty and insufficient security for the plaintiff's mortgage debt, and the defendants, who are personally liable therefor, are insolvent.

And insert in the prayer for relief:

That a receiver of the rents and profits be appointed, by order of the court, to apply the same to the plaintiff's demand. 1 Abb. Forms 601.

4. *Complaint by Mortgagee in Possession Against Parties Entitled To Redeem, Seeking Accounting and Payment, or Strict Foreclosure.*

(Allege mortgage, default, etc., as in preceding forms.)

III. That after the mortgage debt became due as aforesaid, the plaintiff entered into possession of the mortgaged premises, and the receipt of the rents and profits thereof, and has since continued, and still is, in possession.

IV. That the said rents and profits have not been sufficient in amount to equal the annual interest upon the said bond and mortgage (or state otherwise, as the fact may be).

V. That the plaintiff has laid out considerable expenditures for permanent improvements upon said premises, to-wit (stating the general nature and value of same), which he claims should be allowed him as an offset against so much of said rents and profits. And has also paid the sum of _____ dollars for taxes and assessments (or, if any prior lien has been discharged, state the nature of the lien, amount and time of payment of same); all of which sums the said plaintiff also claims should be allowed him, and credited on his account against so much of said

rents and profits; which several sums, when so applied and credited to the said plaintiff, charging the plaintiff with the amount of rents and profits so received by him, will leave remaining due to said plaintiff, on his said bond and mortgage, about _____ dollars.

VI. That the defendant (junior incumbrancer) has, or claims, an interest in said mortgaged premises, under and by virtue of a mortgage thereon from the said defendant (mortgagor) subsequent to the mortgage of the plaintiff; and the defendant _____ has, or claims, an interest therein, etc. (setting forth generally the interests of the respective parties).

VII. That the plaintiff has applied to the said defendants (junior incumbrancers), and requested them to pay the plaintiff the said sum so due on the bond and mortgage held by the plaintiff, or come to an accounting with him thereon for the said rents and profits (permanent improvements and advances), and, after the proper charges and credits, pay the said plaintiff what should appear to be due him on his said bond and mortgage; or, in default thereof, to release their right and equity of redemption in said mortgaged premises. But the said defendants have hitherto refused, and still refuse so to do, or to comply with any part of said plaintiff's request.

Wherefore the plaintiff demands judgment:

1. That an account may be taken of what, if anything, is due and owing to the plaintiff for principal and interest on his said bond and mortgage; and that an account may also be taken of the rents and profits of the said mortgaged premises which have been received by said plaintiff, and also of the expenditures of the said plaintiff for permanent improvements, and for taxes and assessments (or for the amount so paid for prior incumbrances, etc., as the case may be).

2. That the said defendants pay the plaintiff what may be found due him on taking the said account, together with his costs of action, by a short day to be appointed by the court for that purpose; or, in default thereof, that the said defendants, and all persons claiming under them, be absolutely debarred and foreclosed of and from all right and equity of redemption in and

to the said mortgaged premises, and every part thereof, and that said defendants deliver up to the plaintiff all deeds, papers or writings in their custody or power relating to or concerning the said mortgaged premises, or any part thereof; and for such further relief as may be just, with costs of this action. 1 Abb. Forms 601.

5. *Complaint on Note and Mortgage (Short Form).*

I. That on the _____ day of _____, 18—, the defendant made his promissory note of that date, and thereby promised to pay to plaintiff, or order, _____ dollars, _____ years after said date, for value received.

II. That the defendant, on the _____ day of _____, 18—, to secure the payment of said note, executed to the plaintiff his mortgage deed, and thereby conveyed to the plaintiff, his heirs and assigns, the following lands and tenements, situate in said county of _____ (description as contained in the deed). The condition contained in said mortgage deed was, in substance, that if (here set forth the condition).

III. That on the _____ day of _____, 18—, at _____ o'clock a. m. (or p. m.), said mortgage was delivered to the recorder of said county, to be by him entered on record, and was recorded the same day (according to facts).

IV. That the said deed has become absolute; and there is due and remaining unpaid upon said indebtedness the sum of _____ dollars, with interest from the _____ day of _____, 18—.

Wherefore the plaintiff asks that said mortgage may be foreclosed, the said premises ordered to be sold, and the proceeds applied to the payment of said debt, and execution awarded for the balance. 1 Abb. Forms 603.

G. *Answers.*

1. *Answer, Denial of Mortgage.*

That he has not knowledge or information sufficient to form a belief as to whether the defendant (mortgagor) ever executed the bond and mortgage described in the complaint, or whether the defendant (mortgagee), ever assigned said supposed bond and mortgage to the plaintiff, or whether he is now the lawful owner or holder thereof. 2 Abb. Forms 163.

2. *Answer, Denial of Having Assumed Mortgage.*

That he denies that the defendant (mortgagor) ever executed or delivered any deed or conveyance of the premises described in the complaint to this defendant (except as hereinafter admitted, see next defense), or that this defendant ever accepted said supposed deed, or entered into possession of said premises, or ever in any manner what-ever assumed or agreed to pay the mortgage set forth in the complaint. 2 Abb. Forms 164.

3. *Answer, Non-Joinder of Owner of Equity of Redemption.*

I. That after the making of the mortgage in the complaint described, and before this action, the defendant X., being seized of the premises, by his deed under his hand and seal, dated on the _____ day of _____, 18—, duly conveyed the same to one M. N., subject to said mortgage.

II. That said M. N. is still living at _____, and is now the owner of the equity of redemption in said premises. 2 Abb. Forms 165.

4. *Answer, Purchaser, Having Equity of Redemption in Part of Premises, Is Entitled To Have Residue Sold First.*

I. That after the making of the mortgage mentioned in the complaint, and which the plaintiff seeks to foreclose, said (mortgagor) conveyed to this defendant a part of the mortgaged premises for a valuable consideration, by deed bearing date on the _____ day of _____, 18—, and recorded on the _____ day of _____, 18—, in lib. _____ of conveyances, page _____, in the office of the clerk of the county of _____, which said portion of the mortgaged premises are described as follows (copy of description).

II. (That after the aforesaid conveyance, the said (mortgagor) conveyed the residue of said premises to the defendant W. X.)

Wherefore the defendant demands that if a foreclosure be adjudged, all of said premises not so conveyed to this defendant be sold first; and that the premises so conveyed to this defendant be not sold, unless a sale thereof should be necessary to satisfy deficiency arising after the sale of such residue. 2 Abb. Forms 165.

II. *Order of Reference To Take Proof Etc.*

On reading and filing the affidavit of M. N., dated the _____ day of _____ last, stating the proceedings herein, and the affidavits of O. P. and Q. R., therein referred to, and on motion of M. N. for the plaintiff (no one appearing in opposition):

Ordered that it be referred to R. F., esq., of _____, counselor-at-law, to compute and ascertain the amount due to the plaintiff, for principal and interest on the bond and mortgage set forth in the complaint in this action, (and the amounts due to such of the defendants as are prior incumbrancers).

(Where the whole mortgage debt is not due, add: and also to compute and ascertain the whole amount due, and yet to become due, secured by said mortgage, and remaining unpaid, with interest; and to ascertain the situation of the mortgaged premises, and whether the same can be sold in parcels without prejudice to the interests of the parties; and if he shall be of opinion that a sale of the said premises, in one parcel, will be most beneficial to the parties, then that he report his reasons for such opinion; and if there is a question among the defendants as to the order in which parcels should be sold, may add: and also to examine and determine the order in which the said parcels should be sold for the payment of the plaintiff's demand, in view of the equitable rights of the parties.)

(Where any defendants are infants having answered generally, or are absentees, add: and also to take proof of the facts and circumstances stated in the complaint; and to examine the said plaintiff or his agent on oath, as to any payments that may have been made.) 2 Abb. Forms 521.

I. *Judgments.*

1. *Judgment for Foreclosure, No Defense, Whole Debt Due.*

On reading and filing the affidavit of M. N., showing service of summons in this action on all the defendants personally (except the defendant W. X., and on reading and filing the affidavits of M. N. and O. P., showing that the summons has been served upon the defendant W. X., pursuant to an order of the court by publication of the same, and mailing the same with the complaint, as therein directed); and on reading and filing the affidavit of O.

P., the attorney for the plaintiff, showing that the time to answer has expired, and no demurrer or answer has been put in (except the answer of the defendant U. V., who is an infant, and whose answer by his guardian does not deny any material allegation of the complaint); and showing that the summons and complaint in this action, and due notice of the pendency of this action, were duly filed in the office of the clerk of the county of _____, on the _____ day of _____, 18—; (a) and an order of reference having been made to compute the amount due to the plaintiff upon the bond and mortgage set forth in the complaint (and if any of defendants are infants, having put in general answer, or are absentees, add: and to take proof of the facts and circumstances stated in the complaint, and examine the plaintiff or his agent on oath as to any payments made, and which ought to be credited on said bond and mortgage (b), and on reading and filing the report of the referee named in the order of reference, by which report, bearing date the _____ day of _____, 18—, it appears that _____ dollars was due thereon at the date of said report. (c) Now, on motion of O. P., attorney for the plaintiff:

It is adjudged, that the mortgaged premises described in the complaint in this action as hereinafter set forth, or so much thereof as may be sufficient to raise the amount so reported due to the plaintiff for principal, interest, and costs, and which may be sold separately without material injury to the parties interested, be sold by public auction, in the _____ county of _____, by or under the direction of the sheriff of said _____ county (or, by or under the direction of R. F., who is hereby appointed referee for that purpose, or, who was heretofore appointed referee in this action); that the said sheriff (or referee) give public notice of the time and place of such sale, according to law, and the practice of this court; that the plaintiff or any other party to this action may become a purchaser on such sale; that the said sheriff (or referee) execute to the purchaser or purchasers, a deed or deeds of the premises sold; that out of the proceeds of the sale, after deducting the amount of his fees and expenses on such sale, and any lien or liens upon said premises so sold, at the time

of such sale, for taxes or assessments, he pay to the plaintiff or his attorney the sum of _____ dollars adjudged to the plaintiff for costs and charges in this action, with interest from the date hereof; and, also, the amount so reported due (d) as aforesaid, together with the legal interest thereon, from the date of the said report; or so much thereof as the purchase money of the mortgaged premises will pay of the same; and that he take a receipt of the plaintiff or his attorney for the amount so paid, and file the same with his report of sale; and that the purchaser or purchasers at such sale be let into possession of the premises on production of the deed (and a certified copy of the order confirming the report of sale). That the said sheriff (or referee) pay the surplus money (if any) within five days after the same shall be received and be ascertainable (in the city of New York, say, to the chamberlain of the said city, and in other counties, say), to the treasurer of said county, subject to the further order of the court, and take a receipt therefor, and file the same with his report; that he make a report of such sale, and file it with the clerk of this court with all convenient speed.

And it is further adjudged, that if the proceeds of such sale be insufficient to pay the amount so reported due (e) to the plaintiff, with the interest and costs as aforesaid, the said sheriff (or referee) specify the amount of such deficiency in his report of sale; and that the defendant Y. Z. pay the same to the plaintiff, with interest from the date of such report; and that plaintiff have execution therefor.

(f) And it is further adjudged that the defendants, and all persons claiming under them, or any or either of them, after the filing of the aforesaid notice of pendency of this action, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

The following is a description and the particular boundaries of the premises to be sold, as hereinbefore directed: (insert description). 2 Abb. Forms 565.

2. *Judgment for Foreclosure, No Defense, Part Only of Debt Due.*

(As in preceding form, substituting for the words between [b] and [c].

and also to ascertain the situation of said mortgaged premises, and whether the same can be sold in parcels without injury to the interests of the parties; and if such referee would be of the opinion that the premises cannot be sold in parcels without injury to the interests of the parties, then that he report his reasons for such opinion:

On reading and filing said report, from which it appears that there was actually due to the said plaintiff, at the date of said report, for said principal and interest, the sum of _____ dollars, and the whole amount secured by and unpaid upon said bond and mortgage, with interest thereon, to the date of said report, is the sum of _____ dollars; and that said premises can be sold in parcels without injury to the interests of the parties (here add, briefly, reasons controlling the order of sale if any are stated in the report).

(And insert at [f]):

And it is further adjudged, that said plaintiff be at liberty at any time hereafter, as any instalment of principal or interest shall become due on said bond and mortgage, to apply to this court on the foot of this judgment, for a further judgment (or, to apply to the aforesaid referee, who is hereby continued referee for that purpose, on the foot of this judgment, and procure a report of the amount which shall then be due, to the end, that on the coming in and confirmation of such report, a judgment may be made), for a sale of the residue of said premises not sold under this judgment, to satisfy the amount which shall then be due, with interest, and the costs of such report and sale.

And in case said premises shall all be sold under this judgment to satisfy the amount now actually due, with interest and costs, it is then further ordered, that the said plaintiff be at liberty at any time thereafter, when any future instalment of principal or interest shall fall due upon said bond and mortgage, to apply to this court for an execution against said defendant, Y. Z., who is personally liable for the payment of the debt secured by the said mortgage, for the amount which shall then be due, with interest and the costs of such application. 2 Abb. Forms 568.

3. *Judgment for Foreclosure, No Defense, Part Only of Debt Due, But Whole Property To Be Sold.*

(As in 1, I, 1, substituting for the words between [b] and [c]), and also to ascertain the situation of said mortgaged premises, and whether the same can be sold in parcels without injury to the interests of the parties; and if such referee would be of the opinion that the premises cannot be sold in parcels without injury to the interests of the parties, then that he report his reasons for such opinion. On reading and filing said report, from which it appears that there was actually due to the said plaintiff, at the date of said report, for said principal and interest, the sum of _____ dollars, and the whole amount secured by and unpaid upon said bond and mortgage, with interest thereon, to the date of said report, is the sum of _____ dollars; and that said premises cannot be sold in parcels without injury to the interests of the parties.

(And substituting at [d] and [e] in place of the word "due," the words), "to be secured by and unpaid upon said bond and mortgage."

(And insert at the end, immediately before the last paragraph, which gives description of the premises, the following):

And in case the amount reported as actually due, with interest and the costs of this action, shall be paid before such sale, it is further adjudged, that said plaintiff be at liberty, at any time hereafter when any principal sum or interest secured by said bond and mortgage shall become due, according to the condition of the said bond, to apply to the court on the foot of this judgment for a further judgment (or, to apply to the aforesaid referee, who is hereby continued referee for that purpose, on the foot of this judgment, and procure a report of the amount which shall then be due thereon, to the end, that upon the coming in and confirmation of such report, a judgment may be made) for a sale of the said premises to satisfy the amount which shall then be due, with interest, and the costs of such (report and) sale.

And it is further adjudged, that in case the said premises shall be sold under this judgment, and shall not produce sufficient to satisfy the amount so reported as secured and unpaid, with

interest, and the costs of this action and of such sale, the said plaintiff may, at any time thereafter, when any such deficiency of principal or interest shall have become due according to the condition of the said bond, apply to this court for an execution against said defendant, Y. Z., who is personally liable for the payment of the debt secured by the said mortgage, to collect the amount which shall be then due thereon. 2 Abb. Forms 569.

4. *Recital, Where Amount Is Computed by Court.*

(As in I, I, 1, substituting for the words between [a] and [c]), and the plaintiff having produced to the court satisfactory proof that there is due upon the bond and mortgage mentioned and set forth in the said complaint, the sum of _____ dollars, including interest to this _____ day of _____, 18____. 2 Abb. Forms 571.

5. *Judgment for Deficiency, Against Mere Surety.*

And it is further adjudged, that if the plaintiff is not able to collect the amount of such deficiency out of the estate of the said (mortgagor, etc.), upon the issuing of an execution, against his property, to the sheriff of the county in which he resides, or of the county where he last resided in this state, the defendants (the sureties), upon the return of such execution unsatisfied, pay so much of such deficiency as the proceeds of the sale hereinbefore directed, and the amount, if any, which shall have been collected of the said (mortgagor, etc.), personally (subsequent to the assignment by said sureties to the plaintiff), exclusive of the costs and expenses of the foreclosure and sale, shall be less than the principal (or, other limit of sureties' liability) and the interest thereon from the time of the commencement of this action to the time of such sale; with the interest on that part of the deficiency, from the time of the said sale until it shall be so paid by them.

And it is further adjudged, that if they pay the amount thus decreed against them personally, or if the same is collected out of their property, they shall have the benefit of this judgment against the said (mortgagor, etc.), for the purpose of enabling them to obtain remuneration from him to the same extent, with interest, but no further; either by a new execution against his property, or by bringing an action

thereon, as they may think proper. 2 Abb. Forms 571.

6. *Judgment of Strict Foreclosure.*

(Recitals of proceedings, see other forms.)

It is adjudged, that upon the defendants paying unto the said plaintiff the amount which is so found, and reported due to him, for principal and interest as aforesaid, with _____ dollars costs, hereby adjudged to the plaintiff, within six months after the entry of this judgment, and service of notice thereof (with interest thereon from the date of the above mentioned report, until the time of such payment) at (specifying place and hours for paying); that the said plaintiff do reconvey the mortgaged premises to the said defendant, by a suitable and proper instrument of conveyance, to be approved of by the court in case the parties cannot agree upon the form thereof, free and clear of all incumbrances, done or suffered by him, or by any person claiming by, from, or under him (and with the usual covenants against his or their acts); and that he deliver up all deeds and writings in his custody or power relating thereto, upon oath, to the said defendant, or to whom he shall appoint. And further, that the said plaintiff cancel and discharge such mortgage of record. But in default of the said defendant's paying unto the said plaintiff such principal, interest, and costs as aforesaid, by the time limited for that purpose, then it is adjudged that the said defendant, and all persons claiming by, from, or under him, do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises.

The following is a description, and the particular boundaries of the premises hereinbefore mentioned (insert description). 2 Abb. Forms 572.

II. Redemption.

A. *Bills.*

1. *Bill for Redemption of Mortgages by Heir.*

To, etc.

Humbly complaining, sheweth unto your honors, your orator, J. G., of, etc., that J. G., the elder, late of, etc., but now deceased, and E., his wife, now also deceased, the late father and mother of your orator, were in the right of the said E., seized in fee simple of, or otherwise well entitled to,

two parcels of real estate, bounded and described as follows: (here insert boundaries, etc.) And your orator further showeth, that the said J. G., the elder, and E., his wife, in or about the year ———, made some conveyance and assignment of the said premises unto W. B., of, etc., the defendant hereinafter named, by way of mortgage for securing the repayment of a certain sum of money, with interest, then advanced to the said J. G. by W. B., or by J. B., then of, etc., on the part of, and as the agent of, the said W. B.

And your orator further showeth unto your honors, that the said W. B., upon or soon after the making of the said security, entered into the possession of the said mortgaged premises, or into the receipts of the rents and profits thereof, and hath ever since continued in such possession and receipt, and the said W. B., or the said J. B., on his behalf, also possessed himself of all the title deeds relating to the said premises. And your orator further showeth that the said J. G., the elder, departed this life in or about the year ———, and that the said E., having survived her husband, departed this life on or about, etc., intestate, and without having made, after the death of her said husband, any conveyance or disposition of such right and interest as she retained at his death in the premises, leaving your orator, her eldest son and heir-at-law, who thereupon became entitled to the equity of redemption of the said mortgaged premises.

And your orator further showeth unto your honors, that the said W. B. from time to time made some small payments to the said J. G., the elder, in his lifetime, and after his death to the said E., out of the rents and profits of the said premises; and the said W. B. applied the greater part of such rents and profits to his own use, and by means thereof the said W. B. hath been more than repaid the principal and interest due to him on the security of the said premises. And your orator hath frequently applied to the said W. B., and requested him to come to an account for the rents and profits of the said premises so received by him, and to pay over to your orator what he should appear to have received beyond the amount of the principal and interest due to him, and to deliver up

the possession of the said mortgaged premises; and your orator well hoped that the said defendant would have complied with such requests as in justice and equity he ought to have done, but that the said W. B., acting in concert with divers persons unknown to your orator, refuses to comply therewith. To the end therefore, that, etc.

And that the said defendant may answer the premises, and that an account may be taken of what, if anything, is due to the said defendant for principal and interest on the said mortgage, and that an account may also be taken of the rents and profits of the said mortgaged premises, which have been possessed or received by the said defendant, or by any other person or persons by his order or for his use, or which without his wilful default or neglect might have been received, and that if it shall appear that the said rents and profits have been more than sufficient to satisfy the principal and interest of the said mortgage, then that the residue thereof may be paid over to your orator; and that your orator may be permitted to redeem the said premises, your orator being ready and willing, and hereby offering to pay what, if anything, shall appear to remain due in respect to the principal and interest on the said mortgage; and that the said defendant may be decreed to assign and to deliver up possession of the said mortgaged premises to your orator or to such person as he shall direct, free from all incumbrances made by him or any person claiming under him, and may deliver over to your orator all deeds and writings in his custody or power relating to the said mortgaged premises. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1933.

2. *Statements in Bill for Redemption of Absolute Deed Taken as Security.*

Bill by E. W., of, etc., as assignee of N. W., against A. B., of, etc., states that, on the ——— day of ———, N. W. was seized of a tract of land in C., containing about eleven acres and a half; that about one acre of this land had been sold and conveyed by N. W. to J. F., who, having mortgaged it back to secure the payment of the consideration money, N. W. had entered for breach of condition, and to foreclose the mortgage; that all but the J. F. acre was incumbered by two mortgages, both held by the defendant; the

first being a mortgage from said N. W. to F. W., on which there was then due for principal and interest the sum of \$1,487.32/100, the defendant being the executor and trustee under the will of F. W., in that right holding this mortgage; and the second being a mortgage from N. W. to the defendant, nominally to secure the sum of \$1,200 and interest, but really to secure such sums as might be advanced by the defendant to N. W.; and that on this last-mentioned mortgage there was then due, for such advances, the sum of four hundred dollars.

The bill further states that at the same time N. W. also owed the defendant, personally, eight dollars 10/100, and to him as agent for the heirs of N. W., senior, the sum of one hundred and thirty-six dollars 71/100; that N. W. was much embarrassed in his affairs, and at the pressing solicitation of the defendant, who was his brother-in-law and of W. W., his brother, he consented to make a deed of the said land, excepting the J. F. acre, to the defendant, absolute in form, but intended to stand as security for what N. W. thus owed; that the conveyance was made for that purpose only, and the defendant went into possession; that none of the notes held by the defendant were surrendered or cancelled, the same being retained because the land was held as security only; that the defendant was to have the management of the land and receive the rents and profits, and apply them towards the accruing interest; and if there should be any excess, towards the principal, and that N. W. was to have the right to redeem, at any time when he should be able to do so.

The bill further states that afterwards the defendant, without any notice to N. W. of his intention to sell, or to purchasers of the nature of his title, sold the land by an absolute title, to bona fide purchasers, without notice; and it prays for an account of the rents and profits while held by the defendant, and of the value of the land when sold, and that after deducting the amount for which the land stood as security, the residue may be paid to the plaintiff, who alleges himself to be the assignee, by deed, for a valuable consideration, of all N. W.'s equity in the premises. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1938; Wyman v. Babcock, 2 Curt. C. C. 386.

3. *Bill for Redemption by Purchaser of Equity of Redemption.*

To the judges of the circuit court of the United States, within and for the district of Massachusetts, sitting in equity:

W. H., of S., in the county of P., in the Rhode Island district, a citizen of the state of Rhode Island, brings this his bill of complaint against the president, directors and company of the W. bank, a corporation legally created under the laws of the commonwealth of Massachusetts, and located and transacting business in the city and county of W. in said commonwealth, all citizens of the state of Massachusetts.

And thereupon your orator complains and says: That one S. H., of N., in said county of W., and commonwealth of Massachusetts, on or about the fourteenth day of October, A. D. 1839, was seized in fee simple of, or otherwise well entitled to, certain real estate situated in said N., particularly described in certain deeds of conveyance of the same to said S. H., one from J. F. and S. W., dated December 17, 1821, and one from J. E., dated October 11, 1822, recorded in the registry of deeds for the county of W., book 242, page 32; also a deed from J. E. to said H., dated May 3, 1825, recorded in said registry of deeds, book 248, page 457, copies of which deeds are hereunto annexed, and made a part of this bill marked ———.

And your orator further shows, that the said S. H., on or about said fourteenth day of October, A. D. 1839, made a conveyance of said premises, by way of mortgage, to one H. M. H., of B., in the county of S., and commonwealth of Massachusetts, to secure the repayment of a sum of money, with interest then due from the said S. H. to the said H. M. H.; and that subsequently and on or about the seventh day of March, A. D. 1847, the said H. M. H. transferred and assigned all his interest in said mortgage deed, and in the premises therein described, and in the debt thereby secured, to the defendants. Copies of said mortgage deed, and of the assignment thereof, are hereunto annexed, marked, etc., and made a part of this bill.

And your orator further shows, that after the making of the said transfer, and on the third day of December,

A. D. 1849, the said defendants entered into the possession of the said mortgaged premises, or into the receipt of the rents and profits thereof, and hath ever since continued in such possession and receipt.

And your orator further shows, that since the said mortgaged premises have been in the possession of the defendants, the mills and principal buildings thereon have been destroyed by fire, and that the same were insured by the said S. H., who occupied said premises under lease from said defendants for the benefit of said defendants, as further security for said mortgage debt, and that large sums have been paid to said defendants, on said policies, and that they still hold other policies upon the machinery in said mills, which was also destroyed by fire, which policies have been assigned to said defendants as further security for, and in payment of, said mortgage debt, and that the whole amount of said policies is sufficient to cancel the greater part, if not the whole, of the residue of said debt, which has not otherwise been paid by said S. H., and that if a just account were taken of such payments, and of the sums received or to be received on said policies, which are now due and payable, and of said rents and profits received by said defendants, the whole of said mortgage debt would be found to be justly paid and discharged.

And your orator further shows, that on the ——— day of ———, A. D. 184—, the equity of redemption which the said S. H. retained and owned in said property, was transferred to one A. W. P. by assignments in the course of proceedings under the insolvent law of said commonwealth of Massachusetts, to which the said S. H. was a party, and that said A. W. P., as such assignee of said S. H., by his deed dated the 24th day of June, A. D. 1844, conveyed said equity of redemption to your orator, a copy of which deed is hereunto annexed, marked, etc.

And your orator further shows, that being the owner of said right of redemption in said property, he has applied to said defendants and requested them to come to an account for the rents and profits of the said premises so received by them, and of the moneys received by them from said S. H., for the interest and principal of said debt, and from the policies of insurance, and

to deliver up the possession of said mortgaged premises to him, upon being paid what, if anything, should be found to be justly due to them upon said account, which your orator is and has been ready and willing to pay, and is ready to bring the same into court, if anything shall be found to be justly due to said defendants upon the proper taking of said account. And your orator well hoped that the said defendants would have complied with such requests, as in justice and equity they ought to have done; but the said defendants, acting in concert with divers persons unknown to your orator, refuse to comply therewith, and insist upon holding possession of said estate, and foreclosing your orator's right of redemption therein, and retaining said policies and the amounts received thereon, and said rents and profits, without accounting for the same.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and the said defendants may answer the premises, and that an account may be taken of what, if anything, is due to the said defendants for principal and interest on the said mortgage, and that an account may be taken of the rents and profits of the said mortgaged premises, which have been possessed or received by the said defendants, or by any other person or persons, by their order or for their use, or which, without their wilful default or neglect, might have been received; and also of all sums that may have been paid by said S. H. or others towards the principal and interest of said mortgage debt; and also of the policies of insurance and other securities which the said defendants have received, and of the sums which they have or might have realized therefrom, on account of the principal and interest of said debt, and of the values of such policies and other securities now in their hands, on account of said debt, which they have not sold or turned into money; and that the said defendants be ordered to apply the same to the payment of said debt; and that, if it shall appear that said rents and profits, and the payments and the proceeds of said policies and other securities have been and are more than sufficient to pay the principal and interest of said mortgage debt, that the residue may be paid over to your orator; and that your orator

may be permitted to redeem the said premises, your orator being ready and willing, and hereby offering to pay what, if anything, shall appear to remain due, in respect to the principal and interest on the said mortgage; and that the said defendants may be decreed to deliver up possession of the said mortgaged premises to your orator, or to such person as he shall direct, free from all incumbrances made by them, or any person claiming under them, and may deliver to your orator all deeds and writings in their custody or power relating to the said mortgaged premises, and that your orator may have such further and other relief in the premises as the nature of this case shall require, and to your honors shall seem meet.

May it please your honors to grant unto your orator the subpoena of the United States of America, to be directed to the said president, directors, and company of the W. bank, thereby commanding them at a certain day, and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, abide, and perform such order and decree thereof, as to your honors shall seem meet.

W. H.

By his solicitors, T. A. J., and B. F. B. B. & B., solicitors.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1935.

B. Orders.

1. *Order for Inquiry as to Occupation Rent.*

And it being alleged, that the defendant has been in the actual possession and enjoyment of the said mortgaged premises since the ——— day of ———, it is ordered that the master do inquire, whether the defendant has been so in the possession and enjoyment as alleged of the whole of the premises or any part thereof, and if he so find, it is ordered that he do set an annual value by way of occupation rent thereon during the time of the occupation thereof, and charge the defendant with said value in the said account of rents and profits. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2231.

2. *Order That Account Be Taken of Repairs and Lasting Improvements.*

And it is ordered that the master do take an account of all sums of money laid out or expended by the defendant in necessary repairs and lasting improvements on the premises comprised in the said mortgage, and let interest be computed on the sums which shall appear to have been so laid out in lasting improvements after the same rate of interest as the said mortgage carries, and let what shall appear to be due on the last mentioned account be added to what shall appear to be due for principal, interest, and costs on said mortgage. 3 Dan. Ch. Pl. & Pr. (Perkins' ed. 2232.

3. *Order That Profits Be Applied to Discharge of Mortgage Debt.*

And let what shall appear to be due on the said account of rents and profits be applied, first in discharging the interest, and then in sinking the principal money secured by the said mortgage, and if the same shall break in upon the principal, then rests are to be made from time to time, and interest to be computed only on the residue thereof. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2232.

4. *Order for Inquiry as to Deterioration.*

And it is ordered that the master do inquire whether the mortgaged premises have been deteriorated since the defendant hath been in possession thereof, by the wilful neglect of the defendant in not repairing the same, and to what extent. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2232.

5. *Order To Inquire as to Strip and Waste.*

And it is further ordered that the said master do take an account of all wood and timber cut down and carried off by said C. L. from said mortgaged premises, and of all other strip and waste by said C. L. committed on the said mortgaged premises. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2232.

6. *Order To Take Account of Insurance Premiums.*

That the master do take an account, etc., including the sums the defendant has paid for premiums on the policy of insurance in the pleadings mentioned, with interest thereon at the same rate as the mortgage carries. 3

Dan. Ch. Pl. & Pr. (Perkins' ed.)
2233.

C. *Decrees.*

1. *Decree for Redemption and Account Against Mortgagee in Possession.*

(Among other things.) The court doth think fit and so order and decree, that it be referred to Mr. A. B., one of the masters, etc., to take an account of what is due to the defendant, J. R., for principal and interest on his said mortgage, and to tax him his costs of this suit. And the said master is also to take an account of the rents and profits of the said mortgaged premises come to the hands of the said defendant, J. R., or of any other person or persons by his order or for his use, or which he without wilful default might have received. And what shall be coming on the said account of rents and profits is to be deducted out of what shall be found due to the said defendant, J. R., for principal, interest and costs. And for the better taking the said account, all parties are to produce, etc., as the said master shall direct, who in taking the said account is to make unto the parties all just allowances. And what upon the balance of the said account shall be certified due to the said defendant, J. R., for his principal, interest, and costs, it is ordered and decreed that the said plaintiff, A. O., do pay the same unto the said defendant, J. R., within _____ months after the said master shall have made his report, at such time and place as the said master shall appoint, and that thereupon the said defendant do re-surrender (re-convey, re-assign) the said mortgaged premises unto the said plaintiff A. O., or unto such person or persons as he shall direct, free, and clear of all incumbrances done by him or any person claiming, by, from, or under him. But in default of the said plaintiff's paying unto the said defendant, J. R., what shall be so certified due to him for principal, interest, and costs as aforesaid, after such deductions made thereout as aforesaid, at such time and place as aforesaid, it is ordered that the said plaintiff's bill, as against the said defendant, J. R., do from thenceforth stand dismissed out of this court, with costs, to be taxed by the said master.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.)
2231.

2. *Dismissal of Bill for Redemption, on Failure To Pay Amount Found Due.*

Upon motion, etc., by counsel for the defendant, who alleged that by the decree, dated, etc., it was referred to Mr. A. B., etc., to take an account, etc. That in pursuance of the said decree, the said master made his report, dated, etc., and thereby certified that there would be due to the defendant for principal and interest on his said mortgage, and for his costs, etc., on the _____ day of _____, the sum of \$_____, which the said plaintiff was thereby appointed to pay to the defendant, on, etc., at, etc., between, etc.; that it appears by, etc., that he did attend, etc. (naming the place and time appointed) in order to receive from the plaintiff the said sum of \$_____, but the plaintiff did not, nor did any person on his behalf, attend to pay the said sum, and that the said sum hath not, nor hath any part thereof, been since paid to the defendant, but that the whole thereof still remains due and owing; and upon reading the said decree, the said master's report, etc., this court doth order that the plaintiff's bill do stand dismissed out of this court with costs, to be taxed, etc., and paid to, etc., pursuant to said decree.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.)
2234.

D. *Complaints.*

1. *Complaint To Redeem by Mortgagee Against Mortgagee.*

I. That on the _____ day of _____, 18____, the plaintiff having made to the defendant a bond under his hand and seal, dated that day, conditioned to pay, etc. (state condition of bond), and, being owner in fee (or otherwise) of the premises hereinafter described, made to the defendant a mortgage of even date therewith, to secure the payment thereof, whereby the plaintiff granted, bargained, and sold to the defendant the said premises, upon the condition nevertheless that (state condition of the mortgage), which said premises are (bounded and) described as follows: (insert description from mortgage).

II. That the plaintiff has paid to the defendant all the interest due on said _____ dollars, from the _____ day of _____, 18____, up to the _____ day of _____, 18____; and that on the _____ day of _____,

18—, when (or, and after) the said mortgage became due, he tendered to the defendant the sum of ——— dollars, together with all interest (and costs) due thereon, and has ever since been ready and willing to pay the same; but the defendant refused to receive the same or to deliver up said mortgage to be cancelled.

Wherefore, the plaintiff demands judgment that an account be taken of the amount now due the defendant on said bond and mortgage for principal, interest (and costs); and that the plaintiff may be at liberty to redeem said mortgaged premises upon payment of whatever may be found so due; and that the defendant, upon payment thereof, acknowledge satisfaction of said mortgage, and discharge the same of record. 1 Abb. Forms 604.

2. Complaint To Redeem by Lessee.

I. That on the ——— day of ———, 18—, the defendant (mortgagor) being the owner in fee of the following described premises, leased the same to the plaintiff by an indenture dated on that day, a copy of which is annexed as a part of this complaint; and that by virtue of said lease the plaintiff entered upon, and ever since has been, and still is, in possession of said premises, and is vested with the unexpired term thereof; which premises are (bounded) and described as follows: (description).

II. That on the ——— day of ———, 18—, said (mortgagor) made to the defendant (mortgagee) a mortgage upon the same premises, to secure ——— dollars, payable on the ——— day of ———, 18—.

III. That on the said day the mortgage became due, but has not been paid; and that said (mortgagee) has commenced an action (or proceedings under the statute) to foreclose the same for such default.

IV. That on the ——— day of ———, 18—, the plaintiff tendered ——— dollars to said (mortgagee), being the amount due on said mortgage, with interest, and the costs of said action (or proceeding) up to that time, in redemption of said mortgage, and has ever since been ready and willing to pay the same; and did then request him to assign the same to the plaintiff, but he refused so to do.

Wherefore, the plaintiff demands judgment that he be allowed to re-

deem the said mortgage upon paying to the defendant (mortgagee) the amount due upon the mortgage; and that upon such payment the defendant, by an assignment duly executed and acknowledged by him, assign said bond and mortgage to the plaintiff. 1 Abb. Forms 605.

E. Order of Reference To Take Account in an Action To Redeem.

This cause coming on to be tried at a special term of this court held on the ——— day of ———, 18—, before J. J., one of the justices thereof, and it appearing that the taking of an account is necessary for the information of the court before judgment; thereupon, on hearing the counsel for the respective parties, ordered, that it be referred to R. F., esq., as sole referee, to take and state an account between the several parties to this action, in the manner and under the directions following to-wit:

That he compute the amount due upon the bond and mortgage executed by the plaintiff to the defendant, Z., mentioned in the complaint, from the 8th day of March, 1839, down to which time the interest appears to have been paid.

That he ascertain (from the deeds or otherwise) the consideration paid by the purchasers and defendants, X. and Y., from the said Z., at the auction sale of the said premises made on the 7th of November, 1850 (proceeding to state the mode of apportioning the redemption money among them).

That he open and state an account with each of such defendants, in which he is to allow such party his proportion of the mortgage money so ascertained as aforesaid, with interest; and also all taxes and assessments paid by him or those under whom he claims, upon the lots now held by him; and also any sum paid for necessary repairs upon the same, and any amount expended for lasting improvements, with interest on such sums respectively; and that he state and charge such party with any rents and profits of such lots received by him, or those under whom he claims, or by any one on his or their belief, or which could have been received without wilful default, with interest.

And upon the coming in and confirmation of the report, the action may be

brought on for final determination. 2 Abb. Forms 672.

F. Judgment for Redemption, Ordinary Form.

(Recitals of proceedings.)

Therefore, it is adjudged, that the defendant pay unto the said plaintiff _____ dollars, the amount which is so found and reported due to him, for principal and interest as aforesaid (with _____ dollars for the said value of his improvements), and with _____ dollars costs, hereby adjudged to the plaintiff, within six months after the entry of this judgment, and service of notice thereof (with interest thereon from the date of the above-mentioned report, until the time of such payment), at (specifying place and hours for paying); and that the said defendant do surrender the said mortgaged premises unto the said plaintiff, or unto such person or persons as he shall direct, free and clear of all incumbrances, done or suffered by him, or any person claiming by, from, or under him, and deliver unto the said plaintiff, on oath, under the direction of the court if the parties cannot agree in respect thereto, all deeds and writings in his custody or power, relating to the said mortgaged premises. But in default of the said plaintiff's paying unto the said defendant what is so reported to be due to him for principal, interest (improvements), and costs as aforesaid, it is ordered, that this action do from thenceforth stand dismissed out of this court, with costs. 2 Abb. Forms 573.

G. Affidavit by Mortgagee of Non-payment of Money.

Y. Z., the above defendant, being duly sworn, says: .

That he has not, nor has any other person or persons on his behalf, at any time heretofore received or been paid the sum of _____ dollars, or any part thereof, which by the judgment made in this cause, on the _____ day of _____, 18____ (and the referee's report dated _____, made in this cause pursuant to the said judgment), was ordered and appointed to be paid to this deponent; but that the said sum of _____ dollars, with interest, now remains due and owing to this deponent upon the mortgage in the said judgment mentioned. 2 Abb. Forms 576.

H. Final Order Dismissing Action for Redemption.

Upon the judgment in this cause, entered on the _____ day of _____, 18____, and on reading and filing due proof of service upon the said plaintiff more than six months since, of notice of the entry of the same (and of a copy of the bill of costs as taxed), and on reading and filing the affidavit of the said defendant, showing that the amount thereby required to be paid, has not been paid; but that the whole of the said sum of _____ dollars still remains due and owing from the plaintiff to the said defendant for his principal, interest, and costs; on motion of O. P., of counsel for the defendant, and on hearing Q. R., of counsel for the plaintiff, in opposition;

It is ordered and adjudged, that this action be, and hereby is dismissed, with costs. 2 Abb. Forms 576.

MOTIONS.

I. Notices of Motion, 855

- A. *General Form (Common Law)*, 855
- B. *General Form (Code)*, 855
- C. *General Form (Equity)*, 855
- D. *For Order To Enter Order Nunc Pro Tunc*, 855
- E. *Countermand of Notice*, 856
- F. *Order To Show Cause*, 856

II. Affidavits, 856

- A. *General Form*, 856
- B. *Jurats*, 856
 - 1. *Where Deponent Is a Lunatic*, 856
 - 2. *Where Deponent Is a Foreigner*, 856
 - 3. *Where Deponent Is Blind or Illiterate*, 856

III. Motion in Writing, 856

CROSS-REFERENCES:

ADMIRALTY:

Notice of Motion on Affidavit To Move for Sale of Ship and Cargo.

AMENDMENTS AND JEOPAILS:

Notice of Motion for Leave To Amend;

Notice of Motion for Leave To Amend Declaration;

Notice of Motion for Leave To Amend Complaint;

Notice of Motion To Amend Complaint by Striking Out Co-plaintiffs and Making Them Defendants;

Notice of Motion To Amend Complaint by Adding Defendant;

Notice of Motion for Leave To Serve Proposed Original or Amended Pleading;
 Notice of Motion To Amend by Correcting Fictitious Name;
 Affidavit To Obtain Leave To Correct Fictitious Name.

APPEALS:

Application for Appeal;
 Petition for Appeal;
 Notice of Motion To Stay Proceedings;
 Notice of Motion for Re-argument of Appeal;
 Notice of Motion To Dismiss Appeal (a, b);
 Motion by Appellant Dismissing Appeal;
 Motion To Dismiss Appeal.

ARREST IN CIVIL CASES:

Notice of Motion To Vacate Order of Arrest;
 Notice of Motion To Discharge Defendant From Arrest;
 Notice of Motion To Reduce Bail;
 Notice of Motion for Enlargement of Time To Surrender;
 Notice of Motion To Exonerate.

ARREST OF JUDGMENT:

Notice of Motion in Arrest of Judgment.

ATTACHMENT:

Notice of Motion To Set Aside or Discharge Attachment;
 Notice of Motion To Discharge Attachment on Giving Security.

ATTORNEYS:

Affidavit for Order Requiring Plaintiff's Attorney To Produce His Authority To Sue in Ejectment.

BILLS OF PARTICULARS:

Notice of Motion To Preclude Evidence by Reason of Defective Bill;
 Notice of Motion for Judgment of Dismissal for Not Furnishing Bill of Particulars.

CERTAINTY IN PLEADING:

Notice of Motion To Make Pleadings More Definite and Certain.

CERTIORARI:

Notice of Motion for Certiorari.

CHANGE OF VENUE:

Notice of Motion To Change Venue Pursuant to Demand;
 Notice of Motion by Defendant To Change Venue;
 Notice of Motion by Plaintiff To Change Venue.

CHOICE AND ELECTION OF REMEDIES:

Notice of Motion for Order That Complainant Elect.

CONSOLIDATION OF ACTIONS:

Notice of Motion To Consolidate Actions.

CONTEMPT:

Notice of Motion for Attachment for Contempt.

COSTS:

Motion in Supreme Court for Costs;
 Motion To Retax Costs.

CROSS-BILL:

Notice of Motion for Order To Stay Proceedings in Original Suit (Cross-Bill Filed).

DEFAULT:

Notice of Application for Judgment on Default;
 Notice of Motion To Set Aside Default as Irregular;
 Notice of Motion To Set Aside Regular Default.

DEPOSIT IN COURT:

Notice of Motion for Payment Into Court;
 Notice of Motion for Payment of Part of Claim, or for Delivery of Property.

DEPOSITIONS:

Commission To Examine Witness for Purpose of Motion.

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Notice of Motion for Judgment as in Case of Nonsuit;
 Notice of Motion To Set Aside Nonsuit, and for New Trial;
 Special Motion by One Defendant To Dismiss for Want of Jurisdiction of Person;
 Notice of Motion That Bill Be Dismissed for Want of Prosecution.

DIVORCE:

Notice of Motion for Alimony and Costs.

DUPPLICITY:

Notice of Motion To Compel Election Between Several Counts for Same Cause of Action.
 Notice of Motion To Take Evasive Answer Off File;

EQUIVY JURISDICTION AND PROCEDURE:

Notice of Motion for Decree;
 Notice of Motion To Vacate Enrolment of Decree.

FILING:

Motion To Dismiss, Failure To File Pleading.

FRIVOLOUS AND SHAM PLEADINGS:

Notice of Motion for Judgment on Frivolous Pleadings;
 Notice of Motion To Strike Out Sham Plea;

Notice of Motion To Strike Out Sham Answer;

Notice of Motion To Strike Out One Defense as Sham, and for Judgment on Other as Frivolous.

GARNISHMENT:

Motion To Dismiss Writ by Garnishee, Debt, if Any, a Balance in Partnership Account.

INJUNCTIONS:

Notice of Motion for Special Injunction;

Notice of Motion To Dissolve Injunction;

Notice of Motion for Injunction;

Notice of Motion for Injunction in Interpleader;

Order To Show Cause Why Injunction Should Not Issue, With Restraint Meanwhile;

Preliminary Injunction, With Order To Show Cause;

Injunction Against Banking Corporation, With Order To Show Cause Why Receiver Should Not Be Appointed;

Notice of Motion To Dissolve or To Modify Injunction;

Notice of Motion To Ascertain Damages by Injunction;

Notice of Motion To Confirm Report of Referee on Damages by Injunction.

ISSUES IN PLEADING AND PRACTICE:

Notice of Motion for an Issue at Law.

JUDGMENTS:

Notice of Motion for Judgment on Frivolous Demurrer;

Notice of Motion for Judgment Dismissing Action;

Notice of Motion for Judgment on Failure To Reply;

Notice of Motion for Judgment Non Obstante Veredicto;

Notice of Motion To Set Aside Final Judgment as Irregular;

Notice of Motion To Set Aside Interlocutory Judgment as Irregular.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Notice of Motion To Set Aside Fieri Facias as Irregular;

Notice of Motion To Set Aside Capias Ad Satisfaciendum as Irregular;

Notice of Motion To Set Aside Execution.

JUDGMENTS AND DECREES, REVIVAL OF:

Notice of Motion To Vacate Order Reviving Judgment;

Notice of Motion To Revive Dormant Judgment.

JUDICIAL SALES:

Notice of Motion To Compel Purchaser To Complete His Purchase.

JURIES AND JURORS:

Notice of Motion for Foreign Jury;

Notice of Motion for Special Jury (a, b);

Application for Elisors To Summon Special Jury in Criminal Case.

MANDAMUS:

Notice of Motion for a Mandamus (a, b).

NEW TRIAL:

Notice of Motion for a New Trial, General Form;

Notice of Motion for New Trial on the Merits;

Notice of Motion To Set Aside Verdict and for New Trial for Irregularity;

Order To Show Cause on Motion for a New Trial on Judge's Minutes.

OFFICERS:

Notice of Motion of Substitution of Officer's Successor.

ORDERS OF COURT:

Notice of Settlement of Order;

Notice of Motion To Discharge Order for Irregularity.

PARTIES:

Notice of Motion for Leave That Wife Answer Separately.

PAUPERS:

Notice of Application for Admission To Prosecute in Forma Pauperis.

PRIVILEGE:

Order To Show Cause Why Defendant Should Not Be Discharged on Ground of Privilege.

PROCESS:

Notice of Motion To Set Aside Capias for Irregularity.

RECEIVERS:

Notice of Motion for Appointment of Receiver;

Notice of Motion To Review Appointment of Receiver;

Notice of Motion To Instruct Receiver;

Notice of Motion To Discharge Receiver;

Notice of Receiver's Petition for Directions as to Distribution.

RECOGNIZANCES:

Notice of Motion for Exoneretur of Bail.

REFERENCES:

Notice of Motion for Reference;

Notice of Motion To Set Aside Report of Referee;
Notice of Motion To Refer Cause (Code).

REMOVAL OF CAUSES:

Notice of Motion for Removal of Cause.

REVIVOR:

Notice of Motion To Revive on Death or Disability of Plaintiff;
Notice of Motion To Revive Action, or To Serve Supplemental Complaint;

Notice of Motion To Abate Action Unless Revived;

Notice of Motion on Behalf of Plaintiff on Death or Disability of Defendant.

SECURITY FOR COSTS:

Notice of Motion To File Security for Costs.

SERVICE OF PROCESS AND PAPERS:

Affidavit of Service of Notice of Motion.

SHERIFFS AND CONSTABLES:

Notice of Motion To Stay Proceedings Against Sheriff;

Notice of Motion To Set Aside Attachment Against Sheriff as Irregular.

STAY OF PROCEEDINGS:

Notice of Motion for Injunction To Stay Proceedings at Law;

Order To Stay Proceedings for Motions in General.

STRIKING OUT:

Notice of Motion To Strike Out Counts;

Notice of Motion To Strike Out Plea;

Notice of Motion To Strike Out Irrelevant Answers;

Notice of Motion To Strike Out Irrelevant or Redundant Matter.

SUPPLEMENTAL PLEADING:

Notice of Motion for Leave To File Supplemental Complaint.

SUPPLEMENTARY PROCEEDINGS:

Notice of Motion for an Attachment in Supplementary Proceedings.

TIME TO PLEAD:

Notice of Motion To Enlarge Time To Plead.

TRIAL:

Notice of Motion To Strike Cause From Calendar for Not Serving Papers.

I. Notices.

A. *Notice of Motion, General Form.*
— court. C. D. ads. A. B.

Sir, please to take notice, that upon

the affidavit (or affidavits), with a copy (or copies) whereof you are herewith served, this court will be moved, at the next special term, to be held at the ——— in the city of ———, on the first Tuesday of ——— next, that (state the relief to be moved for). Dated, ———, 18——.

Yours, etc.,

G. H., defendant's attorney.

To E. F., esq.,

Plaintiff's attorney.

Burr. App. 205, §399.

Note.—It has not been definitely laid down when an application for an order should be by petition and when by motion. There is propriety, it would seem, in moving by petition when the application is in behalf of a person not already named as a party, or in behalf of one not sui juris.

B. *Notice of Motion, General Form (Code).*

(Title of the cause.)

Please take notice, that on the affidavit of which a copy is herewith served, the undersigned will move the court, at a special term to be held at ———, on the ——— day of ———, 18——, at ——— o'clock in the ——— noon, or as soon thereafter as counsel can be heard (state the relief to be moved for).

(Signature.)

(Date.)

(Address.)

2 Abb. Forms 229.

C. *Notice of Motion, General Form (Equity).*

In chancery. (Title of cause.)

Take notice that this honorable court will be moved, for and on behalf of the plaintiff, on the ——— day of ———, instant (or next), that (state the relief to be moved for). Dated this ——— day of ———, 18——.

A. B., plaintiff's solicitor.

To Mr. ——— and Mr. ———,

Solicitors for the defendants.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2149.

D. *Notice of Motion for Order To Enter Order Nunc Pro Tunc.*

(Commencement of notice of motion as in I. B.) That the order made in this cause, dated on the ——— day of ———, 18——, which has been drawn up, but by mistake omitted to be entered within the time limited therefor (by the rules of this court),

may be entered nunc pro tunc. 2 Abb. Forms 693.

E. Countermand of Notice.

(Title of the cause.)

Take notice, that I hereby countermand the notice of (designating it), dated on the _____ day of _____ last, and heretofore served on you in this action, (and I hereby offer to pay your costs of opposing said motion).

(Signature.)

(Date.)

(Address.)

2 Abb. Forms 693.

F. Order To Show Cause, General Form.

(Title of cause.)

On the foregoing affidavit (and on the pleadings), (and demand therein mentioned), let the plaintiff show cause at a special term to be held at _____ on the _____ day of _____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, why (state the relief to be moved for) should not be (state the relief to be granted), (and why the defendant should not have the costs of this motion), (and such other relief as may be just). (And until the determination of this motion that all proceedings on the part of the plaintiff be stayed.) (And particularly [stating any proceeding desired to be stayed].) 2 Abb. Forms 245.

Note.—This form is placed here because in many jurisdictions the order to show cause serves principally as a short notice of a motion.

II. Affidavits.

A. Affidavit, General Form.

(Title.) (City and) county of _____, ss.

John Doe, of _____ (and, if there are two deponents, Richard Roe of _____, severally) being duly sworn, says (each for himself) that he is an agent of the plaintiffs (or other description of the deponent).

(Statement of facts.)

John Doe,

Richard Roe, his+mark.

Sworn (or, affirmed) before me, this _____ day of _____, 186—,

(Official designation.)

1 Abb. Forms 4.

Note.—Omit title if action not pending.

Note.—It is a common fault in draw-

ing affidavits to state matters in inducement previous to the beginning of the oath, (as "John Doe, one of the parties above named, being duly sworn, on oath, says," instead of "John Doe, being duly sworn, on oath, says, he is one of the parties above named"). This has carried reversible error into records.

In some jurisdictions a practice has grown up of attaching to the affidavit by a party in support of a motion a prayer for the relief desired similar to that in case of a petition.

B. Jurats.

1. Jurat to Affidavit, Where Deponent Is a Lunatic.

Sworn before me, this _____ day of _____, 18—, I having first examined the deponent, a lunatic, as to the state of his mind, and he appearing to me to be now of sound mind, capable of understanding, and actually understanding, the nature and contents hereof.

(Official designation.)

1 Abb. Forms 6.

2. Jurat, Where Deponent Is a Foreigner.

Sworn before me, this _____ day of _____, 18—, I having first sworn M. N., an interpreter, to interpret truly the same to the deponent, who is a foreigner not understanding the language, and he having so interpreted the same to deponent.

(Signature as above.)

1 Abb. Forms 6.

3. Jurat to Affidavit, Where Deponent Is Blind, or Illiterate.

Sworn before me, this _____ day of _____, 18—, the same having been in my presence (or, by me) read to the deponent, he being blind (or, illiterate), and he appearing to me to understand the same.

(Signature as above.)

1 Abb. Forms 6.

III. Motion in Writing.

For forms, see cross-references above under this title, and 2 STANDARD PROC. 900, 915.

Note.—The statutes of some states require certain motions to be in writing and to be filed in the action. This filing of a written motion is not the making of a motion; it must be called up in court on notice the same as any other motion.

MULTIFARIOUSNESS.*Demurrer in Equity for Multifariousness (a).*

The demurrer of C. D., defendant, to the bill of complaint of A. B., complainant.

This defendant (or, these defendants respectively), by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth (or, do) demur thereto, and for cause of demurrer sheweth (or, show) that it appears by the said bill that the same is exhibited by the said complainant against this defendant and T. M., W. P. and N. W. as defendants thereto, for several distinct matters and causes, in many whereof as appears by the said bill, this defendant is in no way interested; and, by reason of such distinct matters, the said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof; and by joining distinct matters together which do not depend on each other, the proceedings in the progress of the said suit will be intricate and prolix, and this defendant put to unnecessary charges and expenses, in matters which in no way relate to or concern him. Wherefore this defendant (or, these defendants) demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained. 2 Barb. Ch. Pr. 406.

Demurrer in Equity for Multifariousness (b).

"That it appears by the said bill that the same is exhibited by the complainant Isaac N. Jenness, and the several other persons therein named as complainants thereto, for distinct matters and causes, in several whereof, as appears by the said bill, the said complainants are not in any manner in common or jointly interested or concerned, and that the bill is multifarious, and that the said complainants have not, in and by their said bill, made or stated such a case as entitled them in a court of equity to any relief from or against this defendant touch-

ing the matters contained in said bill, or any of such matters." *Jenness v. Smith*, 64 Mich. 91, 30 N. W. 909.

MUNICIPAL CORPORATIONS.**I. Complaints, 857**

- A. *General Form, Against City*, 857
- B. *Against Municipality for Neglect of Excavation in Street*, 858
- C. *Against City or County for Damage Done by Riot*, 858
- D. *To Recover Agreed Damages, Property Illegally Taken*, 859
- E. *To Recover Amount of Interest on Coupon*, 859

CROSS-REFERENCES:**DECLARATION AND COMPLAINT:**

- Commencement, Where Town Is Plaintiff;
- Commencement, Where Town Is Defendant;
- Commencement of Declaration, Where County Is Plaintiff;
- Commencement, Where County Is Defendant;
- Commencement of Declaration, Where Corporation Is Plaintiff;
- Commencement of Declaration, Where Corporation Is Defendant.

PAUPERS:

- Declaration Against Town for Board of Pauper;
- Complaint Against Town for Medical Services to Pauper.

SPECIAL ASSESSMENTS:

- Complaint To Enjoin a Municipal Corporation From Deeding Land Sold for Illegal Assessment.

I. Complaint.

- A. *Complaint Against City, General Form.*

The plaintiff complaining of the defendant, a municipal corporation created by the laws of this state, alleges:

- I. (Set forth cause of action.)

II. And this plaintiff further shows that heretofore, and on or about the _____ day of _____, he presented in writing to the comptroller of the city of New York the claim hereinbefore set forth, upon which this action is founded, for adjustment, and that at least twenty days have elapsed since such presentation of the claim.

III. And this plaintiff further shows that heretofore, and on or about the _____ day of _____, and after the expiration of the said twenty days, he

made a second demand, in writing, upon the said comptroller, for the adjustment of the said claim, but the said comptroller has hitherto wholly neglected and refused to make an adjustment or payment thereof. 1 Abb. Forms 139.

Note. Use care in examining charter and statutes for special provisions as to acts preliminary to action.

*B. Complaint Against Municipality.
Neglect of Excavation in Street.*

I. That the defendants are a municipal corporation, duly organized under the laws of this state.

II. That, among other things, it is by their charter made their duty to keep the streets in said city in good order, and at all times properly protect any excavations made in said streets. That they accepted said charter imposing said duty, and undertook the performance thereof prior to the year 1855.

III. That a certain street in said city, known as _____, was and is much traveled and used by the citizens thereof and others; so much so, that said duty of said defendants as to said street was, and became at the time thereafter mentioned, a matter of public and general concern.

IV. That on or about the _____ day of _____, 18____, a deep and dangerous hole or trench was excavated in said street, and suffered by the defendants, during a night on or about said day, to remain open, exposed, and without proper protection or notice to citizens and travelers against accidents.

V. That the plaintiff on the night aforesaid was lawfully traveling on said street, and, wholly unaware of danger, was accidentally, and without fault or negligence on her part, precipitated into said hole, whereby she received great bodily injury, and was made sick, sore, lame, and disabled for the space of _____; during all which time she thereby suffered great pain, and was thereby then and there hindered from attending to her business and domestic affairs, and has ever since remained and continued sick, sore, lame, and disabled; and was put to great expense in trying to be cured, and has suffered, and still continues to suffer great pain of body by means of such injuries, to her damage _____ dollars. 1 Abb. Forms 446.

*C. Complaint Against City or County
for Damage Done by Mob or
Riot.*

I. That at and before the times hereinafter mentioned, the plaintiff was the occupant of the store and basement, with appurtenances, in the building known as No. _____, in _____ street, in _____, and therein he conducted a business as a gunsmith, and dealer in guns, pistols, gun materials and fittings, and military equipments, fishing tackle, apparatus, and equipments.

II. That on the _____ day of _____, 18____, and less than three months before the commencement of this action, a mob of disorderly and riotous persons collected together in said (town) and created a riot.

III. That on said day the rioters broke into the plaintiff's said store and premises, and carried away therefrom and destroyed his goods and merchandise. (That a number of articles he was able to and did save from the rioters, by concealing them in the said basement. That he used all diligence to prevent the breaking open of his store and the destruction and injury of his aforesaid property, but was unable to prevent the same.)

IV. That on, etc., being apprised of a threat or attempt on the part of the rioters to destroy or injure his property, he immediately notified the mayor of said city (or, the sheriff of said county; or where the action is against the mayor or sheriff, notified the defendants) of all the facts brought to his knowledge in relation to such threat or attempt.

V. That the said defendants, though having due notice of the said riot immediately upon its breaking out, did not themselves protect the plaintiff's property, but neglected so to do.

VI. That the value of his said goods and chattels so destroyed or injured by the said rioters was _____ dollars, after deducting the value of all goods returned to him by the police, as retaken from the rioters; and he also sustained _____ dollars damage, by the breaking of his store, and injury to the building, and the breaking up of his business for _____ days thereafter by reason of the destruction of his stock of goods. 1 Abb. Forms 466.

D. Complaint To Recover Agreed Damages for Property Illegally Taken for Public Improvement.

1. That the defendant is a body corporate, duly created and organized by and under the laws of said state.

2. That heretofore, to-wit, on the eighth day of February, 1873, plaintiff was seized and possessed in fee simple of a certain lot or parcel of land situate in the town of Chester, at the southeast corner of Main and Columbia streets, containing a frontage on said Main street of twenty-three feet, and a depth on Columbia street of two hundred and nineteen feet.

3. That at the date above named, defendant, through its officers and agents, and for the purpose, as it is alleged, of widening said Main street, entered upon and seized and dedicated to the public use the whole of the front of said lot, bounding a distance of twenty-three feet on Main street and to the depth of twelve feet, against the protest and objections of plaintiff, and to his damage \$500.

4. That plaintiff, at the time of said seizure, had begun to erect a certain building of brick on his said premises; and in consequence of said seizure of a part thereof was compelled to erect the same on more unfavorable ground, whereby the expense of erecting was greatly increased, and to the amount of \$140.

5. That plaintiff, pursuant to the directions and ordinances of said defendant corporation, was also put to the further expense, in consequence of the seizure of his said premises, of making and erecting a new sidewalk or pavement upon the portion of the premises so seized, at a cost of \$20.

6. That at the time of said seizure and dedication of plaintiff's said premises, and at divers times afterwards, the defendant, by its corporate authorities, faithfully promised and agreed with plaintiff, in consideration that he would acquiesce in said seizure and dedication to public use of the premises and abandon all further resistance and objection to said seizure and dedication of the same to public use, that defendant would pay to him the full value of said premises so seized, and also the additional expenses incurred by him in the erection of his building and sidewalk; but although plaintiff, relying upon said promises,

did acquiesce in the dedication to public use of said premises, the defendant has neglected and refused, and still neglects and refuses, to pay the value of said premises according to its said promises, and plaintiff alleges that said premises so seized and dedicated and his increased expenses of sidewalk and building were reasonably of the value of \$660, and that defendant should be required to pay said sum, with interest, by way of damage for its detention.

Wherefore plaintiff demands judgment against said defendant for relief, in that defendant be required to pay to him the value of his said premises and his expenses, pursuant to its promise and undertaking, and costs. *Coleman v. Chester*, 14 S. C. 286.

E. Complaint To Recover Amount of Interest Coupon.

"That on the 1st day of January, 1870, at Nebraska City, in said county, the said defendant made and issued its certain bond, dated on said day at said place, whereby, for value received, it promised twenty years from date to pay the bearer one thousand dollars at the Broadway Bank in the city of New York, with interest payable semi-annually at said bank, at the rate of eight per cent. per annum, according to divers coupons thereto attached, which bond, in order to distinguish it from others of like character, was marked No. ———; that attached thereto was, among others, a certain coupon, bearing date on the day and at the place aforementioned, made by said county, whereby it promised to pay to the bearer thereof forty dollars at said bank, on the 1st day of July, 1870, for the interest then and there to be due on said bond, which coupon is in words and figures as follows:—

Nebraska City, January 1, 1870.

\$40.

"The county of Otoe, in the State of Nebraska, promises to pay to the bearer forty dollars, at Broadway Bank, New York, on the 1st day of July, 1870, being for six months' interest on bond No. ———.

"A. Stout,

"President board county commissioners.

"George R. McCallum, clerk.

"That before said coupon by its terms became due and payable, the

said bond, together with said coupon, came to and for value became the property of this plaintiff, who thereupon became, and has ever since been and still is the true and lawful holder thereof; that when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein mentioned, and payment demanded, but refused because said defendant had not nor did it ever have funds at said place; that the said plaintiff has often and in a friendly manner, applied to said defendant, at its treasury, in Nebraska City, in said county, to pay said coupon, but it has refused to do so, notwithstanding it is justly indebted thereon to this plaintiff in the full sum of forty dollars, with interest from the first day of July, 1870." Chicago, etc. R. Co. v. Otoe County, 1 Dill. (U. S.) 338.

Note.—Held, in federal courts, the plaintiff is not bound to show preliminary steps to issue bonds. Want of authority to issue is a matter to be pleaded in defense.

MURDER.—See **HOMICIDE.**

NE EXEAT.

- I. Affidavits, 860
 - A. *In Equity*, 860
 - B. *Under Code*, 860
 - C. *In Action for Accounting*, 861
- II. Application by Petition, 861
- III. Writ, 862
- IV. Indorsement, 863
- V. Order To Show Cause Against, 863
- VI. Order Setting Aside, 863
- VII. Affidavit To Set Aside for Neglect To Prosecute, 863
- VIII. Bond on Arrest, 863
- IX. Affidavit of Sheriff to Copy of Bond, 864
- X. Returns, 864
 - A. *Defendant Arrested*, 864
 - B. *Defendant on Bail*, 864

CROSS-REFERENCE:

BILLS AND ANSWERS:

- Prayer for Writ of Ne Exeat Reg-
no;
Prayer for Ne Exeat Respublica.

I. Affidavits.

- A. *Affidavit To Obtain a Ne Exeat in Equity.*

Commonwealth of Massachusetts, county of Suffolk, ss.:

I, W. B. R., one of the above-named

plaintiffs, being duly sworn, depose and say that the above defendant is actually and justly indebted to the said plaintiff in the sum of \$———, for (here state the ground and circumstances of indebtedment); for the recovery of which the said plaintiffs, did, on the —— day of ——, file their bill of complaint in the office of —— for said county of Suffolk, against the said defendant; to which said bill the said defendant has not yet answered; and being so indebted, the said defendant has lately declared in the presence of each of the plaintiffs, and informed them, and this deponent verily believes, that he will without delay leave this commonwealth and go to live and reside in parts beyond the seas (or in California or Texas), out of the jurisdiction of this court. And this deponent has no doubt, but verily believes, that if the said defendant should be allowed to depart out of this commonwealth, the plaintiffs' debt will either be entirely lost to them, or the recovery thereof greatly endangered.

W. B. R.

Sworn, etc. (Certificate of allowance.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2180.

B. Affidavit To Obtain Ne Exeat Under Code.

I, A. B., the plaintiff in the above entitled action, being duly sworn, says, that (here state cause of action, see Forms II, A, 1; II, L, in **Attachment**, this volume).

II. (State the condition of the cause, *e. g.*, thus): That the said defendant has not as yet served any answer or demurrer to the complaint herein, which was served on him on the —— day of ——, 18——, as deponent is informed by his attorney herein, nor has he given any notice of appearance herein.

III. That being so indebted (or, liable) to this deponent, the said defendant has lately threatened and given out that he will speedily leave this state, and go abroad to —— (here state facts substantiating this allegation).

IV. And this deponent verily believes, that if the said defendant should be suffered to leave this state, this deponent will either lose his said debt, or the same will be very much endangered, and it will be difficult, if not

impossible, for this deponent to recover the same. 2 Abb. Forms 306.

C. Affidavit To Obtain Ne Exeat, in an Action for Accounting.

A. B., the above named plaintiff, being duly sworn, says:

I. That the said Y. Z., formerly entered into an agreement with this deponent to fit out, and put a cargo on board of, a certain vessel, called the M., for a voyage from N. Y. to the island of J., and from such island to N. O. That, accordingly, such vessel was engaged and fitted out, and a cargo put on board; and that the said defendant Y. Z. went out as master and supercargo of such vessel and her cargo, with full power to dispose of the same.

II. That the said Y. Z. proceeded to the said island of J., and there sold and disposed of the cargo of such vessel, and, with the proceeds thereof, purchased a quantity of rum and sugar, and loaded the vessel with the same, and therewith proceeded to N. O. aforesaid, where he sold and disposed of such cargo, and received the proceeds thereof.

III. And, further, this deponent says, that the said Y. Z. has rendered to this deponent sundry accounts of his transactions and dealings in and about such adventure, and the avails and proceeds thereof; and this deponent has also rendered to the said Y. Z. divers accounts relating to the same, which have been acquiesced in and agreed to by the said Y. Z. And this deponent says, that upon such accounts, respectively, it appears that the said Y. Z. is justly indebted to this deponent in the sum of _____ dollars, by the admission of the said Y. Z.

IV. But this deponent says, that such accounts rendered by the said Y. Z. are, in several respects, erroneous, and contain divers improper and over-charges against such adventure and this deponent, and have omitted divers proper credits to be given in account with the same. And this deponent verily believes, that upon a fair and just account to be made up, stated, and settled between this deponent and the said Y. Z. in relation to such adventure and transactions, he, the said Y. Z. would be found justly and truly indebted to this deponent in the sum of _____ dollars; for which debt, or sum of

money, this deponent has not received any security or satisfaction.

V. And this deponent further says that he has lately commenced an action in this court against the said Y. Z., setting forth the premises fully and at large, and specifying various errors, over-charges, and omissions in such accounts rendered by the said Y. Z., and praying that an account may be truly settled and stated under the direction of this court, and that this deponent may be paid the balance which shall be found due thereupon; in which action the said Y. Z. has appeared, but has not answered.

VI. And this deponent further says, that the said Y. Z. has declared his intention to leave the state of New York, and to proceed to England, where he intended to settle and reside; and that the said Y. Z. on or about the _____ day of _____ last, informed one M. N. to that effect, as by the affidavit of the said M. N. appears. And this deponent verily believes that if the said Y. Z. goes out of the state of New York, according to his intention, he will not return, and thereby this deponent will be in great danger of losing his said debt. 2 Abb. Forms 307.

II. Application for Ne Exeat by Petition.

To the justices of the _____ court of _____.

The petition of J. J., the plaintiff, shows:

I. That your petitioner is plaintiff in the above entitled action. That such action was commenced on the _____ day of _____, by the service of a summons, together with a copy of the complaint, upon the above named defendant, R. J. That the object of such action was to obtain a limited divorce in favor of the said plaintiff against the said defendant, upon the ground of cruel and inhuman treatment of said plaintiff, your petitioner, by said defendant, and also upon the ground of such conduct on the part of said defendant towards your petitioner, his wife, as renders it unsafe and improper for her to cohabit with him, said defendant; as more fully appears by the pleadings now on file, to which, for greater certainty, your petitioner refers.

II. That the defendant answered the complaint in this action, and the

issues were tried before Hon. M. N., one of the justices of this court, without a jury, at a special term thereof, on the _____ day of _____ last past. That no decision thereon has yet been made or rendered by said justice to the knowledge or belief of your petitioner, nor has any final judgment in said action yet been made or entered.

III. That by an order made and entered in said action on the _____ day of _____ last past, now on file in the office of the clerk, and to which your petitioner, for greater certainty, refers, it was, among other things, provided, "that upon Saturday of each and every week during the pending of this action, and until the final judgment therein, or the other or further order of this court, said defendant is ordered and directed to pay to the said plaintiff the sum of ten dollars as alimony during the pending of this action, and for the education of, and support of, the children therein mentioned;" and also, "that during the pending of this action, and until the other or further order of this court, the defendant R. J. is hereby enjoined and restrained from removing the said children in the complaint in this action named and described, or any, or all of them, from the custody, care, or control of the said plaintiff, J. J., or in any way or manner interfering with her custody and care of them, or either of them; and until such judgment or order, the custody and control of the said children is, by this order, awarded to the said plaintiff, J. J."

IV. That a copy of such order was duly served on said defendant, and that such order has not in any way been altered or modified.

V. That since the trial of such action the defendant has, from time to time, paid to your petitioner the moneys to her directed to be paid by said order; but that, on the _____ day of _____, instant, between the hours of six and eight in the morning, the said defendant did enter the premises occupied by your petitioner with her children, and, against the remonstrance and objection of your petitioner, forcibly took and removed therefrom all the furniture and household utensils heretofore therein remaining, and caused the same to be sent without the state of New York, to _____, in the state of _____.

VI. That the said defendant has

also, pending this action, repeatedly stated to your petitioner that he had no real estate in the state of New York, and no personal property, except his printing type, which would soon be worn out; and that he was not bound to support your petitioner, unless he wished to. That he had rented a place in said _____ for a year, and that he meant to reside and live there; and threatened also that he would remove your petitioner's children out of the jurisdiction of this court; and she verily believes, from such statements and threats, and such removal of such furniture, as above stated, that he now intends to depart out of the jurisdiction of this court, with intent to evade such order.

VII. Your petitioner further states, that the said defendant R. J. is a printer; that, according to his own statement upon examination before a referee in this action, he does not own any real estate in this state, and his income is derivable from his earnings as a printer; that he has no other property, to the knowledge of your petitioner, which might be resorted to for the purposes of carrying out the provisions of said order above referred to, in case he should leave this state; but that he is abundantly able, from his earnings, to pay the alimony or dower, in addition to his own comfortable support.

VIII. That your petitioner has no other means of support, except as in said complaint averred, to which she asks leave to refer; and that the youngest child of your petitioner by said defendant is but seven months old.

Your petitioner therefore prays that a writ of ne exeat may issue against said defendant R. J., to restrain him from departing without this state, and that he may be compelled to give such security or bail as may be proper.

(Verification.) 2 Abb. Forms 308.

III. Writ of Ne Exeat.

The people of the state of New York, to the sheriff of the county of _____:

Whereas, it appears to us in our _____ court (of the _____ of _____), before (one of) the justices thereof, that Y. Z. is greatly indebted to A. B., and the said A. B. has commenced an action in our said court against the said Y. Z., which said action is now pending and undetermined

(or, that the said A. B. has commenced an action against said Y. Z. for a divorce, and that said defendant has been ordered by our said court to pay _____ dollars a week as alimony to the said plaintiff, pending the action), and that the said defendant designs quickly to go into parts without this state, as by oath made on that behalf appears, which tends to the great prejudice and damage of the said plaintiff.

Therefore, in order to prevent this injustice, we hereby command you that you do without delay cause the said Y. Z. personally to come before you, and give sufficient bail or security, in the sum of _____ dollars, that he will not go, nor attempt to go, into parts without our state without leave of our said court; and in case he shall refuse to give such bail or security, then you are to commit him to the common jail of your county, there to be kept in safe custody until he shall do it of his accord; and when you have taken such security, or made such commitment, you are forthwith to make and to return a certificate thereof to our said court, together with this writ.

Witness, Hon. _____, one of the justices of our _____ court (at chambers), this _____ day of _____, 18—.

(Signature of clerk.)

2 Abb. Forms 310.

IV. Indorsement.

By the special order of the court, hold the defendant to bail in the sum of one thousand dollars.

I allow the within writ.
(Date.)

(Signature of clerk.)

(Signature of judge.)

2 Abb. Forms 311.

V. Order To Show Cause Why Ne Exeat Should Not Be Set Aside.

On the annexed affidavits of the defendant and of M. N., and on all the pleadings and proceedings herein, let the plaintiff, or her attorneys, show cause, before a justice of this court, at a special term thereof to be held at _____, in _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, why the writ of ne exeat heretofore granted herein (or, of which a copy is annexed) should not be set aside as void, or im-providently granted (or, for neglect of the plaintiff to prosecute the action,

or, as irregular in this, specifying irregularity); or for such other or further order as may be proper. 2 Abb. Forms 311.

VI. Order Setting Writ Aside.

On reading and filing the affidavits of the defendant and M. N., and the copy of the petition of the plaintiff, and copy of the writ of ne exeat there-to annexed, and the order to show cause why said writ should not be set aside; and after hearing O. P., of counsel for the plaintiff, in opposition, and on motion of Q. R., of counsel for the defendant:

Ordered, that the said writ or order of ne exeat, issued out of this court, on the _____ day of _____, 18—; to the sheriff of the county of _____, and commanding said sheriff to cause the defendant R. J. personally to come before him, and give sufficient bail or security, in the sum of _____ dollars, that the said R. J. will not go nor attempt to go into parts without the state of New York, and in default of giving such bail or security to commit him, the said R. J., to the common jail of said county, there to be kept in safe custody until he shall do it of his own accord, etc., be set aside, vacated, and discharged; and the said R. J. is hereby discharged from the custody of said sheriff under said writ or order. 2 Abb. Forms 312.

VII. Affidavit To Set Aside Ne Exeat for Neglect To Prosecute.

M. N., attorney for the defendant, being duly sworn, says:

I. That this action was commenced, by the service of a summons upon said defendant, on the _____ day of _____, 18—; and that on the _____ day of said month this deponent served upon the plaintiff's attorney herein a notice of retainer for the defendant in this action, and a demand of a copy of the complaint herein, as appears by said notice, and demand and proof of service annexed.

II. That no copy of the complaint in this action has been served upon this deponent, although more than twenty days have elapsed since the service of the said demand of a copy of the complaint. 2 Abb. Forms 312.

VIII. Bail Bond on Arrest on Ne Exeat.

Whereas, the said _____ has been arrested under and by virtue of a writ

of ne exeat issued out of and under the seal of the supreme court of this state, by which the said sheriff was required to hold the said _____ to bail in the sum of _____ dollars; now therefore, the condition of the said obligation is such that if the said _____ shall go or depart, or attempt to depart from or beyond the said state, without the leave of such court, then the said _____ and each of them will pay or cause to be paid unto the said _____ sheriff as aforesaid, the said sum of _____ dollars; but if the said _____ shall not go or depart, or attempt to go or depart from or beyond the said state without leave of such court, then and in that case this obligation shall be void and of no effect; otherwise to remain in full force and virtue.

Signed, sealed and delivered in the presence _____. (Affidavit of justification and acknowledgment.) Crocker on Sheriffs (2d ed.) 559.

IX. Affidavit of Sheriff to Copy of Bond.

(Title of action.)

County of _____, ss.: A. B., sheriff of _____ county, being sworn, says that the within is a true copy of the bond taken by him on the arrest of the defendant therein named, and now in his possession, with all the indorsements thereon.

Subscribed and sworn before me, this _____ day of _____.

A. B.

Crocker on Sheriffs (2d ed.) 560.

X. Returns.

A. *Return to Ne Exeat, Defendant Arrested.*

I have arrested the within defendant, and have him now in the common jail of _____ county, for want of bail.

A. B., sheriff of county.

Crocker on Sheriffs (2d ed.) 560.

B. *Return Where the Defendant Has Been Let to Bail.*

I have arrested the defendant, and have taken from him a bond with _____ as his surety in the penalty marked on the writ.

A. B., sheriff.

Crocker on Sheriffs (2d ed.) 560.

See "How To Use This Volume," Introduction, page v.

NEGLIGENCE.

I. Declarations, 866

- A. *Against Owner of Coach, Negligence of Servant*, 866
- B. *Against Common Carrier for Losing Box*, 866
- C. *Against Bailee*, 867

II. Complaints, 868

- A. *Negligence of Servant in Driving Against Vehicle*, 868
- B. *Against Railroad Company, Crossing Accident*, 868
- C. *Against Railroad Company for Killing Cattle*, 869
- D. *Against Contractor for Leaving Street Insecure*, 869
- E. *For Laying Rubbish in Street*, 869
- F. *For Keeping Open Dangerous Hatchway*, 869

III. Answers, 870

- A. *Plaintiff's Own Negligence*, 870
- B. *Denial of Ownership of Plaintiff*, 870
- C. *Denial of Ownership of Cause of Injury*, 870

CROSS-REFERENCES:

ADJOINING LANDOWNERS:

- Complaint for Flowing Water From Roof on Plaintiff's Premises;
- Complaint for Negligently Excavating Adjacent to Plaintiff's Buildings;
- Complaint for Negligently Excavating Adjacent to Plaintiff's Land;
- Complaint for Negligence Whereby Land Was Overflowed;
- Complaint for Carelessly Kindling Fire on Defendant's Land, Whereby Plaintiff's Property Was Burned.

ADMIRALTY:

- Libel in Rem for Collision.

ANIMALS:

- Declaration for Keeping Dog Accustomed To Bite Mankind;
- Complaint for Keeping Mischievous Dog by Which Plaintiff Was Bitten;
- Declaration for Keeping Dog Accustomed To Bite Other Animals;
- Complaint for Keeping Dog Accustomed To Bite Sheep and Other Animals;
- Denial of Scierter;
- Denial of Ownership of Dog.

ANSWERS:

- Answer by Common Carrier That the Damage Was by Plaintiff's Fault.

CASE (THE ACTION OF TRESPASS ON THE):

Declaration Against Occupier of House for Laying Rubbish in Street, Whereby Carriage Was Overturned.

DEATH BY WRONGFUL ACT.

Complaint Against Railroad by Personal Representative for Negligence Causing Death;
Complaint Against Owner of Warehouse, the Walls of Which Fell on Deceased;
Complaint, Death by Wrongful Act, Setting Out Defect;
Declaration Against Railroad Company for Running Over Intoxicated Person;
Notice of Injury;
Notice of Injury to Railroad Company;
Indictment Against Railroad for Death by Negligence;
Answer Setting Up Contributory Negligence.

HOMICIDE:

Indictment for Criminal Negligence in Erecting Building.

INFANTS:

Answer, Infancy and Want of Discretion as to Hired Horse.

INJURIES TO PERSONS:

Declaration, Injuries Caused by Falling Into an Unguarded Area Way;
Declaration Against Manufacturer of Elevator for Injury to Servant of Owner While Testing;
Declaration, Injury to Employee Using Defective Appliances;
Declaration, Injury to Person Passing in Unloading Wagon;
Declaration, Injury Caused by Defective Insulation of Electric Light Wires;
Declaration, Injury to Child by Improperly Guarding Machinery;
Declaration, Collision Between Row Boat and Tug;
Declaration, Injuries by Collision Between Two Street Cars;
Declaration, Action for Being Run Over While on Track;
Complaint, Injuries Caused by Unguarded Excavation Near Sidewalk;
Complaint, Injury to Employee by Defective Appliance;
Complaint, Injuries Received at Grade Crossing;

Complaint, Injuries Caused by Train Falling Through Bridge;
Complaint, Injuries Sustained by Sudden Start of Train;
Complaint, Injuries Received on Jumping From Street Car, Collision Being Imminent;
Answer, Alleging Failure To Use Proper Care;
Answer, Failure To Observe the Approach of Train;
Answer, Setting Up "Act of God";
Answer, Claim Satisfied and Discharged;
Answer, Accord and Satisfaction for Personal Injury by Co-defendant;
Demurrer, That Negligence Is Insufficiently Alleged;
Reply to Claim of Satisfaction.

MASTER AND SERVANT:

Declaration, Negligence for Not Providing a Safe Place for Employee;
Complaint by Servant of Railroad, Injured by Defective Machinery;
Notice to Employer of Injury.

MINES AND MINERALS:

Complaint, Injury to Surface Support Caused by Mine.

MUNICIPAL CORPORATIONS:

Complaint Against Municipality, Neglect of Excavation in Street;
Complaint Against City or County for Damage Done by Riot.

PASSENGERS:

Declaration Against Proprietor of Stage Coach for Injuries to Person;
Complaint for Injury to Passenger on Steamboat;
Complaint Against Railroad for Injuries to Person;
Complaint for Injury to Passenger on Stage Coach.

PHYSICIANS AND SURGEONS:

Complaint Against Surgeon for Maltreatment;
Complaint, Negligently Performing an Operation.

RAILROADS:

Complaint, Destruction of Adjoining Property by Sparks From Locomotive.

SHIPS AND SHIPPING:

Declaration Against Owner of Steamboat for Negligence;
Declaration Against Owner of Vessel for Negligence in Navigation;
Complaint for Negligence in Loading Cargo.

I. Declarations.

A. *Declaration Against Owner of Coach for Negligence of Servant in Driving Against Chaise.*

For that whereas the said plaintiff, heretofore, to-wit, on, etc., at, etc. (venue), was lawfully possessed of a certain carriage, to-wit (a chaise), of great value, to-wit, of the value of _____ dollars, and of a certain horse (or divers, to-wit, _____ horses), then and there drawing the same, and in which said carriage the said plaintiff was then riding in and along a certain public and common highway; and the said defendant was also then and there possessed of a certain other carriage, and of a certain other horse (or divers, to-wit, _____ horses), drawing the same, and which said carriage and horses of the said defendant were then and there under the care, government and direction of a certain then servant and there driving the same, in and of the said defendant, who was then along the said highway, to-wit, at, etc. Nevertheless the said defendant then and there, by his said servant, so carelessly and improperly drove, governed and directed his said carriage and horses, that by and through the carelessness, negligence and improper conduct of the said defendant by his said servant in that behalf (one of the hind wheels of), the said carriage of the said defendant, then and there ran, and struck with great force and violence upon and against the said carriage of the said plaintiff, and thereby then and there crushed, broke to pieces, damaged and destroyed the same (and one of the wheels, and the splinter bar, and the shafts thereof), and the said carriage of the said plaintiff, thereby * then and there became, and was rendered of no use or value to the said plaintiff, and thereby the said plaintiff was then and there cast out and thrown with great force and violence, from and off his said carriage, to and upon the ground there, and by means of the several premises aforesaid, the said plaintiff was then and there greatly bruised, hurt and wounded, and became and was sick, sore, lame and disordered, and so remained and continued for a long space of time, to-wit, hitherto, during all which time the said plaintiff suffered great pain, and was hindered and prevented from performing and transacting his lawful af-

fairs and business by him during that time to be done and transacted; and also, by means of the premises, was forced and obliged to pay, lay out and expend, and hath necessarily paid, laid out and expended, divers sums of money, in the whole amounting to a large sum of money, to-wit, the sum of _____ dollars, in and about the endeavoring to be healed and cured of his said wounds, hurt and bruises, occasioned as aforesaid; and also by means of the premises, the said plaintiff hath paid, laid out and expended, divers large sums of money, amounting in the whole to a large sum of money, to-wit, the sum of _____ dollars, in and about the repairing of the said chaise so damaged as aforesaid, to-wit, at, etc.

And whereas also the said plaintiff, heretofore, to-wit, on, etc., at, etc. (venue), was lawfully possessed of a certain other carriage, to-wit, a chaise of great value, to-wit, of the value of seven hundred dollars, and of a certain other horse (or of divers others, to-wit, _____ horses), then and there harnessed to the same, and in which said carriage the said plaintiff was then riding in and along a certain public and common highway; and the said defendant was also then and there possessed of a certain other carriage, and of a certain other horse (or divers, to-wit, _____ other horses), drawing the same, and which said last mentioned carriage and horse (or horses) the said defendant was then and there driving in and along the said highway, to-wit, at, etc. (venue). Nevertheless the said defendant then and there so carelessly and improperly drove, governed and directed his said carriage and horses, that by and through the carelessness, negligence and improper conduct of the said defendant, the said carriage of the said defendant then and there crushed, broke to pieces, damaged and destroyed the said carriage of the said plaintiff, and the said carriage of the said plaintiff thereby then and there became and was rendered of no use or value to the said plaintiff, and thereby, etc. (Conclude as in the first count from the *, and add the usual general conclusion.) Burr. App. 310, §579; 2 Chit. Pl. 710; Yates' Forms 417.

B. *Declaration Against Common Carrier for Losing Box.*

A. B., plaintiff in this suit, by L. V., his attorney, complains of C. D., de-

defendant in this suit, being in custody, etc., of a plea of trespass on the case: For that whereas the said defendant, before and at the time of the delivery of the goods and chattels to him, as hereinafter next mentioned, was, and from thence hitherto hath been, and still is, a common carrier of goods and chattels for hire, to-wit, from ——— to ———, to-wit, at, etc. And whereas also the said plaintiff, whilst the said defendant was such common carrier as aforesaid, to-wit, on, etc., at, etc. (the real place), to-wit, at, etc. (the venue), caused to be delivered to the said defendant, and the said defendant then and there accepted, and received of and from the said plaintiff, a certain box (or parcel, according to the fact), containing divers goods and chattels, to-wit, etc. (here specify the articles according to their description), of the said plaintiff, of great value, to-wit, of the value of ——— dollars, to be safely and securely carried and conveyed by the said defendant, from ——— aforesaid, to ——— aforesaid; and there, to-wit, at, etc., aforesaid, safely and securely to be delivered for (or to) the said plaintiff, for certain reasonable reward, to the said defendant in that behalf. Yet the said defendant, not regarding his duty as such common carrier as aforesaid (but contriving and fraudulently intending, craftily and subtly to deceive, defraud and injure the said plaintiff in this behalf), did not, nor would safely or securely carry or convey the said (box) and its contents aforesaid, from ——— aforesaid, to ——— aforesaid, nor there, to-wit, at ——— aforesaid, safely or securely deliver the same for (or to) the said plaintiff; but on the contrary thereof, he the said defendant, so being such common carrier as aforesaid, so carelessly and negligently behaved and conducted himself in the premises that, by and through the carelessness, negligence and default of the said defendant in the premises, the said (box) and its contents aforesaid, being of the value aforesaid, afterwards, to-wit, on the day and year aforesaid, at; etc. (the venue), aforesaid, became and were wholly lost to the said plaintiff, to-wit, at, etc. (the venue), aforesaid.

And whereas also, heretofore, to-wit, on the same day and year aforesaid, to-wit, at, etc. (the venue), aforesaid, the said plaintiff, at the special in-

stance and request of the said defendant, caused to be delivered to the said defendant a certain other (box), containing certain other goods and chattels, to-wit, goods and chattels of the like number, quantity, quality, description and value, as those in the said first count mentioned, of the said plaintiff, to be taken care of, and safely and securely carried and conveyed by the said defendant to ——— aforesaid, and there, to-wit, at ——— aforesaid, to be safely and securely delivered by the said defendant for the said plaintiff, within a reasonable time then next following, for certain hire and reward to the said defendant in that behalf; and although the said defendant then and there accepted, and had and received the said last mentioned (box), and its contents aforesaid, for the purpose and on the terms aforesaid, and although a reasonable time for the carriage, conveyance and delivery thereof as aforesaid hath long since elapsed, yet the said defendant, not regarding his duty in that behalf (but contriving and fraudulently intending, craftily and subtly to deceive and defraud the said plaintiff in this respect), did not, nor would, within such reasonable time as aforesaid, or at any time afterwards (although often requested so to do), take care of or safely or securely carry and convey the said last mentioned (box) and its contents aforesaid, to ——— aforesaid, nor there, to-wit, at ——— aforesaid, safely or securely deliver the same for the said plaintiff, but hath hitherto wholly neglected and refused so to do; and by means of the negligence and improper conduct of the said defendant in that behalf, the said last mentioned (box) and its contents aforesaid have not been delivered to, or for the said plaintiff at ——— aforesaid, or elsewhere, and are wholly lost to the said plaintiff, to-wit, at, etc. (the venue), aforesaid. To the damage of the said plaintiff of ——— dollars, and therefore he brings his suit, etc. Burr. App. 313, §582; 2 Chit. Pl. 651; Yates' Forms 392.

C. Declaration Against Bailee for Negligence.

For that whereas heretofore, to-wit, on, etc., at, etc., in consideration that the said plaintiff, at the special instance and request of the said defendant, had caused to be delivered to him

the said defendant a certain chair (or sideboard, etc.), of him the said plaintiff, of great value, to-wit, of the value of _____ dollars, to be taken care of and safely and securely kept by the said defendant for the said plaintiff, he the said defendant, undertook, and then and there agreed with the said plaintiff, to take due and proper care of the said (chair) for the said plaintiff, and to re-deliver the same to the said plaintiff when he the said defendant should be thereunto afterwards requested; and although the said defendant was afterwards, to-wit, on, etc., at, etc., requested by the said plaintiff to re-deliver the said (chair) to him the said plaintiff, to-wit, at, etc., yet the said defendant, not regarding his duty in that behalf, did not, nor would, when he was so requested as aforesaid, or at any time before or afterwards, re-deliver the same to the said plaintiff, but on the contrary thereof, he the said defendant so carelessly behaved and conducted himself with respect to the said (chair), and took so little and such bad care thereof, that by and through the carelessness, negligence and improper conduct of the said defendant, the said (chair), being of the value aforesaid, became and was wholly lost to the said plaintiff, to-wit, at, etc.

And whereas also, heretofore, to-wit, on, etc., at, etc., the said defendant, at his special instance and request, had the care of a certain other (chair) of the said plaintiff of great value, to-wit, of the value of one hundred dollars, yet the said defendant, not regarding his duty in that behalf, did not nor would take due and proper care of the said last mentioned (chair), but wholly neglected so to do, and took such bad care thereof that afterwards, to-wit, on, etc., the said last mentioned (chair) became and was wholly lost to the said plaintiff, to-wit, at, etc. (Third count in *trover*.) Burr. App. 314, §583; 2 Chit. Pl. 670.

II. Complaints.

A. *Complaint, Negligence of Servant in Driving Against Plaintiff's Vehicle.*

I. That on the _____ day of _____, 18—, the plaintiff was riding along the public highway, in the town of _____, in a chaise, drawn by a horse, both the property of the plaintiff, of the value of _____ dollars.

II. That the defendant was then the proprietor of a stage and four horses, which were then passing along said highway in the possession of defendant (or of defendant's servant), who was driving the same.

III. That defendant (or that said servant) so carelessly drove and managed said stage and horses that by reason of his negligence said stage struck the plaintiff's chaise, and overthrew and broke the same, and threw down the plaintiff's horse, breaking his leg, and threw the plaintiff out of his chaise upon the ground (or otherwise describe the accident according to the fact), whereby the plaintiff was bruised and wounded, and was for _____ days prevented from attending to his business, and was put to great expense in repairing his chaise and in endeavoring to be healed of his own hurts, and he was obliged to kill his said horse in consequence of his leg being broken as aforesaid, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 452.

B. *Complaint Against Railroad, Crossing Accident.*

I. That at the time hereinafter mentioned, the defendants, a corporation duly organized under the laws of this state, were the owners of a certain railroad, known as _____ railroad, together with the track, cars, locomotives and other appurtenances thereto belonging.

II. That on the _____ day of _____, 18—, while the plaintiff was traveling in a wagon drawn by two horses, all the property of the plaintiff, and of the value of _____ dollars, along the public highway from _____ to _____, which public highway crosses the railroad aforesaid at a place called _____; and as the plaintiff had reached said crossing, the defendants carelessly and negligently caused one of their locomotives (with a train of cars attached thereto) to approach said crossing, and then and there to pass rapidly over the track of said railroad, and negligently and carelessly omitted, while so approaching said crossing, to give any signal, by ringing the bell or sounding the steam whistle, by reason whereof the plaintiff was unaware of their approach.

III. That by reason of said negligence of the defendants the locomotive struck the plaintiff's horses and threw

them down, killing one of them immediately, and so severely injuring the other as to make it necessary to kill him; and also overset the plaintiff's wagon, breaking it so that it is worthless; and also threw the plaintiff out upon the ground, with such force as to fracture his left collar-bone (or other consequences, according to the fact).

IV. That thereby the plaintiff has been deprived of the use of said horses and wagon, and was put to great pain and to great expense in endeavoring to cure himself of said injury, and was and still is prevented from going on with his business as ———, and is, as he believes, permanently injured, so that he will never be as strong or able to carry on said business as effectively as before, and was otherwise greatly injured, to his damage ——— dollars. 1 Abb. Forms 453.

C. Complaint Against Railroad for Killing Cattle.

I. That at the time hereinafter mentioned the defendants, a corporation duly organized under the laws of this state, were the owners of a certain railroad known as ——— railroad, together with the track, cars, locomotives, and other appurtenances thereto belonging.

II. That on the ——— day of ———, 18—, the plaintiff was the owner and possessed of certain cattle, to-wit (designating them), of the value of ——— dollars, and which cows and oxen casually and without the fault of the said plaintiff, strayed in and upon the track and ground occupied by the railroad of the said defendant at M.

III. That the said defendants, by their agents and servants, not regarding their duty in that respect, so carelessly and negligently ran and managed the said locomotive and cars that the same ran against and over the said cows and oxen of the said plaintiff, and killed and destroyed the same, to the damage of the plaintiff ——— dollars. 1 Abb. Forms 454.

D. Complaint Against Contractor for Leaving Street Insecure, Horse Injured.

I. That at the times hereinafter mentioned the defendant had taken upon himself (or had agreed with the trustees of the village of ——— to lay down pipes in and under the highway (known as ——— street), in

———, for the purpose of lighting the said highway with gas, and to make the proper trenches for the purpose; and when such pipes were laid down, to fill up properly the said trenches, and to put and leave the said highway clear and in a reasonably secure condition.

II. That the defendant and his servants, on the ——— day of ———, 18—, accordingly took up part of the said highway, and made trenches and holes therein, and laid down said pipes, and displaced the earth and materials of the said highway, and so carelessly and negligently filled said trenches, and left the said highway in so dangerous and improper state, that a horse of the plaintiff, of the value of ——— dollars, which he was then and there lawfully driving along the said highway, sunk and fell therein, and was wounded and lamed, and rendered of little or no value, to the plaintiff's damage ——— dollars. 1 Abb. Forms 447.

E. Complaint for Laying Rubbish in Street, Whereby Plaintiff Was Thrown Out of Carriage.

I. That the defendant, on or about the ——— day of ———, 18—, wrongfully placed large quantities of building materials and earth in the public highway (known as ——— street) in ———, and negligently left the same therein, obstructing the highway during the night time, and without placing any light or signal there to indicate danger.

II. That in consequence of said negligence and improper conduct of the defendant, in the nighttime of that day, the carriage of the plaintiff, of the value of ——— dollars, with the plaintiff therein, then passing through said street, was accidentally driven against the said obstructions, and was thereby overturned; by means whereof the plaintiff was bruised and wounded (conclude as in other forms). 1 Abb. Forms 447.

F. Complaint for Keeping Open Dangerous Hatchway, Through Which Plaintiff Fell.

I. That the defendant, at the time hereinafter mentioned (was the owner and) had possession and control of a certain building and premises (briefly designate them), with the appurtenances thereto belonging, which building was then occupied by him as (briefly

designate the uses of the building, if a public resort).

II. That said building was negligently and carelessly built, inasmuch as there was in the public hall in the second story of the same (at the time of its erection and leasing by the defendant, as well as) at the time hereinafter mentioned, an unguarded hole or hatchway through the floor, opening into the first story.

III. That the defendant, well knowing the premises, and while the owner and occupant (or while the occupant) of said building, did, on the _____ day of _____, 18—, negligently and wrongfully leave the same uncovered and unprotected, by means whereof the plaintiff, who was then lawfully in said building, and in the pursuit of his business (or by the permission of the defendant), then and there necessarily and carefully passing along said hall, fell through said hatchway.

IV. That by means of the premises the plaintiff was greatly hurt and injured, and became sick and lame, and so remained for a long time (or so still remains), and was during the space of _____ prevented from attending to his business as _____, and was compelled to, and did expend, _____ dollars in endeavoring to be healed of his said injuries (or otherwise state injuries to plaintiff according to the fact), to his damage _____ dollars. 1 Abb. Forms 444.

III. Answers.

A. *Answer, Plaintiff's Own Negligence, Falling Into Hole.*

That the defendant and his servants used due care and diligence (about the construction of the said building, or in repairing said street, and replacing the pavement thereof, or in guarding the said excavation with proper bulwarks, and in putting up lights during the nighttime, or otherwise, according to the allegations in the complaint), and that said injury was not caused by any negligence on the part of the defendant or his servants, but was owing to the negligence and fault of the plaintiff himself. 2 Abb. Forms 117.

B. *Answer, Denial of Ownership of Plaintiff.*

That the said horse and carriage alleged to have been injured were not the property of the plaintiff. 2 Abb. Forms 117.

C. *Answer, Denial of Ownership of Cause of Injury.*

That at the time of the grievance alleged the defendant was not the owner, and had not the possession or control of the premises in which said hole or hatchway was (or of the wagon which caused the alleged injury). 2 Abb. Forms 117.

NEGOTIABLE INSTRUMENTS.—See
BILLS AND NOTES.

NEUTRALITY LAWS.

I. Indictment, Preparing Military Expedition, 870

II. Indictment for Fitting Out Vessel, 870

III. Libel To Condemn Vessel, 871

I. Indictment, Preparing Military Expedition in Violation of Neutrality Laws.

The indictment charges that defendants, "mariners, at the district aforesaid and within the jurisdiction of this court, did, within the territory and jurisdiction of the United States, to-wit, at the port of Philadelphia, Pennsylvania, within the district aforesaid, begin, set on foot, and provide and prepare the means for a certain military expedition and enterprise to be carried on from thence against the territory and dominions of a foreign prince, to-wit, against the island of Cuba, the said island of Cuba being then and there the territory and dominions of the King of Spain, the said United States being then and there at peace with the King of Spain, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America," Wiborg v. United States, 163 U. S. 632, 16 Sup. Ct. 1127, 41 L. ed. 289.

II. Indictment for Fitting Out Vessel in Violation of Neutrality Laws.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said John D. Quincy, on the day and year aforesaid, at the district aforesaid, within the limits of the United States, and within the jurisdiction of the United States and of this court, with force and arms, was knowingly concerned in the fitting out of a certain vessel called the Bolivar, otherwise called Las Damas Argentinas, with intent that such vessel be

employed in the service of a foreign people, that is to say, in the service of "The United Provinces of Rio de la Plata," to commit hostilities against the subjects of a foreign prince, that is to say, against the subjects of "His Imperial Majesty, the Constitutional Emperor and Perpetual Defender of Brazil," with whom the United States then were, and still are at peace, against the form of the Act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said John D. Quincy, on the day and year aforesaid, at the district aforesaid, within the limits of the United States and within the jurisdiction of the United States and of this court, with force and arms, was knowingly concerned in the fitting out of a certain other vessel, called the Bolivar, otherwise called Las Damas Argentinas, with intent that the said vessel should be employed in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata, to cruise and commit hostilities against the subjects and property of a foreign prince, that is to say, against the subjects and property of His Imperial Majesty the Constitutional Emperor and Perpetual defender of Brazil, with whom the United States then were and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States. United States v. Quincy, 6 Pet. (U. S.) 445, 8 L. ed. 458.

III. Libel To Condemn Vessel for Violation of Neutrality Laws.

(The first two paragraphs of the libel alleged the seizure and detention of the vessel, and the libel then continued):

"Third. That the said steamboat or steam vessel, the 'Three Friends,' was on, to-wit, on the 23d day of May, A. D. 1896, furnished, fitted out and armed, with intent that she should be employed in the service of a certain people, to-wit, certain people then engaged in armed resistance to the government of the King of Spain, in the island of Cuba, to cruise and commit hostilities against the subjects, citizens,

and property of the King of Spain, in the island of Cuba, with whom the United States are and were at that date at peace.

"Fourth. That the said steamboat or steam vessel, 'Three Friends,' on, to-wit, on the 23d day of May, A. D. 1896, whereof one Napoleon B. Broward was then and there master, and within the said southern district of Florida, was then and there fitted out, furnished, and armed, with intent that said vessel, the said 'Three Friends,' should be employed in the service of a certain people, to-wit, the insurgents in the island of Cuba, otherwise called the Cuban revolutionists, to cruise and commit hostilities against the subjects, property, and people of the King of Spain, in the said island of Cuba, with whom the United States are and were then at peace.

"Fifth. That the said steamboat or steam vessel 'Three Friends,' on, to-wit, on the 23d day of May, A. D. 1896, and whereof one N. B. Broward was then and there master, within the navigable waters of the United States, and within the southern district of Florida and the jurisdiction of this court, was then and there, by certain persons to the attorneys of the said United States unknown, furnished, fitted out, and armed, being loaded with supplies and arms and munitions of war, and it, the said steam vessel 'Three Friends,' being then and there furnished, fitted out, and armed with one certain gun or guns, the exact number to the said attorneys of the United States unknown, and with munitions of war thereof, with the intent, then and there, to be employed in the service of a certain people, to-wit, certain people then engaged in armed resistance to the government of the King of Spain in the island of Cuba, and with the intent to cruise and commit hostilities against the subjects, citizens, and property of the King of Spain, in the said island of Cuba, and who, on the said date and day last aforesaid, and being so furnished, fitted out, and armed as aforesaid, then and there aforesaid, from the navigable waters of the United States, to-wit, from the St. Johns river, within the southern district of Florida, and within the jurisdiction of this court aforesaid, proceeded upon a voyage to the island of Cuba aforesaid, with the intent aforesaid, contrary to the form of the stat-

ute in such case made and provided. And that by force and virtue of the acts of Congress in such case made and provided, the same steamboat or steam vessel, her tackle, engines, machinery, apparel and furniture became and are forfeited to the use of the said United States.

"Sixth. And the said attorneys say that by reason of all and singular the premises aforesaid, and that by force of the statute in such case made and provided, the aforesaid and described steamboat or steam vessel 'Three Friends,' her tackle, machinery, apparel, and furniture, became and are forfeited to the use of the said United States."

(And concluded with a prayer for process and monition and the condemnation of the vessel as forfeited.) *United States v. Three Friends*, 166 U. S. 1, 17 Sup. Ct. 495, 41 L. ed. 897.

NEW ASSIGNMENT.—See ASSAULT AND BATTERY; PLEAS.

NEW MATTER.—See ANSWERS; PLEAS.

NEWLY DISCOVERED EVIDENCE. See NEW TRIAL.

NEWSPAPERS.—See LIBEL AND SLANDER.

NEW TRIAL (IN TRIAL COURT).

I. Notices of Motion, 872

- A. *General Form*, 872
- B. *On the Merits*, 872
- C. *To Set Aside Verdict and for New Trial for Irregularity*, 872
- D. *On Judge's Minutes*, 873

II. Affidavits, 873

- A. *Misconduct of Juror*, 873
- B. *Improper Communication by Plaintiff to Jury*, 873
- C. *'Surprise'*, 873
- D. *Corroborating Affidavit, Surprise*, 874
- E. *Newly Discovered Evidence*, 874
- F. *Corroborating Affidavit, Newly Discovered Evidence*, 875
- G. *Irregularity in Noticing Cause*, 875
- H. *In Action To Recover Real Property*, 875

III. Orders, 875

- A. *Granting New Trial*, 875
- B. *Granting New Trial, Unless Verdict Reduced*, 875
- C. *Setting Aside Nonsuit and for New Trial*, 876
- D. *Denying New Trial*, 876

CROSS-REFERENCES:

CASE ON APPEAL:

- Case Containing Exceptions Upon Trial by Jury;
- Case Containing Exceptions on a Trial by the Court or a Referee;
- Amendments Proposed to Case, Etc.;
- Notice of Settlement of Case, Etc.;
- Order for Time To Prepare Case or Exceptions, With Stay.

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

- Notice of Motion To Set Aside Nonsuit, and for New Trial.

FINDINGS AND CONCLUSIONS:

- Notice of Exceptions to Findings of Court or Referee.

STAY OF PROCEEDINGS:

- Order for Stay of Proceedings To Move for New Trial.

I. Notices of Motion.

- A. *Notice of Motion for a New Trial, General Form.*

Take notice that on the case (or exceptions, or case containing exceptions), (or upon the affidavits of which copies are herewith served upon you), and upon all the pleadings and proceedings herein, I shall move this court, at a special term thereof to be held in and for the county of _____, at the _____ in the city of _____, on the _____ day of _____, 18—, at _____ o'clock, for a new trial herein. 2 Abb. Forms 490.

- B. *Notice of Motion for a New Trial on the Merits.*

Sir: Please to take notice that, upon the affidavits (and case), with copies whereof you are herewith served, this honorable court will be moved, at the next term of the said court, to be held at the _____ in the city of _____, on the _____ Monday of _____ next, at the opening of the court on that day, or as soon thereafter as counsel can be heard,* that the verdict rendered in this cause be set aside, and a new trial granted. Dated, etc. Burr. App. 213, §426.

- C. *Notice of Motion to Set Aside Verdict and for New Trial for Irregularity.*

(As in I, B, to the *, and then as follows): that the verdict rendered in this cause be set aside for irregularity, with costs, and that a new trial be ordered (or for such other rule or order

as the court may direct). Dated, etc. Burr. App. 213, §425.

Note.—Include proceeding subsequent to trial verdict judgment, etc.

D. Order To Show Cause on Motion for New Trial on Judge's Minutes.

Let the plaintiff (or defendant) show cause before me at the circuit court now in session in and for (city and) county of _____, at the courthouse in _____ (or at the city hall in said city), on the _____ day of _____, 18—, why an application for a new trial herein on the judge's minutes should not be entertained; and if said application is so entertained, then why such new trial should not be granted; and in the meantime, and until the determination of said motion, not exceeding twenty days, let all proceedings on the part of said _____ be stayed.

(Date.) M. N.,
Justice, etc.

2 Abb. Forms 480.

II. Affidavits.

A. Affidavit To Move for a New Trial on the Ground of Misconduct of a Juror.

I. That on the _____ day of _____, 18—, the (second) day of the trial of this action, on the steps of the courthouse he heard a conversation between one L. M. and R. S., one of the jurors before whom said action was then on trial.

II. That the said L. M. then and there told said juror that he was acquainted with the witnesses in this case, and had been acquainted; that they would swear to anything for a dollar.

III. That the said L. M. applied these remarks to the witnesses for the (defendant) only; that said L. M. spoke of U. V., one of the (defendant's) witnesses, in particular, as a bad character.

IV. That the said L. M. then and there stated to said juror that W. X., the principal witness for the plaintiff, was a very respectable citizen; that he had never heard anything against him.

V. That the said L. M. and the said juror were and are old acquaintances and friends.

VI. That on the next day, and while the trial was still proceeding at the same place, the said L. M., in the hearing of deponent, renewed the said conversation, and intimated that in his

opinion the (defendant) was endeavoring to establish his case by false swearing. 2 Abb. Forms 491.

B. Affidavit To Move for New Trial on Ground of Improper Communication by Plaintiff to Jury.

J. K., being duly sworn, says:

I. That on the morning of the (second) day of the trial of this cause, and after the plaintiff had rested his case, but before the opening of the court, three of the jurors who were empaneled to try the cause, were in the bar room of a public house in the village of _____, together with a number of other persons there assembled.

II. That while said jurors were there, the plaintiff addressed them, and said in their presence and hearing, that the defendants were a cut-throat corporation; that they had swindled the public; that they had defrauded him, the plaintiff; that he, plaintiff, had paid them thousands of dollars; that he delivered the fruit in controversy on said

_____ defendants at their dock to be carried on their boats, and that they refused to carry the same, and went off without it; and in consequence the fruit rotted or spoiled on his, plaintiff's, hands, and he lost several hundred dollars; and that defendants ought to stand it or be compelled to suffer the loss.

III. That thereupon the constable in attendance upon the court remarked to the plaintiff in the presence and hearing of the jurymen, that the persons he was addressing were jurymen, and asked plaintiff if he did not know it.

IV. That plaintiff immediately replied that he knew what he was about, and requested the constable to mind his own business, and that what he had been saying to the jurors about his suit was true; and he, plaintiff, afterwards continued addressing the jurors in substance as before, detailing as he, plaintiff, insisted, what were the facts of his case, and the mismanagement of the defendants in relation to his fruit. 2 Abb. Forms 492.

C. Affidavit To Move for New Trial on Ground of Surprise.

Q. R., being duly sworn, says:

I. That he is the attorney for the defendant herein.

II. That this action was brought to recover possession of certain real prop-

city, to wit, a farm in the town of _____, in this state.

III. That from the commencement of this action until about (ten) days prior to the trial hereof, the attorney for the plaintiff had in his possession a certain deed, made and executed by the father of the plaintiff, now deceased, conveying said real property in fee to one J. K.

IV. That plaintiff claims title to said real property by descent from his said father, and in no other way.

V. That deponent gave plaintiff's attorney reasonable notice to produce said deed on the trial, and further duly and seasonably subpoenaed the plaintiff's attorney to attend the trial, and bring with him the said deed.

VI. That prior to the service of said notice and subpoena, the plaintiff's attorney delivered said deed to the plaintiff, who thereupon deposited the same with L. M., the counsel of plaintiff, residing in _____.

VII. That at the trial of this action, deponent learned for the first time that the said plaintiff's attorney had parted with said deed.

VIII. That up to the time he was put upon the stand, the plaintiff's attorney entirely concealed from deponent the fact that said deed was out of his possession.

IX. That deponent was taken entirely by surprise by the failure of the plaintiff's attorney to produce said deed.

X. That on a new trial deponent can, as he believes, obtain the production of said deed, or if not, can prove the contents thereof by the testimony of J. K.

XI. That there has been no opportunity since the trial of this cause to notice a motion for a new trial, until the special term to be held at _____ on the _____ day of _____, 18—. 2 Abb. Forms 494.

D. Corroborating Affidavit, *New Trial, Surprise.*

J. K., being duly sworn, says:

I. That he is the person referred to in the foregoing affidavit of Q. R.

II. That the statements therein contained, so far as they relate to deponent, are true.

III. That the contents of the deed mentioned in said affidavit are such as are therein stated. 2 Abb. Forms 495.

E. Affidavit To Move for New Trial on Ground of Newly Discovered Evidence (a).

C. D., the above named defendant, being duly sworn, deposes and says that this action was brought for (state what), and that the defense set up thereto by this deponent was (state what). And deponent says that this cause was tried at a circuit court which was holden at the courthouse in the town of _____, in and for the said county of _____, on the _____ day of _____ last, and a verdict rendered therein for the plaintiff, for _____ dollars. And deponent further says that he has fully and fairly stated the case in this cause to G. H., esquire, his counsel therein, who resides in _____, and has fully and fairly disclosed to his said counsel the facts which he expects to prove by I. J., of _____, and that the said I. J. can testify to the following facts, that is to say (here state the testimony, or let an affidavit of the witness, stating the facts, be annexed to the affidavit, and referred to in the usual way). And this deponent further says that such evidence has been discovered since the said trial, and was not previously known to this deponent to exist, and that the same is material to this deponent, as he is advised by his said counsel, and verily believes.

Sworn, etc. Burr. App. 33, §64.

Affidavit To Move for New Trial on the Ground of Newly Discovered Evidence (b).

Y. Z., being duly sworn, says:

I. That he is the (defendant) in this action.

II. That this action was tried on the _____ day of _____, 18—, at a (circuit court), held in and for the county of _____, at _____, in said county.

III. That said trial resulted in a verdict for the (plaintiff) for _____ dollars.

IV. That since the said trial, and on the _____ day of _____, 18—, deponent has discovered for the first time that he could have proved by one J. K., who resides at _____, the following facts: that at the time of the representations testified to by L. M., upon the trial of this action, he was present; that the representations actually made by the (defendant) at that interview were that he believed N. O. was good, but that he would not be

security for him; that the safety of the loan would depend upon his business, and whether it continued good; that he believed the business was profitable, and would pay well if judiciously managed; that the (defendant) did not say that N. O. was perfectly good, or that the money would certainly be repaid, or that N. O. was doing a business second to none in the world, nor anything to that effect. 2 Abb. Forms 495.

F. Corroborating Affidavit, Newly Discovered Evidence.

J. K., being duly sworn, says:

I. That he is, and was at the time of the conversation between L. M. and the defendant, a clerk in the store of the defendant.

II. That at the said conversation so referred to the (defendant) made the representations set forth in the foregoing affidavit, and no others.

III. That from the (defendant's) manner of speaking of the suit, deponent supposed there was no danger of a recovery against him, and he therefore did not communicate what he knew until after the verdict was rendered. 2 Abb. Forms 497.

G. Affidavit To Move for New Trial for Irregularity in Noticing Cause.

G. H., the attorney for the defendant in this cause, being duly sworn, deposes and says that issue was joined in said cause on the _____ day of _____ last; and that on the _____ day of _____ following, a notice of trial in said cause for a circuit court to be held in and for the said county of _____ (a copy of which notice is hereto annexed), was served upon this deponent by a clerk of E. F., the plaintiff's attorney, which notice this deponent at the same time refused to receive as irregular and insufficient. And deponent further says that notwithstanding such refusal, and the insufficiency of said notice, the said E. F. proceeded to the trial of said cause, at the said circuit court, and obtained a verdict against the defendant for _____ dollars.

Sworn, etc. Burr. App. 33, §63.

H. Affidavit To Move for New Trial in an Action To Recover Possession of Real Property.

A. B., being duly sworn, says:

I. That he is the (plaintiff) in this action.

II. That this action was brought on to recover the possession of real property, to-wit, a certain block of land in the city of _____.

III. That the action was tried at a circuit court, held in and for the county of _____, at _____, in said county before Mr. Justice M. N., and a jury; and that on the _____ day of _____, 18—, said jury returned a verdict in favor of the (defendant).

IV. That judgment was entered on said verdict herein within (three) years last past, on the _____ day of _____, 18—, in favor of the (defendant).

V. That deponent is ready and willing to pay all costs and damages awarded against him as a condition of obtaining a new trial.

(If the application is for a second new trial, set forth facts which show that justice will be promoted by such new trial.) 2 Abb. Forms 497.

Note.—Second trial is granted as a matter of right in some states in ejectment.

III. Orders.

A. Order Granting Motion for New Trial.

A motion for a new trial on the part of the (plaintiff) herein having been made on the case (or exceptions, or case containing exceptions), (and upon reading and filing the affidavits of _____), and after hearing G. H., esq., of counsel for the plaintiff, in support of said motion, and O. P., esq., of counsel for the defendant, in opposition:*

Ordered that the said motion for a new trial be, and the same hereby is, granted (or granted, with costs to abide the event, or on payment of costs, or on payment of all costs of the action after notice of trial, or on condition that the plaintiff stipulate, etc., or otherwise state the terms on which the new trial is granted). 2 Abb. Forms 498.

B. Order Granting Motion Unless the Opposing Party Will Consent To Reduce His Verdict.

As in previous form to the *:

Ordered that the said motion for a new trial be, and the same hereby is, granted, unless the plaintiff, within _____ days, stipulate to reduce the verdict to _____ dollars (or unless the defendant within _____ days stipulate to waive the sum awarded to him by the verdict for his counterclaim

herein), in which case said motion is denied (without costs). 2 Abb. Forms 498.

C. Order Setting Aside Nonsuit and for New Trial.

On reading and filing an affidavit (or admission) of the due service of notice of argument in this cause, on motion of Mr. F., of counsel for the plaintiff (no one appearing to oppose), ordered that the nonsuit in this cause be, and the same is, hereby set aside, and a new trial granted. Burr. App. 465, §942.

Note.—Include in order the setting aside of all proceedings subsequent to trial.

D. Order Denying New Trial.

This cause having been brought to argument, and counsel having been heard thereon, on motion of Mr. F., of counsel for the plaintiff, ordered that a new trial be denied (with costs). Burr. App. 465, §943.

NEXT FRIEND.—See GUARDIAN AD LITEM.

NIL DEBIT.—See GENERAL ISSUE AND GENERAL DENIAL.

NOLO CONTENDERE.

CROSS-REFERENCE:

ARRAIGNMENT AND PLEA:

Plea of Nolo Contendere;

Entry of Plea of Nolo Contendere.

NOLLE PROSEQUI

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Nolle Prosequi, as Entered at Trial;

Entry of Nolle Prosequi to a Particular Count;

Entry of Nolle Prosequi as Contained in Replication;

Entry of Nolle Prosequi to One of Several Defendants.

Judgment Record on Nolle Prosequi in Criminal Case.

“*State of Missouri v. Bernard H. Engelke and Edward P. Barrett.*

“Now at this day, comes the prosecuting attorney and enters a nolle prosequi herein; it is therefore ordered by the court that the said defendants be discharged, and that they go hence without bail.” *Engelke v. Clouteau*, 98 Mo. 629, 12 S. W. 358.

NON ASSUMPT.—See GENERAL ISSUE AND GENERAL DENIAL.

NON CEDIT.—See GENERAL ISSUE AND GENERAL DENIAL.

NON DETINET.—See GENERAL ISSUE AND GENERAL DENIAL.

NON EST FACTUM.—See GENERAL ISSUE AND GENERAL DENIAL.

NON-JOINDER.—See PARTIES.

NON OBSTANTE VEREDICTO.—See JUDGMENT RECORDS; JUDGMENTS.

NONSUIT.—See DISMISSAL, DISCONTINUANCE AND NONSUIT.

NOT GUILTY.—See ARRAIGNMENT AND PLEA; GENERAL ISSUE AND GENERAL DENIAL.

NOTICE.

CROSS-REFERENCES:

ADMIRALTY:

Notice of Appearance;

Notice of Appeal to Supreme Court;

Notice for Publication Containing Substance of Libel;

Notice of Motion on Affidavit To Move for Sale of Ship and Cargo;

Notice of Appeal to Circuit Court of Appeals;

Notice of Appearance in Supreme Court;

Notice of Filing Bond on Appeal.

AMENDMENTS AND JOINFALLS:

Notice of Motion for Leave To Amend;

Notice of Motion for Leave To Amend Declaration;

Notice of Motion for Leave To Amend Complaint;

Notice of Motion To Amend Complaint, by Striking Out Co-plaintiffs and Making Them Defendants;

Notice of Motion To Amend Complaint by Adding Defendant;

Notice of Motion for Leave To Serve Proposed Original or Amended Pleading;

Notice of Motion To Amend by Correcting Fictitious Name.

APPEALS:

Notice of Judgment To Limit Time;

Notice of Appeal (a, b);

Notice of Appeal From Justice Court;

Notice of Exception to Sureties;

Notice of Sureties Justifying;

Notice of Argument;

Notice of Motion for Reargument;

Notice of Motion To Dismiss Appeal (a, b);

Notice of Filing Remittitur.

APPEARANCES:

Notice of Retainer.

ARREST IN CIVIL CASES:

Notice of Justification of Bail;
 Notice of Exception to Bail;
 Notice of Motion To Vacate Order of Arrest;
 Notice of Motion To Discharge Defendant From Arrest;
 Notice of Motion To Reduce Bail;
 Notice of Other or Additional Bail.

ATTACHMENT:

Notice of Claim by Third Person;
 Notice of Motion To Discharge Attachment On Giving Security.

BANKRUPTCY PROCEEDINGS:

Notice of First Meeting of Creditors;
 Notice to Trustee of His Appointment;
 Notice of Dividend;
 Notice of Petition for Removal of Trustee.

BILLS AND NOTES:

Complaint, Demand and Notice Waived;
 Complaint, Notice of Non-payment Excused, No Funds;
 Answer, Denial of Notice, Dishonor.

BILLS OF EXCEPTIONS:

Notice of Settlement of Bill of Exceptions.

BILLS OF PARTICULARS:

Notice To Preclude Evidence;
 Notice for Judgment for Not Furnishing Bill of Particulars.

CASE ON APPEAL:

Notice of Settlement of Case.

CERTIORARI:

Notice of Filing Certiorari To Remove Cause;
 Notice of Motion for Certiorari.

COSTS:

Notice of Taxation of Costs.

DEATH BY WRONGFUL ACT:

Notice of Injury;
 Notice of Injury to Railroad Company.

DECEDENTS' ESTATES:

Notice To Present Claim;
 Notice of Application To Compel Allowance of Claim;
 Notice of Application for Allowance of Claim Disallowed;
 Notice of Hearing on Petition To Sell Personalty;
 Published Notice of Application for Conveyance on Contract.

DEFAULT:

Notice of Assessment of Damages Before Clerk;
 Notice of Assessment of Damages Before Jury.

DEMURRER:

Notice of Argument of Demurrer.

DEPOSITIONS:

Notice of Application for Commission To Take Deposition;
 Notice To Settle Interrogatories for Deposition;
 Notice of Taking Deposition (a, b).

DISCOVERY:

Notice To Produce Paper at Trial;
 Notice of Examination of Party Before Trial.

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Notice of Order for Leave To Discontinue.

DOWER, PROCEEDINGS TO RECOVER:

Notice of Petition for Dower.

EJECTMENT:

Notice of Appearance, With Declaration.

ELECTIONS:

Notice of Contest Because Officer Elected Ineligible;
 Notice of Contest Because Election Was Irregularly Conducted.

EMINENT DOMAIN:

Notice of Filing Report in Condemnation Proceedings;
 Notice of Appeal From Assessment by Commissioners.

ERRORS, ASSIGNMENT OF:

Notice To Join in Assignment of Errors.

FINDINGS AND CONCLUSIONS:

Notice of Exceptions to Conclusions;
 Notice of Exceptions to Findings of Fact.

GUARDIAN AD LITEM:

Notice of Application by Relative or Friend for Guardian Ad Litem;
 Notice to Defendant or Guardian That Plaintiff Will Apply for Guardian Ad Litem.

GUARDIAN AND WARD:

Notice of Application To Sell Lands of Minor;
 Notice of Sale of Land of Minor.

HABEAS CORPUS:

Notice to Party Interested of Time and Place When Writ Returnable.

HEARING:

Notice of Hearing.

HOMESTEAD AND EXEMPTION:

Notice to Sheriff That Debtor Will Choose Exempt Property.

INTERSTATE COMMERCE COMMISSION:

Notice To Answer;
 Notice of Hearing;
 Notice of Hearing by Carrier;
 Notice of Taking Deposition.

JUDGMENTS:

Notice of Acceptance of Offer of Judgment;
 Notice for Judgment on Frivolous Demurrer;
 Notice for Judgment Dismissing Action;
 Notice for Judgment on Failure To Reply;
 Notice for Judgment Non Obstante Veredicto;
 Notice of Acceptance of Offer To Liquidate Damages;
 Notice of Judgment;
 Notice of Judgment of Respondent Ouster.

JUDICIAL SALES:

Notice of Judicial Sale;
 Notice To Compel Purchaser To Complete Purchase.

JURIES AND JURORS:

Notice of Striking Jury (a, b);
 Notice for Firing Jury;
 Notice for Special Jury (a, b).

LIBERUM TENEMENTUM:

Rejoinder, Notice To Quit;
 Surrejoinder, Notice To Quit Was Waived;
 Rebutter, Denying Notice To Quit Was Waived.

LIS PENDENS:

Notice of Lis Pendens for Foreclosure;
 Notice of Lis Pendens for Partition;
 Notice of Lis Pendens in Attachment Affecting Real Property;
 Notice of Lis Pendens in Proceedings To Set Aside Fraudulent Conveyance;
 Affidavit of Filing Notice of Lis Pendens.

MASTER AND SERVANT:

Notice to Employer of Injury.

MECHANICS' LIENS:

Notice of Lien by Subcontractor.

MOTIONS:

Notices of Motion.—See Motions for a large number of forms.

ORDERS OF COURT:

Notice of Settlement of Order;
 Notice of Decision of Circuit Court and Order Thereon;
 Notice To Discharge Order for Irregularity.

PARTITION:

Notice of Presenting Petition for Partition.

PAUPERS:

Notice of Application To Prosecute In Forma Pauperis.

PLEAS:

Notice of Special Matter With General Issue.

RECOGNIZANCES:

Notice of Render in Discharge of Bail;
 Notice for Exoneretur

REFERENCES:

Notice of Hearing Before Referee;
 Notice of Motion for Reference;
 Notice To Proceed Before Referee;
 Notice of Hearing Before Referee (Code);
 Notice To Refer Cause.

REJOINDER:

Rejoinder, Notice To Quit;
 Surrejoinder That Notice To Quit Was Waived.

REMOVAL OF CAUSES:

Notice of Offer To Be Indorsed on Bond;
 Notice of Motion for Removal.

SCIRE FACIAS:

Notice To Plead to Scire Facias.

SECURITY FOR COSTS:

Notice of Filing Security for Costs;
 Notice of Motion To File Security for Costs;
 Notice of Exception to Security for Costs;
 Notice of Justification of Sureties for Costs.

SEQUESTRATION:

Notice to Tenants To Attorn.

SERVICE OF PROCESS AND PAPERS:

Notice for Publication To Be Appended to Summons;
 Notice for Publication of Attachment Against Non-resident;
 Notice for Publication of Attachment Against Absconding Debtor.

SHERIFFS AND CONSTABLES:

Notice To Return Capias Ad Respondendum;
 Notice To Return Capias Ad Satisfaciendum;
 Notice to Return Fieri Facias;
 Affidavit of Service of Notice To Return;
 Notice To Set Aside Attachment Proceeding Against Sheriff as Irregular;
 Notice To Stay Proceedings Against Sheriff.

SUBSTITUTION OF ATTORNEY:

Notice of Substitution of Attorney.

TENDER:

Notice of Paying Into Court.

TIME TO PLEAD:

Notice To Declare;
 Notice To Plead;

Notice To Reply;
 Notice To Rejoin;
 Notice To Surrejoin;
 Notice To Plead to Scire Facias.

TRIAL:

Notice of Trial;
 Notice To Strike Cause From Calendar for Not Serving Papers.

WRIT OF ERROR:

Notice of Bail in Error;
 Notice of Exception to Bail in Error.

NOTICE OF DEFENSE.

Notice, 17th Plea of General Issue.

"You will please take notice that on the trial of said cause the above named defendant will give in evidence, and insist in its defense, that, at the time of the alleged destruction and damage of the property claimed in plaintiff's declaration to have been destroyed and damaged by fire, as in said declaration set forth, none of said claimed to be insured property was so destroyed, as alleged in said declaration; that said property had, prior to the said fire reaching it, been all removed to a place of safety, and was not in anywise damaged or destroyed, of which fact the assured and said plaintiffs had notice.

"That said policy of insurance declared upon contained the following condition:

"Any fraud or attempt at fraud, or any misrepresentation in any statement touching the loss, or any false swearing on the part of the assured or his agent, in any examination, or in the proofs of loss, or otherwise, shall cause a forfeiture of all claim on this association under this policy; and in such case this association shall have the right, at any time, to require the same to be delivered up to be canceled."

"That the said assured, and the said plaintiffs, in making claim against this defendant, and in making proofs of loss to this defendant, violated the said condition." *Robinson v. Fire Assn.*, 63 Mich. 90, 29 N. W. 521.

NUISANCE.

I. Declaration for Nuisance Near Dwelling, 880

II. Pleas, 880

A. *Not Guilty*, 880

B. *Justifying Removal*, 880

III. Writ of Inquiry, 881

IV. Judgment, 881

V. Execution, 881

VI. Complaints, 882

A. *Against Erector*, 882

B. *For Injunction and Damages*, 882

C. *Against Continuer*, 882

VII. Answers, 882

A. *Denial of Nuisance*, 882

B. *Denial of Act*, 882

C. *Denial of Plaintiff's Title*, 882

D. *Answer, Alleging Prescriptive Right To Maintain Nuisance*, 882

VIII. Bill To Prevent Nuisance, 883

IX. Decrees, 884

A. *Interlocutory, Ordering Reference*, 884

B. *Abating and Reducing, With Injunction*, 885

C. *Staying Pollution of Stream*, 885

X. Indictments, 885

A. *For Nuisance, Maintaining Dam*, 885

B. *Obstructing Highway by Maintaining Fence*, 886

C. *Affidavit Charging Maintenance of Nuisance*, 887

D. *Affidavit, Maintaining Smokestack of Insufficient Height*, 887

CROSS-REFERENCES:

ANIMALS:

Indictment, Nuisance for Keeping Furious Dog Unmuzzled Near Highway.

DEMURRER:

Demurrer to a Bill To Restrain Private Nuisance, Plaintiff Not Having Established His Right at Law.

HEALTH:

Indictment for Nuisance Affecting Health.

INJUNCTIONS:

Injunction Against Noisy Bells;

Injunction Against Continuance of Slaughter House;

Injunction Against Nuisance, Burning Brick.

INTOXICATING LIQUORS:

Information, Maintaining Nuisance by Selling Liquor.

PROFANITY:

Indictment, Profanity as a Common Law Nuisance.

VENDOR AND PURCHASER:

Complaint on Covenant Against Nuisances, Deed Executed Only by Grantor.

WATERS AND WATERCOURSES:

Declaration for Damage Caused by
Containing Dam, Flowing Meadow;
Complaint, Allegation of Special
Damage to Plaintiff's Land;

Complaint, Allegation Against Con-
tainer of Dam Which Is Nuisance;

Complaint Against Erector of a Dam
Which Is Nuisance, Seeking Abate-
ment and Damages.

I. Declaration for Nuisance Near Dwelling.

For that whereas the said plaintiff, before and at the time of the committing of the grievances by the said defendant as hereinafter mentioned was, and from thence hitherto hath been, and still is, possessed of a certain messuage or dwelling house, and premises, situate in the county of _____ (or, at, etc.); and the said messuage or dwelling house, and premises of the said plaintiff, with his family, at the times hereinafter mentioned, occupied and inhabited, and still doth occupy and inhabit, to-wit, in the county (or at, etc.) And whereas also the said defendant, before and at the time of the committing of the grievances hereinafter next mentioned, was, and from thence hitherto hath been, and still is possessed of a certain piece or parcel of ground contiguous and near to the said messuage or dwelling house, and premises, of the said plaintiff, to-wit, in the county (or at, etc.) aforesaid. Nevertheless the said defendant contriving and intending to injure, prejudice, and aggrieve the said plaintiff, and to incommode and annoy him and his family in the possession, occupation, and enjoyment of his said messuage or dwelling house, and premises, heretofore, to-wit, on, etc., and on divers other days and times, between that day and the day of exhibiting this bill (or, if in C. P., say, "commencement of this suit"), wrongfully and injuriously erected and built a certain building and erected on the said piece or parcel of ground of the said defendant, so being contiguous and near to the said messuage or dwelling house and premises of the said plaintiff as aforesaid, and wrongfully and injuriously kept and continued, and caused to be kept and continued, the same building and erection so erected and made, for a long space of time, to-wit, hitherto; and on the several days and times aforesaid, to-wit, in the county

(or at, etc.) aforesaid, wrongfully and injuriously exercised and carried on in the said house or building, the trade or business of a candlemaker or manufacturer of candles, and made, and caused and procured to be made and manufactured, divers large quantities of candles therein. By means of which several premises, divers noisome, noxious, and offensive vapors, fumes, smokes, smells, and stenches, on the several days and times aforesaid, rose, issued, and proceeded from the said buildings and erections, and entered into and spread and diffused themselves over and upon, into, through, and about the said messuage or dwelling house and premises of the said plaintiff, and the air over, through, and about the same, was thereby greatly filled and impregnated with the said noisome, noxious, and offensive vapors, fumes, smokes, smells, and stenches, and was rendered, on the said several days and times aforesaid, and became and was, and still is corrupted, offensive, unwholesome, unhealthy and uncomfortable, and the said plaintiff hath thereby been and still is greatly annoyed and incommoded in the use, possession, occupation, and enjoyment of the said messuage or dwelling house and premises, and hath been, and is, by means of the committing of the grievances aforesaid by the said defendants as aforesaid, otherwise greatly injured and damaged, to-wit, in the county (or at, etc.) aforesaid. 2 Chit. Pl. 773.

II. Pleas.

A. *Plea in Nuisance, Not Guilty.*

And the said C. D. by G. H., his attorney, comes and defends the wrong and injury, when, etc., and says that he is not guilty of the premises above laid to his charge, in manner and form, as the said A. B. hath above thereof complained against him. And of this, he puts himself upon the country, etc.

G. H., attorney for deft.

Burr. App. 571, §1113.

B. *Plea Justifying Removal.*

Because he says, that the said defendant, before and at the said time when, etc., and from thence hitherto hath been, and still is, lawfully possessed of and in a certain garden or parcel of land, situate and being in the parish aforesaid, in the county aforesaid, and that the said branches in the said first count mentioned, and the said wood and underwood, in the

said last count mentioned, just before the said time when, etc., were overhanging, encumbering, and damaging the said garden or parcel of land of the said defendant, and the vegetables therein growing; wherefore he the said defendant, at the said time when, etc., did cut, lop, and top the said branches and underwood so overhanging, encumbering, and damaging the said close of the said plaintiff as aforesaid, and took and carried away the said branches, wood, underwood, and berries, to a small and convenient distance, and there left the same for the said plaintiff, as he lawfully might for the cause aforesaid, which are the said supposed trespasses whereof the said plaintiff hath complained against the said defendant. And this, etc. 3 Chit. Pl. 1102.

III. Writ of Inquiry as to Nuisance.

The people of the state of New York to the sheriff of the (city and) county of _____, greeting:

Whereas A. B., lately in our supreme court of judicature before our justices thereof, impleaded C. D. of a plea wherefore, etc. (here insert the declaration), to his damage _____ dollars, as he said: And such proceedings were thereupon had in our said supreme court, before our said justices, that the said plaintiff ought to recover his damages by occasion of the premises; but because it is unknown to our said supreme court, before our said justices, what damages the said plaintiff hath sustained by reason of the premises. Therefore we command you, that with twelve good and lawful men of your county, you go to the place where the said nuisance in the said declaration mentioned exists, and there by the oath of the said twelve good and lawful men, you diligently inquire thereof, and of the damages occasioned thereby; and that the inquisition which you shall thereupon take you send to our said court, before our justices thereof, at, etc., on, etc. (the return day) under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness, etc. (teste and signatures in the usual form). Burr. App. 590, §1161.

IV. Judgment in Nuisance.

(The record is made up in the same manner as in ordinary actions, with placita, pleadings and the usual entries

to judgment, which, if rendered for the plaintiff, is entered as follows):

Therefore it is considered, that the said plaintiff do recover against the said defendant his damages aforesaid, by the jurors aforesaid in form aforesaid found, and also _____ dollars and _____ cents for his costs and charges, by him about his suit in this behalf expended, by the court now here adjudged of increase to the said plaintiff, with his assent; which said damages, costs and charges in the whole amount to _____ dollars and _____ cents. And it is further considered, that the said nuisance in the said declaration described and set forth, be removed by the sheriff of the county of _____ (the county in which the nuisance occurred. If there be judgment as to the particular manner in which the nuisance is to be abated, it must be set forth). And let the said defendant be taken, etc. Burr. App. 532, §1055; Yates' Forms 522.

V. Execution in Nuisance.

The people, etc., to the sheriff, etc., greeting:

Whereas A. B. lately in our supreme court of judicature, before our justices thereof, at, etc., recovered a judgment against C. D. on a writ of nuisance, that he should recover of the said C. D. _____ dollars, as well for his damages by him sustained by the said nuisance, as for his costs and charges by him about his suit in that behalf expended, adjudged by the said court to the said plaintiff; and it was further considered by the said court before our said justices that the said nuisance be removed by (here state how, according to the judgment, and describe the nuisance to be removed, with convenient certainty); whereof the said defendant is also convicted as appears to us of record; and although judgment be given as aforesaid, yet execution thereof remaineth still to be done; now, therefore, we command you, that (of the goods and chattels of the said C. D., etc. (as in ordinary fl. fa.)), and we further command you that) you forthwith do remove (state according to the judgment), and how you shall have executed this our writ, make appear to our justices of our supreme court of judicature at, etc., on, etc. (the return day), together with this writ.

Witness, etc. (teste in the usual form).

_____, _____, clerks.

E. F., attorney.

Burr. App. 519, §1040; Yates' Forms 522.

VI. Complaints.

A. Complaint Against Erector of Slaughter House, a Nuisance, Seeking Damages.

I. That the plaintiff is, and at the times hereinafter mentioned was (the owner and) possessed of the house and lot No. _____ in _____ street, in the city of _____, which he inhabited with his family.

II. That the defendant was also then possessed of certain premises contiguous to (or, in the immediate vicinity of) those of the plaintiff.

III. That the defendant, in the month of _____, 18____, erected on his said premises a slaughter house and cattle pens, and thereafter kept and slaughtered therein large numbers of cattle and hogs, thereby causing noxious and offensive smells, and loud and offensive noises, and tainting and corrupting the atmosphere, so as to render the dwelling house and premises of the plaintiff unfit for habitation, to the nuisance of the said dwelling house and premises of the said plaintiff, and to his damage _____ dollars.

IV. That the defendant's violation of this covenant has prevented other lots in the vicinity from becoming valuable to the plaintiff, as they would otherwise have done, and has injuriously affected their condition and hindered the plaintiff from selling them; that the offal and blood in and carried out from said slaughter-house, and the offensive smell created thereby, is a nuisance to the vicinity of the said premises and to the plaintiff, whose house is adjoining; to his damage _____ dollars. 1 Abb. Forms 475.

B. Complaint, Prayer for Judgment for Injunction Against Nuisance, and for Damages.

State facts as in preceding forms, demanding judgment thus: Wherefore the plaintiff demands judgment:

1. That the defendant be restrained by injunction from erecting or using the said building as a _____, or otherwise to the nuisance of the plaintiff, or permitting it to be so used.

2. That the plaintiff recover from the defendant _____ dollars dam-

ages, and his costs. 1 Abb. Forms 476.

C. Complaint Against Continuer of Nuisance.

I. That the plaintiff is, and at the times hereinafter mentioned was (the owner and) possessed of the house and lot No. _____, in _____ street, in the city of _____, which he inhabited with his family.

II. That ever since the _____ day of _____, 18____, the defendant has maintained a slaughter house on his premises contiguous thereto (or, in the immediate vicinity thereof), and has kept and slaughtered therein large numbers of cattle and hogs, thereby causing noxious and offensive smells, and loud and offensive noises, and tainting and corrupting the atmosphere, so as to render the dwelling house and premises of the plaintiff unfit for habitation, to the nuisance of the said dwelling house and premises of the said plaintiff, and to his damage _____ dollars.

III. That on the _____ day of _____, 18____, the plaintiff requested the defendant to remove the said slaughter house, or to cease using it for that purpose, but he has not done so.

IV. Special damage, if any. 1 Abb. Forms 476.

VII. Answers.

A. Answer, Denial of Nuisance.

That the defendant's premises have not been used as a slaughter house (or other offensive manner), as alleged. 2 Abb. Forms 127.

B. Denial of Act.

That the defendant did not erect (or keep up) said (dam), as alleged. 2 Abb. Forms 128.

C. Answer, Denial of Plaintiff's Title.

That the plaintiff was not, and is not, owner of (or, possessed of) the premises described in the complaint, as alleged. 2 Abb. Forms 127.

D. Answer, Alleging Prescriptive Right To Maintain Nuisance.

"And for a third plea in this behalf, the said defendants say that the premises, whereon the injury alleged by the plaintiff is being done, were owned and possessed by the defendants, and those under whom the defendants legally claim, for many years, before the plaintiff became possessed

of his title in, or occupied the premises in the declaration mentioned, and that defendants, and those under whom they so legally claim, have used their aforesaid property for a brewery, and therein conducted their business as such for more than twenty years, before the commencement of this suit, without suit, molestation or disturbance by, or on the part of the owners and occupiers of the said property, now of the plaintiff, and during all that time they had continued to use and carry on their said trade as brewers, and during all that time the said business of brewing had thereon been followed, conducted and done with no more or greater noise, jarring or agitation, than were necessary and requisite to enable them to carry on their said business, and than the plaintiff, and those under whom he claims, had been accustomed to, from said cause and business, during all that time." *Repp v. Berger*, 60 Md. 1.

VIII. Bill To Prevent Nuisance Where Irreparable Injury Would ensue.

That your orator A. B. now is, and for a considerable time past has been, possessed of a certain message or dwelling house, with the appurtenances, situate at D., in the county of C., in which, for twenty years last past, there has been, and still is of right ought to be, two ancient windows to admit of light and air, for the convenient and wholesome use, occupation, and enjoyment of the said house. And your orator further sheweth unto your honors, that G. H., of, etc. (the defendant hereinafter named) is possessed of a piece or parcel of land adjoining or contiguous to that part of your orator's said house wherein are such windows as aforesaid; and the said C. D. has lately begun to dig the foundation for a certain wall or building in that part of the said piece of ground which is immediately opposite, and is within the space or distance of four feet only from such part of your orator's said house as aforesaid; and the said G. H. has already erected, or caused to be erected, part of such intended wall or building of considerable height, and exceeding the height of twenty feet, which has greatly darkened your orator's said dwelling house and the appurtenances, and prevented the light and air entering your orator's said house through the said windows, and

rendered the same close, uncomfortable, and unwholesome, and unfit for the habitation of your orator. And your orator further sheweth unto your honors, that, in consequence of such proceeding on the part of the said G. H. as aforesaid, your orator, in or as of last ——— term, brought an action on the case in, etc., which has since been tried, and a verdict obtained for your orator, for the sum of \$———, for the damages sustained by your orator by the erection of such wall or building as aforesaid.

And your orator further sheweth, that your orator, both previously to, and since the determination of such action as aforesaid, frequently by himself and otherwise applied to the said G. H., and requested him not only to desist from continuing to erect, but also to take down and abate such wall or building, and nuisance, so as to prevent your orator being so injured thereby as aforesaid, which your orator hoped would have been done. But now so it is, may it please, etc., the said G. H. combining, etc., still proceeds in the erection of the said wall or building, and he pretends that, as an absolute owner of the said piece of ground, he has good right to erect the said wall or building or any part thereof, without any interruption or prevention by or on the part of your orator; and he also pretends that the said wall or building is erected on an ancient foundation, and therefore, notwithstanding it may obstruct your orator in the free enjoyment of the light and air, which was admitted through your orator's said windows, that he is legally entitled so to do. Whereas your orator charges the contrary thereof to be true, and that the said G. H. is only entitled to exercise such acts of ownership in and upon the said piece of ground as are legal and proper, and not to erect a wall or building so near to your orator's message and dwelling house as to obstruct his ancient windows, and become a nuisance to your orator; and that even if the said wall or building be erected on an ancient foundation, but which your orator nowise admits, yet the said premises being so far distant from L., no right or privilege, to the injury or prejudice of your orator, by reason thereof, attaches to the said G. H., as such owner of the said piece of ground as aforesaid. And your orator further charges, that from

the slight and perishable materials of which the said wall or building is composed, the same is in great and constant danger of falling and doing considerable injury to your orator, as the said G. H. well knows, but nevertheless he persists in his intention of continuing such erection, which will render the said wall or building much more injurious and dangerous to your orator than the same now is, unless he shall be restrained therefrom by the order and injunction of this honorable court. And that the said G. H. may make a full and true disclosure and discovery of and concerning the several matters aforesaid; and that the said G. H. may be restrained, by the order and injunction of this honorable court, from proceeding in the erection of the said wall or building; and that he may be decreed to obviate and abate the said nuisance, so as to render your orator's enjoyment of his said dwelling house, with the appurtenances, as safe, wholesome, and fit for your orator's habitation as the same was previously to the commencement of the erection of such wall or building as aforesaid. (And for general relief.) May it please, etc. (End with praying an injunction in the terms of the prayer, and praying process, etc.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2070.

IX. Decrees.

A. *Interlocutory Decree, Ordering Reference for Experiments as to Extent of Nuisance.*

And now this cause coming on to be heard, etc., etc., it is ordered by the court, that it be referred to T. R., esq., as master, with directions to ascertain and report to this court upon the evidence in the cause, and such other evidence as he may deem necessary, and such experiments as he may choose to direct, to what extent, if any, the erection of the Albion dam has obstructed or does obstruct the natural flow of the water from the plaintiff's mill and lands, and to what extent it will be required to be lowered, if any, in order to restore the flow of said water to its state before said erection; and that he have authority to summon witnesses, administer oaths, and exercise all the usual powers of master in chancery in such cases, and that he have authority in

particular to direct the parties to stop their several mills if necessary, in order that all such experiments as the master may think requisite to be made may be made, and for the same purpose, if necessary, to direct that the dam may be lowered and ponds drawn off, and to compel the obedience of the said parties to all orders made by him in the necessary discharge of the duties of his appointment. And that he may report to this court of his doings in the premises, when he shall have performed the duties of his said appointment.

And the said master is in the meantime specially directed to proceed immediately to ascertain by actual experiments, conducted by skilful engineers, to be chosen by himself and with notice to the parties, the effect on the plaintiffs' works of lowering the Albion dam to the height at which it stood before the erection thereon of 1828, that is to say, two feet below its present height, that these experiments be made at different states of the river, so as to show the effect aforesaid at those several states respectively, that the master have authority to direct the defendants to draw off the water in their pond, by gates or by reducing the height of the dam or by any other means so that the said experiments may be fully and satisfactorily made, at the said several depths of water in the river. That the said master cause these experiments to be made forthwith, and that he report the result thereof specially to this court. And that the master have also authority by such experiments to ascertain the effect of lowering said dam to intermediate stages less than two feet, at the said several states of the water; and that he have authority to direct and order both parties to stop their respective works if necessary, and to do and perform whatever he may judge necessary, in order to render such experiments complete and satisfactory.

Ordered as above.

Nov. Term, 1833. B. C., clerk.

The parties agree that S. B. C. and R. S. S. be the engineers to be employed by the master.

Witness, B. C., clerk.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2311, 2312.

B. Decree for Abating and Reducing a Mill-Dam Which Caused the Water To Flow Back on Mills Above; But so Framed as to Conclude Neither Party as to the Right To Raise Flash Boards in the Dam in Certain States of the River. Injunction Not Again To Raise Dam so Reduced.

(Final decree.) This cause came on again to be heard upon the master's report, and the exceptions taken thereto by the parties respectively, and was argued by counsel. On consideration whereof, it was ordered, adjudged, and decreed by the court, that the exceptions of the said parties respectively be, and the same are hereby overruled, and that the said report do stand in all matters confirmed except as herein-after stated. And it not appearing by the answers of the defendants that they assert any right or title to the Eel dam, in the said answers stated, under the owners thereof, by operation of law or otherwise, nor what the true nature and extent of the right and title of the said owners of said Eel dam were and are: It is, thereupon, further ordered, adjudged, and decreed, that the said Albion dam in the said pleadings mentioned ought to be reduced from its height, at the time of the filing of the plaintiff's bill, the space of twenty-four inches from the top thereof, as a nuisance to the privileges and mills of the plaintiffs in the same bill mentioned, and in violation of their rights thereto; and the said defendants are hereby ordered to abate and reduce the said Albion dam the said twenty-four inches accordingly, within forty days from the entering of this decree. And it is further ordered, adjudged, and decreed, that the said defendants, their heirs and assigns be, and they hereby are, perpetually enjoined, after the same Albion dam is so abated and reduced as aforesaid, never thereafter to raise the same dam above the level to which the same shall be so abated and reduced as aforesaid. And it is further adjudged and decreed that a writ of injunction do issue forthwith against the defendants, commanding them to comply with all and singular the premises so enjoined upon them.

And inasmuch as it appears from the master's report that in low states of the river, when it is not obstructed by snow and ice, the defendants might,

without injury to the plaintiffs, put flashboards on their dam sixteen inches and one-half wide, and the same keep up, until the water in the river flows over the top of them with their present mill gates drawn, and it is not the intent of the court, in any manner, to act upon this part of the said report, but to leave the parties respectively to their respective rights in regard thereof in the same manner as if the same were not stated in the same report; it is further ordered and declared, that no part of this decree is to be construed in any manner to affirm or deny the right of the defendants to put up such flash-boards; but the parties are left to their respective rights in the premises, as if the same were not stated in the report.

And it is further ordered and decreed, that the plaintiffs do recover their costs in the premises. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2310; Mann v. Wilkinson, 2 Sumn. 273, 16 Fed. Cas. No. 9,036.

C. Decree Staying Pollution of Stream.

This court doth order, that a perpetual injunction be awarded to restrain the local board of health for the town of ———, their agents, servants, and workmen, from causing or permitting to pass any sewage, filth, or other offensive matter, either solid or liquid, down or through any sewer or drain into the river W., in the bill mentioned, to the injury of the plaintiff. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2309; 2 Seton Dec. (Eng. ed. 1862) 894.

X. Indictments.

A. Indictment for Nuisance, Maintaining Dam at Outlet of Lake.
State of New York, Ontario county,
ss:

The jurors for the people of the state of New York and for the body of the county, to-wit. Henry Smith, etc., etc., being sworn and charged to inquire for the people of the said state, and for the body of the county aforesaid, upon their oath, present, that James L. Munson and Jacob Ansberger, late of the town of ——— in the county aforesaid, on the first day of ———, in the year of our Lord one thousand eight hundred and ———, with force and arms, at the town of ———, in the county aforesaid, being possessed of a certain mill and mill-dam, which said mill and mill-dam were built,

erected and maintained by the said James L. Munson and Jacob Ansberger, across a certain outlet and common watercourse called "Canandaigua Outlet," near a certain place called "Canandaigua," in said county, which continually and during said time, and at all times of the year, hath run and been used and accustomed, and of right ought, without any obstruction or impediment, to run out of a certain lake called "Canandaigua Lake," situate and being in said county within its natural banks, through the lands and premises of divers good and lawful citizens of the state of New York.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said James L. Munson and Jacob Ansberger, being so possessed of a certain mill and mill-dam with their appurtenances, situate near and adjacent to a certain common highway and public road, and the dwelling houses of divers of the good citizens of the state of New York, at the town and in the county aforesaid, on the first day of ——— in the year of our Lord one thousand eight hundred and ———, and on divers days before and since that day, by so building, erecting and maintaining the said mill, and the said mill-dam being so as aforesaid built, erected and maintained across the said outlet and common watercourse, as aforesaid, did injuriously, unlawfully and maliciously obstruct the water in its said ancient course, so that it did not run at it was used and accustomed to do, but by means thereof and thereby, injuriously, unlawfully and maliciously, did permit and cause the said water of the said mill-dam to overflow the natural banks of the said ancient and common watercourse, upon either side and on both sides of the said watercourse, and to flow back upon to a great distance, to-wit, for the distance of five miles on either side and on both sides of the said watercourse, and overflow and cover and submerge the lands of the good and lawful citizens of the state of New York, there lying and situate adjacent thereto, on either side and on both sides of the said watercourse, so that by reason thereof the same could not be cultivated, by means whereof the mud, wood, leaves, brush, and animal and vegetable substances, and other filth, collected and brought down the channel of the said watercourse, and from

the waters of the said lake, by the natural flowing of the waters, then became and were, during all the time aforesaid, collected and accumulated in large quantities in the channel of the said watercourse, by the natural flowing of the waters, and on the lands and premises overflowed, covered and submerged, as aforesaid; and the said mud, wood, leaves, brush, and animal and vegetable substances, and other filth so there collected and brought down the channel of the said watercourse, and by the waters of the said lake, became and were, and still are very offensive, and the waters became and are corrupted, and by means whereof and from the action of the same upon the said mud, wood, leaves, brush, and the animal and vegetable substances, and other filth brought down the channel of the said watercourse, and upon the vegetable substances then growing upon the margin of the said watercourse, and upon the said lands overflowed and submerged as aforesaid, and by the alternate rise and fall of the water in the said pond and upon the said adjacent lands, the said mud, wood, leaves, brush, and the animal and vegetable substances and water, so as aforesaid collected, became stagnant, putrid and noxious, from whence unwholesome damps, fogs and smells did arise, whereby the air was greatly corrupted and infected, to the great damage and common nuisance of all the good and lawful citizens of the state of New York dwelling thereabouts, and all others passing and repassing on the said highway and near the said highway and near the said stagnant waters, and against the form of the statute in such cases made and provided, and against the peace of the people of the state of New York and their dignity. *Munson v. People*, 5 Park. Cr. (N. Y.) 16.

B. Indictment Obstructing Highway by Maintaining Fence.

"That Chester C. Matthews and Benjamin Buzzard, late of said county, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, and from that day until the commencement of proceedings herein, to-wit, on the twenty-eighth day of March, A. D. 1870, with force and arms, at Jackson township, in said county of Ashland and State of Ohio, knowingly and unlawfully did obstruct and incumber the public high-

way, to-wit, a certain county road, duly, lawfully, and regularly laid out, opened, worked, and used as a public highway by the people and citizens of the State of Ohio, and which said public highway is situate in the township of Jackson, and in said county of Ashland and State of Ohio, by then and there causing and permitting to stand and remain in said public highway a fence of rails, which said fence the said Chester C. Matthews and Benjamin Buzzard placed and caused to be placed in said public highway, knowingly and unlawfully, and with intent to obstruct and incumber the same, to the great damage and common nuisance of the citizens and people of the county of Ashland, and the citizens and people of the State of Ohio." *Matthews & Buzzard v. State*, 25 Ohio St. 536.

Note.—Held sufficient under the statute without an averment that the public were actually hindered.

C. Affidavit Charging Maintenance of Nuisance.

"Henry Jones, being duly sworn, on his oath swears, that on or about the 24th day of July, 1876, at said county, and near the city of Madison, and at divers other times before said day and the commencement of this action, at and near the dwelling houses of affiant and divers citizens of said place and county, said Moses did unlawfully maintain, and cause and procure to be maintained, a slaughter house, for the purpose of slaughtering cattle, and boiling the entrails and offal of the cattle; and the said Moses did, on the day and year, at the place aforesaid, and on divers other days and times before the commencement of this action, unlawfully kill and slaughter cattle, and boil entrails and offal, and cause and procure the slaughtered cattle, and the entrails and offal of the same to be boiled, to the injury of divers citizens, near said slaughter house as aforesaid; by reason whereof divers noisome, offensive and unwholesome smokes, smells and stinks, during the time aforesaid, were from them emitted, so that the air then and there was filled and impregnated with said smokes, smells and stinks, and made offensive, uncomfortable and unwholesome to the citizens near said slaughter house." *Moses v. State*, 58 Ind. 185.

Note.—Held to describe a public nuisance under the statute.

D. Affidavit, Maintaining Smoke-stack of Insufficient Height.

"Frederick Dalman being duly sworn, upon his oath says that on the first day of December, A. D. 1896, at the county of Allen and State of Indiana, Mary L. Smith and John C. Fulk did then and there, and on divers other days, both before and since said time, and up to the date of this prosecution, unlawfully erected, continued and maintained in the city of Ft. Wayne and State of Indiana, at, near, and among the dwelling houses of the divers inhabitants of the said city, a certain smoke-stack, projecting from a building used by the said Mary L. Smith and John S. Fulk, as a grist, feed, and flour mill, such stack being connected with a furnace within said building and used for the carrying away of smoke and soot produced by the burning of coal, wood and corn-cobs in such furnace, the said Mary L. Smith and John C. Fulk maintaining such stack at an elevation not sufficient to carry away the soot and smoke discharged from the same, by reason whereof unwholesome smokes and gases and great quantities of soot, which issue from such stack, then and there are carried to the ground and into the streets, to-wit, yards, verandas, and residences of the inhabitants there residing, thereby rendering the air unwholesome, uncomfortable and injurious to the health and offensive to the senses, while the free use of the property of said inhabitants is thereby obstructed, and the comfortable enjoyment thereof prevented, to the great damage and common nuisance of all the inhabitants of the said city, and State there being, residing and passing through and along said street, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Indiana. (Signed) Frederick Dalman. Subscribed and sworn to before me this 10th day of December, 1896. Henry P. Scherer, Mayor and Ex-officio J. P." *Fulk v. State*, 19 Ind. App. 356, 49 N. E. 465.

Note.—Reversed and a new trial granted because of failure to prove the allegation that the stack was of insufficient height, though it might be

immaterial to the sufficiency of the affidavit.

NUL TIEL CORPORATION.—See CORPORATIONS.

NUL TIEL RECORD.

CROSS-REFERENCES:

GENERAL ISSUE AND GENERAL DENIAL:
Plea of Nul Tiel Record.

REPLICATION AND REPLY:

Replication in Trover to Plea of Nul Tiel Record;

Replication of Nul Tiel Record.

RES JUDICATA:

Replication of Nul Tiel Record to Plea of Judgment Recovered.

OATH.

CROSS-REFERENCES:

CORONER'S INQUEST:

Oath to Foreman of Jury;

Oath to Juror;

Oath to Witness.

GUARDIAN AND WARD:

Oath of Guardian on Sale of Land of Minor.

PRELIMINARY EXAMINATION:

Oath to Complaining Witness on Preliminary Examination.

REFERENCES:

Oath of Referee.

OBJECTIONS AND EXCEPTIONS.

CROSS-REFERENCES:

BILLS OF EXCEPTIONS:

Defendant's Bill of Exceptions to Charge to Jury;

Plaintiff's Bill of Exceptions to Charge to Jury;

Bill of Exceptions, Decision Rejecting Evidence;

Bill of Exceptions to Decision Admitting Evidence;

Bill of Exceptions Setting Forth Pleadings;

Bill of Exceptions Prepared for Settlement;

Bill of Exceptions, Florida Supreme Court;

Evidentiary Bill of Exceptions, Florida Supreme Court;

Indorsement on Bill of Exceptions;

Notice of Settlement of Bill of Exceptions;

Judge's Certificate to Bill of Exceptions.

EQUITY JURISDICTION AND PROCEDURE:

Exceptions to Answers for Insufficiency (a, b);

Exceptions to Examination of Party;

Exceptions to Report of Master.

FINDINGS AND CONCLUSIONS:

Notice of Exceptions to Findings of Fact.

OBSCENITY.

I. Indictment for Selling Obscene Print, 888

II. Information for Selling and Publishing Obscene Literature, 889

III. Exhibiting Obscene Painting, 889

IV. Indictment for Indecent Exposure, 889

CROSS-REFERENCE:

POST-OFFICE:

Indictment for Mailing Obscene Matter;

Indictment for Mailing Obscene Book.

I. Indictment for Selling an Obscene Print.

Middlesex, to-wit—The jurors for our lady the queen upon their oath present, that J. S., late of the parish of B., in the county of M., bookseller, being a scandalous and evil-disposed person, and devising, contriving, and intending the morals as well of youth as of divers other liege subjects of our said lady the queen to debauch and corrupt, and to raise and create in their minds inordinate and lustful desires, and the clergy of this kingdom to bring into great contempt, hatred, scandal, infamy, and disgrace on the third day of August, in the ninth year of the reign of our sovereign lady Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, in a certain open and public shop of him the said J. S., there situate, unlawfully, wickedly, maliciously, and scandalously did sell and utter to one J. M., a certain lewd, wicked, scandalous, and obscene print or paper, entitled "The Parson receiving Tithes in kind," representing a man in the habit of a clergyman, in an obscene impudent, and indecent posture with a woman; and which said lewd, wicked, scandalous, and obscene print or paper is contained in a certain printed pamphlet then and there uttered and sold by him the said J. S. to the said

J. N., entitled "The Covent Garden Magazine, or Amorous Repository, calculated solely for the Entertainment of the Polite World, for April, 1773;" to the manifest corruption of the morals as well of youth as of other liege subjects of our said lady the queen, to the great scandal, infamy and disgrace of the clergy of this kingdom, in contempt of our said lady the queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the said queen, her crown and dignity. Archb. Cr. Pl. 534.

II. Information, Publishing and Selling Obscene Literature.

"Frank Holedger is hereby charged with the crime of publishing, editing and selling obscene and indecent literature, committed as follows, to-wit: That on the 12th day of January, A. D. 1895, at the county of Spokane and state of Washington, Frank Holedger then and there being, did then and there knowingly, unlawfully, maliciously, scandalously and feloniously compose, edit, print, sell, distribute and offer for sale and distribution a certain lewd, scandalous, obscene and indecent newspaper of the date of January 12th, 1895, commonly known as the Spokane Sunday Sun. Contrary to the statute," etc. State v. Holedger, 15 Wash. 443, 46 Pac. 652.

Note.—Held sufficient under statute.

III. Indictment, Exhibiting Obscene Painting.

"The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the city of Philadelphia, upon their oaths and affirmations respectively do present, that Jesse Sharpless, late of the same city yeoman, John Haines, late of the same city yeoman, George Haines, late of the same city, yeoman, John Steel, late of the same city yeoman, Ephraim Martin, late of the same city yeoman, and ——— Mayo, also late of the same city yeoman, being evil disposed persons, and designing, contriving, and intending the morals, as well of youth as of divers other citizens of this commonwealth, to debauch and corrupt, and to raise and create in their minds inordinate and lustful desires, on the first day of March, in the year one thousand eight hundred and fifteen, at the city aforesaid, and within the jurisdiction of this court, in a certain

house there situate, unlawfully, wickedly, and scandalously did exhibit, and show for money, to persons, to the inquest aforesaid unknown, a certain lewd, wicked, scandalous, infamous, and obscene painting, representing a man in an obscene, impudent, and indecent posture with a woman, to the manifest corruption and subversion of youth, and other citizens of this commonwealth, to the evil example of all others in like case offending, and against the peace and dignity of the commonwealth of Pennsylvania." Com. v. Sharpless, 2 Serg. & R. (Pa.) 91.

Note.—In the opinion it was said: "Must the indictment describe minutely, the attitude and posture of the figures? I am for paying some respect to the chastity of our records. These are circumstances which may be well omitted."

IV. Indictment Against Man for Publicly Exposing His Naked Person (a).

Middlesex, to-wit: The jurors for our lady the queen upon their oath present, that J. S., late of the parish of B., in the county of M., laborer, being a scandalous and evil-disposed person, and devising, contriving, and intending the morals of divers liege subjects of our lady the queen to debauch and corrupt, on the third day of August, in the ninth year of the reign of our sovereign lady Victoria, at the parish aforesaid, in the county aforesaid, on a certain public and common highway there situate, in the presence of divers liege subjects of our said lady the queen then and there being, and within sight and view of divers other liege subjects through and on the said highway then and there passing and repassing, unlawfully, wickedly, and scandalously did expose to the view of the said persons so present, and so passing and repassing as aforesaid, the body and person of him the said J. S. naked and uncovered, for a long space of time, to-wit, for the space of one hour; to the great scandal of the said liege subjects of our said lady the queen, to the manifest corruption of their morals, in contempt of our said lady the Queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the queen, her crown and dignity. Archb. Cr. Pl. 655.

Indictment Against a Man for Publicly Exposing His Naked Person (b).

"That A. M. Bauguess, on the 28th day of June, 1897, at the township of Madison, in the county of Lee and state aforesaid, did wilfully, unlawfully, and designedly make an open, indecent, and obscene exposure of his person in a public place, to-wit," etc. *State v. Bauguess*, 106 Iowa 107, 76 N. W. 508.

OBSTRUCTING JUSTICE.

- I. Indictment for Resisting Officer, Common Law Form, 890
- II. Information, Resisting Public Officer, Statutory, 890
- III. Indictment for Impeding Officer in Execution of Civil Process, 890
- IV. Indictment, Assault on Officer, 890
- V. Indictment, Resisting Officer Serving Process, 891
- VI. Indictment, Resisting Receiver Appointed by Court, 891
- VII. Indictment for Interfering With Witness, Advising Non-attendance, 891
- VIII. Indictment, Interfering With Witness, Administering Intoxicants, 892

CROSS-REFERENCES:

EMBRACERY:

- Indictment for Embracery, Attempting To Influence;
- Indictment for Embracery, Offer of Specific Property;
- Indictment for Embracery, Indefinite Offer of Gain, Defendant Not a Party.

RIOT:

- Indictment for Riot, Obstructing Justice.

- I. Indictment for Resisting Officer, Common Law Form.

"That Prince Bowen, with force and arms, etc., in and upon one Samuel G. Gordon an assault did make, the said Samuel G. Gordon then and there being a peace officer, to-wit, a policeman of the city of Charleston, an incorporated city in the county and state aforesaid, and then and there being in the lawful discharge of his duty as such policeman, and the said Prince Bowen then and there well knowing the said Samuel G. Gordon to be a policeman as aforesaid, and him the

said Samuel G. Gordon did then and there beat, bruise, wound, and ill-treat, and did then and there resist, obstruct, hinder, and oppose the said Samuel G. Gordon in the discharge of his duty as said policeman, etc." *State v. Bowen*, 17 S. C. 58.

II. Information for Resisting Public Officer, Statutory.

"That the said James Hunt, on the twenty-second day of August, 1897, at the county and state aforesaid, did wilfully, unlawfully, and feloniously resist, delay, and obstruct one C. Shanks in the discharge and attempt to discharge his duties as a public officer, he, the said C. Shanks, being then and there a duly appointed, qualified, and acting deputy sheriff of Los Angeles county and being then and there engaged as such deputy sheriff in arresting James Hunt, who was then and there wilfully and unlawfully disturbing the peace." *People v. Hunt*, 120 Cal. 281, 52 Pac. 658.

Note.—Held sufficient under statute without setting out particular acts.

III. Indictment for Impeding Officer in Execution of Civil Process.

"The grand jurors, etc., present that John B. Downer, etc., and one Archipus Fuller, etc., on the twenty-eighth day of September, A. D. 1835, with force and arms, etc., in and upon one Stillman Churchill in the peace then and there being, and then being constable of Stowe, in the county of Washington aforesaid, and in the due execution of his said office, then and there being, did make an assault, and him, the said Stillman Churchill, so being in the due execution of his said office as aforesaid, then and there did hinder and impede, and then and there beat, wound, and ill-treat, and other wrongs to the said Stillman Churchill, then and there did, to the great damage of the said Stillman Churchill, and against the peace." *State v. Downer*, 8 Vt. 424, 30 Am. Dec. 482.

Note.—Held sufficient at common law.

IV. Indictment, Assault on Officer.

Be it remembered, that at a county court, begun and holden at Burlington, within and for the county of Chittenden, on the third Tuesday of September, A. D. 1881, the grand jurors within and for the body of the county of Chittenden aforesaid, now here in court duly

empaneled and sworn, upon their oath present that Eugene Carpenter and Thomas Fassett, of Burlington, in the county of Chittenden, on the, to-wit: 12th day of September, A. D. 1881, at Burlington, in said county of Chittenden, with force and arms, in and upon Joseph A. Larose, then and there being a police officer of the city of Burlington, in the county of Chittenden aforesaid, under the authority of the State, did an assault make by then and there beating him, the said Joseph A. Larose, with fists, clubs, feet and sticks, and did then and there by means of which impede and hinder the said Joseph A. Larose, police officer aforesaid, while in the execution of his said office, of police officer as aforesaid, and while he as such police officer was engaged in attempting to quell and quiet a disturbance of the public peace between them, the said Eugene Carpenter and Thomas Fassett, and other persons to the grand jurors aforesaid at present unknown, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state. *State v. Carpenter*, 54 Vt. 550.

Note.—This was held to be a good common law form.

V. Indictment, Resisting Officer Serving Process.

The grand jurors chosen, selected and sworn, in and for the city of Chicago, in the state of Illinois, in the name and by the authority of the people of the state of Illinois, upon their oaths present, that Elijah Bowers, late of said city, on the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-five, in said city of Chicago, in the county and state aforesaid, in and upon one Michael Hickey, in the peace of the people then and there being, and being then and there a public officer, to-wit, a constable, and being then and there in the due execution of his duty as such constable, and being then and there attempting to serve a lawful process did then and there unlawfully, knowingly and wilfully resist, obstruct, and oppose, and him, the said Hickey, acting as such officer, he, the said Elijah Bowers, did then and there beat, wound, and ill-treat, contrary to the statute and against the peace and dig-

nity of the same people of the state of Illinois.

D. Mellroy, state's attorney.

Bowers v. People, 17 Ill. 373.

VI. Indictment, Resisting Receiver Appointed by Court.

That the defendant "knowingly and wilfully did resist and oppose one Stephen Adams, there and then duly appointed and acting as receiver of and for the circuit court of Polk county, Iowa, in the case of the National Life Ins. Co. of Montpelier, Vermont, plaintiff, against John D. Rivers and others, defendants, and by said court then and there, by order in writing, duly made and delivered to him, directed, authorized, and empowered to take charge of, and hold the crops growing or grown on the following described premises, to-wit: (describing them) "in his, the said Stephen Adams', efforts to obey and execute the said order of said court; and the said defendants above named, when and while said Stephen Adams, as such receiver, was legally and peacefully attempting to take charge of said crops growing and grown on the lands aforesaid, unlawfully, knowingly and wilfully did, then and there, resist and oppose him, the said Stephen Adams, by then and there closing and keeping closed the gates and other ways of entrance to and upon said lands, by threats of personal violence, by having and displaying arms and weapons, and other acts and threats unknown to the grand jury—contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Iowa." *State v. Rivers*, 64 Iowa 729, 19 N. W. 792.

VII. Indictment, Interfering With Witness, Advising Non-attendance.

"That J. J. Goss was indicted for murder by the grand jury at the April term, 1889, sitting in and for said county of Pike, and that one S. F. Perrow was a material witness on behalf of defendant, J. J. Goss, and that said S. F. Perrow was duly summoned to appear before the honorable circuit court of Pike county at its April term, 1889, on the 20th day of April, 1889, and to appear from day to day and from term to term of said court until discharged by law; and so the grand jurors upon their oaths do further present that S. R. Perrow, late of the

said county, on the 21th day of April, 1899, in the county aforesaid, unlawfully and wilfully did then and there attempt to obstruct and impede the trial of said cause, to wit, the State of Mississippi v. J. J. Goss, charged with murder, by then and there counseling, advising and secreting said witness, S. F. Perrow, and to remain away from and absent himself as a witness on behalf of said J. J. Goss, when said case was called for trial in aforesaid court, and by virtue of said counseling and advising to the said S. F. Perrow, given by the said S. R. Perrow, said S. F. Perrow failed to answer as a witness as aforesaid, when said cause was duly called in court, against the peace and dignity of the State of Mississippi." *Perrow v. State*, 67 Miss. 305, 7 So. 349.

VIII. Indictment, Interfering With Witness, Administering Intoxicants.

That the defendant, "well knowing that one Fred N. Treat, had been summoned in due form of law to appear before the supreme judicial court holden at Belfast within and for the county of Waldo, on the thirtieth day of April aforesaid, then and there to give evidence in said court in behalf of the state, and contriving and intending to obstruct the due course of justice, did then and there unlawfully and corruptly prevent, and attempt to prevent the said Treat from appearing at said court to give evidence as aforesaid, by then and there soliciting, enticing and persuading the said Treat to become intoxicated, and by then and there removing and abducting him the said Treat, whereby the said Treat did not appear at said court and give evidence," etc. *State v. Holt*, 84 Me. 509, 24 Atl. 951.

OBTAINING PROPERTY BY FALSE PRETENSES.

I. Indictments. 892

- A. *Presenting Pretended Letter From, and Pretending To Be a Relative of, a Person of Credit*, 892
- B. *Pretending Second Mortgage Was Only Lien*, 893
- C. *Pretending To Be Agent of Wholesale Firm*, 894
- D. *Obtaining Merchandise*, 895

CROSS-REFERENCE:

FALSE PERSONATION:

Information, Obtaining Property or Money by False Personation.

I. Indictments.

- A. *Indictment for False Pretenses, Presenting a Pretended Letter From, and Pretending To Be a Relative of a Person of Credit.*

That L. P., late of, etc., being an evil disposed person, and not minding to get his living by truth and honest labor, according to the laws of this realm, but compassing and devising how he might unlawfully obtain, and get into his hands and possession, the moneys of the honest liege subjects of our said lord the king, for the maintenance of his unthrifty living, on, etc., at, etc., aforesaid, falsely, and deceitfully did pretend and affirm to one T. T. that his, the said L. P.'s name was H. H. of N., in the county of S., esquire, and nephew to Mr. H. of N., in the county of S. (meaning J. H. of N., in the county of S., clerk), and that the said L. P. a certain false and counterfeit letter, in the name of him the said J. H. as a true letter of the proper handwriting of him the said J. H. falsely, fraudulently, and deceitfully, to the said T. T. then and there did deliver (he the said J. H. of N., in the county of S., clerk, then and long before being the special friend and intimate acquaintance of him the said T. T.) by which said false and counterfeit letter it was mentioned that the said J. H. desired the said T. T. to supply the bearer thereof, Mr. J. H., with the sum of sixty guineas, and to place it to his account (meaning the account of him the said J. H.), and that the said T. T. then and there believing the said false and counterfeit letter, to be of the proper handwriting of him the said J. H. did then and there pay and deliver to the said L. P. sixty pieces of gold coin, of the proper coin of this kingdom called guineas, of the value of sixty-three pounds of lawful money of G. B. whereas in truth and in fact, the said J. H. never did write or send, or cause to be written or sent, any such letter to the said T. T. desiring the said T. T. to supply the said H. H. with any sum of money whatever, and so the jurors, etc., do say, that the

said L. P. on the said, etc., at the said, etc., by color of the said counterfeit letter, and by the said false pretenses unlawfully, falsely, fraudulently, and deceitfully did obtain and get into his hands and possession, of and from the said T. T. the said sum of sixty-three pounds of lawful money of G. B. of the moneys of him the said T. T. and the said L. P. the said T. T. of his money aforesaid, then and there fraudulently and deceitfully did deceive and defraud, to the great damage and deceit of the said T. T. to the evil example, etc., against the peace, etc., and also against the form, etc. 3 Chit Cr. L. 1003.

*B. Indictment for False Pretenses,
Pretending Second Mortgage
Was Only Lien.*

And the jurors aforesaid, on their oaths aforesaid, present, that James Sully, on the 23d day of June, in the year one thousand eight hundred and fifty-nine, at the city of Buffalo, in the county aforesaid, feloniously devising and intending, by unlawful ways and means, to obtain the signature of one Trumbull Carey to a certain written instrument, to-wit, to a written instrument commonly called a bank check, which was and is in the words and figures following, to-wit:
\$2,000. "Buffalo, June 23d, 1859.

Bank of Genesee: Pay to the order of James Sully two thousand dollars, and charge to my account."

Did then and there feloniously, unlawfully, knowingly and designedly, falsely pretend and represent to the said Trumbull Carey that a certain mortgage, hereinbefore particularly described and set forth in the first count of this indictment, was the only mortgage, lien or incumbrance of any kind upon the premises in said mortgage described; that there was no other mortgage, lien or incumbrance upon the premises therein described; that it was a first and only mortgage, lien or incumbrance upon the premises therein described, and was a bona fide mortgage, and given for a part of the purchase-money of said premises, and which said mortgage was executed by Ernestus T. Cross and Margaret Cross, his wife, to William M. Moulton, and bears date June the second, in the year last aforesaid, and is to secure the payment of the sum of four thousand and three hundred dollars, and which

said mortgage, and the premises described therein, are hereinbefore, in the first count of this indictment, particularly described and set forth; and the said Trumbull Carey, then and there believing the said false pretenses and representations so made as aforesaid by the said James Sully, and then and there believing the same, and being deceived thereby, was then and there induced, by reason of the false pretenses and representations aforesaid, so made as aforesaid, to purchase the mortgage aforesaid, and the bond accompanying the same, and to affix and write his name and signature to the aforesaid written instrument, commonly called a bank check, to-wit, in the words and letters following: "T. Carey," which said check, with the signature of said Trumbull Carey thereon, obtained as aforesaid, the said James Sully took and obtained from said Carey, in part payment of the purchase-money for said mortgage and bond purchased as aforesaid; and the said James Sully did then and there feloniously, knowingly and designedly obtain the signature aforesaid of the said Trumbull Carey to the aforesaid written instrument, commonly called a bank check, by reason of the false pretenses and representations aforesaid, and with intent feloniously to cheat and defraud the said Trumbull Carey.

Whereas in fact, and in truth, said mortgage was not then and there the only mortgage, lien or incumbrance upon the premises therein described, and whereas in fact, and in truth, said mortgage was not then and there the first and only mortgage, lien or incumbrance upon the premises therein described, and was not a bona fide mortgage, given for part of the purchase-money, but, on the contrary, said mortgage was given without any consideration whatsoever and was then and there wholly worthless, and there was then and there another mortgage upon said premises to secure the payment of the sum of five thousand two hundred and fifty dollars, dated the sixth day of May, in the year last aforesaid, executed and delivered by one William M. Moulton to one Truman Luce, and which mortgage was then and there the first mortgage upon the aforesaid premises, and was the first and prior lien and incumbrance thereon, and the said James Sully then and there well knew, at the time of his

making the false pretenses and representations aforesaid, that the said last mentioned mortgage was upon the said premises, and was the first mortgage, lien and incumbrance thereon; and whereas in fact, and in truth, each and every of the pretenses and representations so made as aforesaid by the said James Sully were utterly false and untrue, and the said James Sully well knew that each and every of the pretenses and representations so made by him as aforesaid, were utterly false and untrue, at the time of making the same, contrary to the form of the statute in such case made and provided, and against the peace of the people of the state of New York and their dignity.

J. M. Humphrey, district attorney.

People v. Sully, 5 Park. Cr. (N. Y.) 142, 147.

Note—A cheat or fraud at common law must be such as would impose on the public, and on a man of ordinary caution. People v. Sully, 5 Park. Cr. (N. Y.) 142.

Pretenses under statute must have deceived the party victimized. *Id.*

C. Indictment for False Pretense, Pretending To Be Agent of Wholesale Firm.

City and county of New York, ss.:
The jurors of the people of the state of New York, in and for the body of the city and county of New York, upon their oath, present:

That Julius J. Smith, late of the first ward of the city of New York, in the county of New York aforesaid, well knowing that Rachel Stoesser, hereinafter mentioned, was then and there a customer, and in the habit of dealing with the firm of J. Riegelman & Deffaa, dealers in flour, doing business in said city, on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and sixty-two, at the ward, city and county aforesaid, with force and arms, on the day and year last aforesaid, with intent feloniously to cheat and defraud said Rachel Stoesser, did then and there feloniously, unlawfully, knowingly and designedly, falsely pretend and represent to said Rachel Stoesser, that he, the said Julius J. Smith, was then and there a salesman and agent for the said firm of J. Riegelman & Deffaa, and that he, the said Julius J. Smith, had then and there procured to be sent

to said Rachel Stoesser by said firm of J. Riegelman & Deffaa, ten barrels of flour and one bag of meal; and that he, the said Julius J. Smith, had then and there full power and authority to collect and receive the price of said flour and meal from the said Rachel Stoesser. And the said Rachel Stoesser, then and there believing the said false pretenses and representations so made as aforesaid, by the said Julius J. Smith, and being deceived thereby, was induced by reason of the false pretenses and representations so made as aforesaid, to deliver and did then and there deliver to the said Julius J. Smith the sum of eighty-two dollars and seventy cents in money, of the value of eighty-two dollars and seventy cents of the proper moneys, valuable things, goods, chattels, personal property and effects of the said Rachel Stoesser, and the said Julius J. Smith did then and there designedly receive and obtain the said sum in money of the value aforesaid of the said Rachel Stoesser, of the proper moneys, valuable things, goods, chattels, personal property and effects of the said Rachel Stoesser by means of the false pretenses and representations aforesaid, and with intent feloniously to keep and defraud the said Rachel Stoesser of the said sum in money of the value aforesaid.

Whereas, in truth and in fact, the said Julius J. Smith was not then and there a salesman and agent for the said firm of J. Riegelman & Deffaa, and had not then and there procured to be sent to said Rachel Stoesser by the said firm of J. Riegelman & Deffaa, ten barrels of flour and one bag of meal; whereas, in truth and in fact, he, the said Julius J. Smith, had not then and there any power and authority to collect and receive the price of said flour and meal from the said Rachel Stoesser. And whereas, in fact, and in truth, the pretenses and representations so made as aforesaid by the said Julius J. Smith to the said Rachel Stoesser, were in all respects utterly false and untrue, to-wit, on the day and year last aforesaid, at the ward, city and county aforesaid. And whereas, in fact and in truth, the said Julius J. Smith well knew the said pretenses and representations, so by him made as aforesaid to the said Rachel Stoesser, to be utterly false and untrue at the time of making the same.

And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said Julius J. Smith by means of the false pretenses and representations aforesaid, on the day and year aforesaid, at the ward, city and county aforesaid, feloniously, unlawfully, falsely, knowingly and designedly did receive and obtain from the said Rachel Stoesser the sum in money of the value aforesaid of the proper moneys, valuable things, goods, chattels, personal property and effects of the said Rachel Stoesser with intent feloniously to cheat and defraud her of the same, against the form of the statute in such case made and provided, and against the peace of the people of the state of New York and their dignity.

A. Oakey Hall, district attorney.

People v. Smith, 5 Park. Cr. (N. Y.) 490, 491.

D. Indictment for Obtaining Merchandise by False Pretenses.

"In the Pope circuit court, the state of Arkansas, against John Johnson. Indictment.

"The grand jury of Pope county, in the name and by the authority of the state of Arkansas, accuse John Johnson of a felony, committed as follows, to-wit:

"The said John Johnson, on the nineteenth day of July, A. D. 1880, in the county and state aforesaid, unlawfully, feloniously and designedly, did falsely pretend to one D. M. Mourning, that he, the said John Johnson, was then in the employ of one W. R. Kiger, and was then sent by the said W. R. Kiger to the said D. M. Mourning, for one pair of shoes (the said W. R. Kiger then and long before being well known to the said D. M. Mourning and G. H. Mourning, in their business and way of trade as merchants), by reason of which said false pretenses, the said John Johnson did, then and there, unlawfully obtain from the said D. M. Mourning, one pair of shoes, of the value of two dollars and twenty-five cents, of the joint goods and chattels of the said D. M. Mourning and G. H. Mourning, with intent then and there to cheat and defraud them, the said D. M. Mourning and G. H. Mourning, of the same, whereas in truth, and in fact, the said John Johnson was then sent by the said W. R. Kiger to the said D. M. Mourning for the pair of shoes afore-

said. Against the peace and dignity of the state of Arkansas." Johnson v. State, 36 Ark. 242.

OCCUPANCY.—See **USE AND OCCUPATION.**

OFFER OF JUDGMENT.—See **JUDGMENTS.**

OFFICE.—See **ELECTIONS; OFFICERS.**

OFFICERS.

I. Complaints by Officers, 896

A. *By Attorney-General, 896*

B. *By Single Officer, 896*

C. *By Board of Officers, 896*

II. Substitution of Successor, 896

A. *Notice of Motion, 896*

B. *Affidavit, 896*

C. *Order, 896*

III. Complaint for an Office Not Elective, 896

IV. Official Bonds, 897

A. *Complaint, Assignment of Breach of Bond of County Treasurer, 897*

B. *Assignment of Breach of Sheriff's Bond, 897*

1. *Neglect To Levy, 897*

2. *Neglect To Sell, 897*

3. *Neglect To Return, 898*

4. *Allegation of Judgment, 898*

V. Indictment for Misconduct in Office, 898

A. *Failure To Pay Over to Successor, 898*

B. *Failure To Make Report of Revenue, 898*

C. *Failing To File Statement, 899*

D. *For Neglect To Supervise Jail, 899*

E. *For Neglecting To Keep Road in Repair, 899*

F. *For Appropriating Money Contrary to Law, 899*

CROSS-REFERENCES:

ARREST IN CIVIL CASES:

Capias Ad Respondendum, Money Collected by Public Officer.

BRIBERY:

Indictment for Attempting To Bribe; Indictment for Accepting Bribe.

CERTIORARI:

Certiorari To Review Removal of Officer.

ELECTIONS:

Complaint for Usurping an Elective Office;

Notice of Contest Because Officer Elected Ineligible;

Notice of Contest, Election Irregularly Conducted.

FALSE IMPRISONMENT:

Complaint Against Officer and Sureties for False Imprisonment.

MARRIAGES:

Petition for Writ. To Draw Warrant;

Alternative Marriages to a Corporation; To Admit an Alderman Into Office.

OBSTRUCTING JUSTICE:

Indictment for Resisting Officer, Common Law Form;

Information for Resisting Public Officer, Statutory;

Indictment for Impeding Officer in Executing of Civil Process;

Indictment, Assault on Officer;

Indictment, Resisting Officer Serving Process.

QUO WARRANTO:

Information in Nature of Quo Warranto Against an Individual.

I. Complaints by Officer.

A. Complaint by the Attorney-General on Relation.

(Name of the court, etc.) The people of the state of New York, on the relation of A. B., plaintiffs, against Y. Z., defendant.

The people of the state of New York, by M. N., their attorney-general, and A. B., the individual plaintiff above named, complaining of the defendant, allege: 1 Abb. Forms 153.

B. Complaint by a Single Officer.

Robert Denniston, as controller of the State of New York, against John Jones.

The plaintiff complains, and alleges:

I. That he is the comptroller of the state of New York. 1 Abb. Forms 152.

C. Complaint by a Board of Officers.

(Name of the court, etc.) The board of commissioners of excise in and for the county of _____, plaintiffs, against Y. Z., defendant.

The plaintiffs as board of commissioners of excise aforesaid, complain of the defendant, and allege: 1 Abb. Forms 153.

II. Substitution of Successor.

A. Notice of Motion of Substitution of Officer's Successor.

(Title of the cause.)

Please take notice, that on the affidavit (or, certificate) of which a copy is herewith served, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18____, at

_____ o'clock in the forenoon, or as soon thereafter as counsel can be heard, to substitute W. X., supervisor of the town of _____ (or other official designation), in the place of Y. Z., as plaintiff (or, defendant) in this action; or for such other relief as may be just. 2 Abb. Forms 233.

B. Affidavit on Motion of Substitution of Officer's Successor.

(Title of the cause.) (Venue.)

M. N., being duly sworn, says that he is the attorney of the plaintiff (or, defendant) in this action; that on the _____ day of _____ last, W. X., of _____, was duly elected (or, appointed) to the office of _____ of the (town of _____, in the) county of _____, in place of the (defendant Y. Z.); and that on the _____ day of _____ last, the said W. X. entered upon the duties of said office, and still holds the same. 2 Abb. Forms 234.

C. Order of Substitution of Officer's Successor.

(Title of the cause.) (At a special term, etc.)

On reading and filing the affidavit of M. N. (and proof of due service of notice), and on motion of M. N., after hearing O. P. (or, no one appearing) in opposition:

Ordered, that W. X., of _____ (designating official description) be substituted as the (defendant) herein, in place of Y. Z. (and he is hereby required to appear and answer within _____ days after service of a copy of this order). 2 Abb. Forms 234.

III. Complaint for an Office Not Elective.

I. That at the times hereafter mentioned, in the municipal corporation entitled "The Mayor, Aldermen, and Commonalty of the City of New York," there was, and still is, an executive department created and existing under the laws of this state, known as the street department, the chief officer of which department is called the street commissioner, which office of street commissioner was and is a public office in said city.

II. That in the month of _____, 18____, one J. S. T. was duly elected to said office, for the term of _____ years from the _____ day of _____, 18____, and on said day entered upon the duties of said office, and discharged the duties thereof until the _____

day of ———, 18——, when he died, whereby the office became, and thence, until and at the time of the appointment hereinafter referred to, continued vacant.

III. That after said death, and on the ——— day of ———, 18——, the said (individual plaintiff) was appointed to said office by the mayor of said city, with the advice and consent of the Board of Aldermen of said city, and thereafter, and on the same day, in due form of law, and according to the ordinances of the corporation of said city, he gave sufficient security for the performance of his duties as such street commissioner, in the form and amount for that purpose prescribed by the said ordinances, and took and subscribed, before the mayor of said city, and filed, his oath in the following form: (copy oath). And that he accepted such appointment, and in all respects qualified himself to assume such office, and perform the duties thereof.

IV. That the defendant, claiming to have been appointed by the governor of the state of New York, to fill the aforesaid vacancy, created by the death of said J. S. T., and without any other or any legal warrant, right, or grant whatever, intruded into and usurped said office, and still unlawfully holds and exercises the same.

Wherefore the plaintiff demands judgment, with costs:

1. That the defendant is not entitled to the said office, and that he be ousted therefrom.

2. That the said (individual plaintiff) is entitled to the office, and to assume the execution of the duties of the same on taking the oath and filing the bond prescribed by law. 1 Abb. Forms 620.

IV. Official Bonds.

A. *Complaint, Assignment of Breach of Bond of County Treasurer.*

That said treasurer, between the ——— day of ———, and the ——— day of ———, received various sums of money as such treasurer, amounting to about the sum of ——— dollars (being a part of the tax raised in his county for the year ———), and that he fraudulently, and in breach of his trust, converted and appropriated to his own use said sum.

For a further breach, the plaintiff

alleges that said treasurer, on the ——— day of ———, accounted with the plaintiffs concerning moneys (raised in his county for defraying the public and necessary charges thereof) which had come to his hands as said treasurer, and on such accounting was found to be in arrear, and indebted to the plaintiffs in the further sum of ——— dollars, and that on the ——— day of ———, the plaintiffs demanded that he pay the same over to them, but he refused so to do, and no part thereof has been paid. 1 Abb. Forms 283.

B. *Assignment of Breach of Sheriff's Bond.*

1. *Complaint, Assignment of Breach in Sheriff's Bond, for Neglect To Levy.*

That on the ——— day of ———, in an action brought by him against one M. N., the relator recovered judgment, duly given by the Court of ———, against said M. N., for the sum of ——— dollars (which judgment was on, etc., duly docketed in the office of the clerk of the county of, etc.)

That on the ——— day of ———, an execution in favor of the relator against the property of said M. N. was duly issued on said judgment, and delivered to the said sheriff, of which the following is a copy: (or state its effect).

That said sheriff did not execute said process, but although there was then within his county real and personal property of which he might have levied, the moneys thereby directed to be levied (and of which he had notice), he neglected and refused so to do, whereby the relator lost his said debt.

That on the ——— day of ———, leave was granted to the relator by the supreme court at ———, to prosecute said bond by reason of the premises. 1 Abb. Forms 284.

2. *Complaint, Assignment of Breach in Sheriff's Bond, Neglect To Sell.*

(Allege judgment and execution, as in preceding form.)

That the said sheriff by virtue thereof, on the ——— day of ———, levied on the goods of said M. N., of the value of ——— dollars; but he neglected to advertise and sell the goods so levied on by him as aforesaid, and no part of the moneys di-

rected to be collected on the relator's said execution has been received by the relator. 1 Abb. Forms 284.

3. Complaint, Assignment of Breach in Sheriff's Bond, Neglect To Return.

(Allege judgment and execution, as in IV, 13, 1, continuing): who by virtue thereof, on the ——— day of ———, levied on the goods of said M. N., of the value of ——— dollars; but, although more than sixty days elapsed after its delivery to him and before this action, wholly neglected and failed to make return of said execution, and no part of the moneys directed to be collected thereby has been received by the relator. 1 Abb. Forms 285.

4. Complaint, Allegation of Judgment Against Sheriff.

That thereafter, and on and about the ——— day of ———, in an action brought by the plaintiff in the ——— court, he recovered against a judgment duly given against the said sheriff for the sum of ——— dollars, for the damages which the relator had sustained by the neglect of the sheriff to execute (or, return) said process, and ——— dollars costs of his said action, and no part thereof has been paid to the relator. 1 Abb. Forms 285.

V. Indictments for Misconduct in Office.

A. Indictment for Official Misconduct, Failure To Pay Over to Successor.

"The state of South Carolina, county of Lexington. At a court of general sessions, begun and holden in and for the county of Lexington, in the state of South Carolina, at Lexington court house, in the county and state aforesaid, on the third Monday of September, in the year of our Lord one thousand eight hundred and ninety-five, the jurors of and for the county aforesaid, in the state aforesaid, upon their oath, present: That William J. Assmann, late of the county and state aforesaid, on the first day of April, in the year of our Lord one thousand eight hundred and ninety, and on divers other days since said day, and up to the eighth day of December, in the year of our Lord one thousand eight hundred and ninety-one, with force and arms unlawfully did commit official misconduct, in this, that he, the said

William J. Assmann, was duly elected clerk of the court of common pleas and general sessions of Lexington county, at the regular general election in the year 1888, and duly qualified as such within the time required by law, and entered upon and continued to discharge the duties of said office up to and until the eighth day of December, in the year of our Lord one thousand eight hundred and ninety-one, at which time one Isaiah Haltiwanger succeeded him, the said William J. Assmann, as clerk of the court of common pleas and general sessions of the county of Lexington aforesaid, and entered upon the discharge of the duties of said office. And at that time aforesaid, to-wit: on the eighth day of December, in the year of our Lord one thousand eight hundred and ninety-one, the said William J. Assmann then and there had and held in his hands a certain sum of money, to-wit: the sum of \$1,926.45, which had been received by him, the said William J. Assmann, as clerk as aforesaid, in proceedings had in a case entitled Ex parte E. E. Fort, as administratrix of the estate of Hugh L. Boyd, deceased, In re E. E. Boyd, as administratrix as aforesaid, plaintiff, v. Mary L. Lee, as executrix, and others, defendants, which said sum of money the said William J. Assmann, upon the succession of him, the said Isaiah Haltiwanger, to the office aforesaid, at the time aforesaid, and within thirty days thereafter, he, the said William J. Assmann, failed to pay over to his successor in office as clerk of the court of common pleas and general sessions of Lexington county, to-wit: to the said Isaiah Haltiwanger, the aforesaid sum of \$1,926.45, paid him as clerk aforesaid, under the proceedings aforesaid against the form of the statute in such case made and provided, and against the peace and dignity of the state.

P. H. Nelson, solicitor."

State v. Assmann, 46 S. C. 554, 24 S. E. 673.

B. Indictment for Failure To Make Report of Revenue.

That defendant, as clerk of the county court of Campbell county, "wilfully, knowingly, and unlawfully failed to make to the chairman of the county court in the time required by the act of 1875, his monthly report of revenue by him received," and said report for

the months alleged, in 1876, was not made till the 8th of February, 1877. *State v. Jones*, 2 Lea (Tenn.) 716.

C. Indictment Against County Clerk for Failing To File Statement.

The first count charged that defendant "being the clerk of said court from January 1st, 1871, to January 1st, 1875, did, on the 1st day of January, 1875, and at the end of the year 1874, wilfully, corruptly, knowingly, etc., fail and refuse to file a statement in detail, under oath or affirmation, showing the aggregate amount of fees and emoluments received by him as clerk for the year 1874." The third count charged that "defendant, during his term of office, and on the eighteenth day of November, 1874, did, wilfully, corruptly, fraudulently, etc., represent and show that he had not received, for the year 1874, in the aggregate of all official fees and emoluments, more than the sum of \$2,500, after deducting such sums as were necessary and proper for the payment of deputies and assistants; and that there was no surplus to pay into the county treasurer; and did then and there procure the court to receive the said statement, and discharge the said defendant from making any further statement or settlement of official fees for the year 1874, and did so cause the court to make said order, whereas, in truth, the fees for said year amounted to \$7,764, and leaving a balance, after deducting \$2,500 and reasonable deputy hire, of \$2,598; that he did, with the intent to cheat, cause and procure said false settlement and discharge to be made, and is, therefore, guilty of a fraud in office." *State v. O'Gorman*, 68 Mo. 179.

D. Indictment for Neglect To Supervise Jail.

"Did then and there unlawfully and negligently fail to exercise a supervision and control over the county jail of said county, he, the said John F. Gordon, being then and there the sheriff of said county, namely: he the said John F. Gordon did then and there, on said day, and divers days just before said day, wholly fail and neglect to enter said jail and examine the same, and did then and there wholly neglect and fail to examine into the manner of keeping the prisoners confined in said jail, and did wholly fail and neglect to see that proper precautions were taken to prevent the escape of said

prisoners, so that fifteen prisoners were then and there kept in said jail without being ironed, and without a guard around said jail, so that on said day, by the failure and neglect aforesaid by the said John F. Gordon as aforesaid, one George Middleton, then and there legally confined in said jail, on accusation of theft of a mare, and fourteen other persons then and there legally confined in said jail on accusations of felonies, did then and there and thereby escape from jail and flee from custody, and that said prisoners were then and there enabled to, and did escape on account of, and by reason of, said neglect and failure as aforesaid, against the peace and dignity of the state." *Gordon v. State*, 2 Tex. App. 154.

Note.—Under general provision of statute against neglect of duty by officers.

E. Indictment for Neglecting To Keep Road in Repair.

The jurors for the state upon their oaths present, that John A. Dickson, R. K. Presnell, John Garrison, T. J. Gilliam, Sam Huffman, N. L. Beach, commissioners of the town of Morganton, late of the county of Burke, on the first day of May, in the year of our Lord, one thousand eight hundred and ninety-seven, with force and arms, at and in the county aforesaid, unlawfully and wilfully did fail, refuse and neglect to have the road leading from the depot to Huntling Creek worked out and kept in proper repair. The same being a public road or street and within the corporate limits of the town of Morganton, against the form of the statute in such case made and provided, and against the peace and dignity of the state.

L. F. Spainhour, solicitor.

State v. Dickson, 124 N. C. 871, 32 S. E. 961.

F. Indictment for Misconduct in Office, Appropriating Money Contrary to Law.

"The grand jury of the county of Webster, in the name and by the authority of the state of Iowa, accuse Josiah Conlee, John Wilson, A. Graves, G. T. Richey, John Linn, N. H. Hart, A. S. White, C. C. Carter, D. C. Russell, D. W. Prindle, C. W. Maher, and J. M. Henderson, of the crime of wilful misconduct in office in ordering the erection of bridges at a cost of more

three \$5,000 each, without first submitting a proposition therefor to the legal voters of said county; committed as follows: The said J. Slat. Conlee and others (having them), on the 14th day of September, A. D. 1866, in the county aforesaid, then and there being the supervisors of the county of Webster, in the State of Iowa, and being convened in session as the board of supervisors of said county, wrongfully, unlawfully and wilfully, did order the erection of three several bridges within the limits of said county, at a cost exceeding the sum of \$5,000 each, and then and there, wrongfully, unlawfully and wilfully, did appropriate, of the public money of said county, the sum of \$5,000 each, for the erection of three several bridges within the limits of said county, and the further sum of \$5,000 each, for the abutments and trestle work on said bridges, being a part, parcel and portion of said bridges, without first submitting any proposition therefor to the legal voters of the county of Webster, contrary to the prohibition of the statute in such cases made and provided, and in violation of their official duties." *State v. Conlee*, 25 Iowa 237.

OPENING OR VACATING JUDGMENTS.—See JUDGMENTS.

ORDERS OF COURT.

- I. Caption of Order of Court, 908
- II. Caption of Order in Court of Equity, 908
- III. Order To Show Cause, 908
- IV. Order in the Alternative, 908
- V. Order Nisi in Equity, 908
- VI. Notice of Settlement of Order, 908
- VII. Notice of Decision of Circuit Judge, 908
- VIII. Introductory Part of Order on Further Hearing, 908
- IX. Order Vacating Order Made Without Notice, 909
- X. Order Vacating Order Made on Notice, 909
- XI. Notice of Motion To Discharge Order for Irregularity, 909

CROSS REFERENCES:

ARREARAGE

- Order Enlarging Time.
- Order Staying Proceedings for Time To Make Motion;
- Order That Libel Be Taken Pro Con-

caption of Orders and Decrees;
Order for Interlocutory Sale of Ship and Cargo.

AMENDMENTS AND JEOPAILS:

- Order for Leave To Amend;
- Order Giving Leave To Serve Amended Pleading;
- Order Giving Leave to Amend Formal Error;
- Order for Leave To Correct Fictitious Name;
- Order After Trial, Granting Leave To Amend Complaint To Conform to the Proofs.

ANNUITIES:

- Order That Receiver Pay Annuities.

ANOTHER ACTION PENDING:

- Order of Reference on Plea in Equity.

APPEALS:

- Order Granting Appeal;
- Order Staying Proceedings;
- Order for Re-argument;
- Order Dismissing Appeal;
- Order for Reversal Unless Respondent Consents to Reduction;
- Order for Restitution;
- Order for Judgment of Court Below on Filing Remittitur.

APPEARANCES:

- Order for Defendant's Appearance;
- Order To Indorse Defendant's Appearance;
- Order, Leave for Defendant To Enter Appearance on Return and Consenting To Be Found.

ARREST IN CIVIL CASES:

- Order of Arrest;
- Order Vacating Arrest;
- Order Vacating Arrest on Condition That Defendant Shall Not Sue;
- Order To Show Cause Why Superseas Should Not Issue To Discharge Defendant;
- Order To Reduce Amount of Bail;
- Allowance of Bail;
- Allowance of Bail, as to One Bail, and for Time for Other To Justify;
- Direction That Money Be Refunded on Allowance of Bail;
- Allowance of Added Bail;
- Order Exonerating Bail.

ARREST OF JUDGMENT:

- Order in Arrest of Judgment.

ATTACHMENT:

- Order for Sale of Perishable Property;
- Order To Examine Person Holding Property of Debtor in Attachment;
- Order To Examine an Officer of Cor-

poration Holding Property of a Debtor;

Order Vacating Warrant of Attachment;

Order Discharging Attachment on Security.

ATTORNEYS:

Order That Plaintiff's Attorney in Ejectment Produce His Authority;
Order Against Attorney Charged With Malpractice.

BANKRUPTCY PROCEEDINGS:

Order To Show Cause on Debtor's Petition;

Order for Jury Trial;

Order of Reference;

Order of Reference in Judge's Absence;

Order Approving Trustee's Bond;

Order That No Trustee Be Appointed;

Order for Examination of Bankrupt;

Order Reducing Claim;

Order Expunging Claim;

Order Allowing Trustee's Account, and Discharge;

Order for Removal of Trustee;

Order for Choice of New Trustee;

Order Confirming Composition;

Order for Distribution on Composition;

Petition and Order for Private Sale;

Petition and Order for Sale of Perishable Property;

Petition and Order for Sale by Auction of Real Estate;

Petition and Order for Redemption of Property From Lien;

Petition and Order for Sale Subject to Lien.

BASTARDY PROCEEDINGS:

Order of Dismissal on Provision for Support in Bastardy.

BILLS OF PARTICULARS:

Alternative Order for Plaintiff To Furnish Bill of Particulars;

Peremptory Order That Plaintiff Serve Bill of Particulars;

Order for Further Bill of Particulars;

Order Precluding Evidence by Reason of Defective Bill;

Order To Serve Bill of Particulars, or That Defendant May Dismiss Complaint;

Alternative Order for Defendant To Furnish Bill of Particulars;

Peremptory Order That Defendant Serve Bill of Particulars.

CASE ON APPEAL:

Order for Time To Prepare Case or Exceptions, With Stay.

CERTAINTY IN PLEADING:

Order To Make Pleadings More Definite and Certain.

CHANGE OF VENUE:

Order To Show Cause, With Stay of Proceedings;

Order Revoking Stay of Proceedings;

Order (Rule) Granting Change of Venue;

Order (Rule) Denying Motion To Change Venue.

CHOICE AND ELECTION OF REMEDIES:

Order That Complainant Elect Between Law and Equity;

Order To Elect Between Several Actions.

CONSOLIDATION OF ACTIONS:

Order Consolidating Actions.

CONTEMPT:

Order To Turn Over to Prison Party Brought Up on Attachment, or by Habeas.

CONTINUANCES:

Order Postponing Trial.

COPYRIGHT PROCEEDINGS:

Order for Reference as to Infringement;

Order for Injunction Staying Partial Infringement.

CORPORATIONS:

Order for Distringas To Compel Appearance of Corporation;

Order Permitting Appearance of Foreign Corporation;

Order (Rule) for Judgment Against a Corporation (Failure To Plead).

COSTS:

Order Allowing Costs in Supreme Court;

Order Striking Item of Costs From Bill.

CREDITORS' SUITS:

Order of Reference To Appoint Receiver in Creditors' Suit;

Order of Reference To Determine Priority Among Creditors;

Order Appointing Receiver in Creditor's Suit Against Foreign Corporation and Resident Agent.

CROSS-BILL:

Order To Stay Proceedings in Original Suit;

Order That Original and Cross-Bill Be Heard Together.

DECEDENTS' ESTATES:

Order Appointing Administrator;

Order To Compromise Claim Due Estate;

Order Allowing Claim (a, b);

Order To Pay Claims Against Estate;
 Order To Sell Personal Property After Notice;
 Order Granting Leave To Convey Real Estate;
 Order Confirming Report of Sale;
 Order for New Account, Setting Aside Former Account;

DECREE:

Order on Special Petition;
 Order on Petition as to Part Adjudged;
 Order on Special Motion;
 Order on Cross Motion;
 Introductory Part of Order on Further Consideration;
 Usual Directions;
 Order for Payment of Interest to Life Tenant or His Representatives;
 Order for Payment of Interest to Trustees;
 Order for Payment of Interest to Corporation Aggregate;
 Order for Payment of Interest to Treasurer of Corporation.

DEFAULT:

Order for Interlocutory Judgment and Writ of Inquiry, Default for Not Pleading;
 Order for Judgment on Default in Debt;
 Order for Judgment for Default for Not Replying;
 Order for Judgment on Default for Not Rejoining;
 Order for Judgment for Not Surrejoining;
 Order for Judgment on Default on Filing Inquisition;
 Order for Judgment on Default on Filing Clerk's Report;
 Order for Judgment Where Summons Was Served by Publication;
 Order for Judgment and That Writ of Inquiry Issue To Assess Damages;
 Order for Judgment and Reference To Ascertain Damages;
 Order for Interlocutory or Final Judgment After Default for Not Joining in Demurrer;
 Order for Judgment on Default for Defendant Not Joining in Demurrer;
 Order To Set Aside Default for Irregularity;
 Order To Set Aside Regular Default;

Order To Set Aside Inquest for Irregularity;
 Order To Set Aside Regular Inquest.

DEMURRER:

Order for Judgment on Demurrer for Plaintiff;
 Order for Judgment on Demurrer for Defendant;
 Order for Judgment on Demurrer for the Defendant Where Unopposed.

DEPOSIT IN COURT:

Order for Payment Into Court;
 Order To Satisfy Part of Plaintiff's Claim;
 Order on Paying Money Into Court;
 Order To Deliver Property;
 Order Permitting Voluntary Payment Into Court.

DEPOSITIONS:

Order for a Commission With Stay of Proceedings;
 Order for Commission Without Stay of Proceedings;
 Order for Taking Deposition Pursuant to Letters Rogatory;
 Order To Show Cause in Contempt for Disobedience to Subpoena on Letters Rogatory.

DISCOVERY:

Order for Inspection of Documents Out of Court (With Leave To Seal Up);
 Order for Production and Deposit of Books;
 Order for Production and Delivery of Papers, or To Show Cause;
 Order for Leave To Inspect Books;
 Order for Examination of Party;
 Order To Produce Documents on Petition Therefor;
 Order Requiring Books Deposited With Referee.

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Order Dismissing Action Absolutely;
 Order Dismissing Action Unless Plaintiff Moves;
 Order of Dismissal by Plaintiff in Vacation, Under Statute;
 Order Dismissing Suit for Non-Delivery of a Copy of Bill;
 Order for Dismissal of Bill at the Hearing;
 Order for Dismissal on Case Agreed;
 Order for Dismissal; Reasons Stated; Costs; Without Prejudice to Right To Bring Another Suit;
 Order for Dismissal of Bill Framed To Prevent Prejudice;

- Order for Dismissal of Bill Where Plaintiff Does Not Appear;
Dismissal of Bill With Costs as to Some Defendants, and Without Costs as to Others;
Order for Dismissal as to Part of Bill;
Order for Leave To Discontinue Without Costs;
Order for Judgment of Discontinuance;
Order for Judgment on Nonsuit;
Order for Judgment as in Case of Nonsuit.
- DIVORCE:**
Order of Reference on Bill To Dissolve Marriage;
Order Allowing Alimony and Expenses;
Order Confiding Custody of Children.
- DOWER, PROCEEDINGS TO RECOVER:**
Order for Admeasurement of Dower (N. Y. St.);
Order To Confirm Report of Commissioners on Dower;
Order in Final Judgment Confirming Report of Commissioners on Dower.
- EJECTMENT:**
Order To Appear and Plead;
Order To Appear and Plead on Motion in Open Court.
- EMINENT DOMAIN:**
Order for Hearing in Condemnation Proceedings;
Order To Summon Jury in Condemnation Proceedings;
Order on Condemnation of Land.
- EQUITY JURISDICTION AND PROCEDURE:**
Order Dismissing Suit for Non-delivery of Copy of Bill;
Order for Decree Pro Confesso Where Defendant Appears and Waives Objection;
Order for Decree Pro Confesso Where Defendant Does Not Appear at Hearing.
Order for Leave To Withdraw and Amend;
Order for Leave To Amend Bill After Plea to Part Is Allowed;
Order for Leave To Amend Bill After General Demurrer;
Order for Leave To Amend an Injunction Bill.
- FILING:**
Order on Certificate That Pleadings Are Not Filed.
- FRIVOLOUS AND SHAM PLEADINGS:**
Order for Judgment on Frivolous Demurrer With Liberty To Plead;
- Order for Judgment on Frivolous Demurrer;
Order Denying Motion for Judgment on Frivolous Demurrer;
Order for Severance and for Judgment on Frivolous Demurrer, as to One;
Order for Judgment on Frivolous Pleading;
Order for Judgment on Frivolous Pleading, Reserving Leave To Amend;
Order To Strike Out Sham Pleading.
- GARNISHMENT:**
Order Setting Aside Judgment Against Garnishee;
Order Directing Garnishee To Pay Money Into Court.
- GUARDIAN AD LITEM:**
Order Appointing Guardian Ad Litem for Infant Plaintiff;
Order Appointing Guardian for Infant Defendant;
Order of Appointment on Defendant's Failure To Procure the Appointment After Notice;
Order Appointing Guardian Ad Litem in Case of Publication;
Order, Guardian Assigned on Application of Infant or Non Compos;
Guardian Assigned to Infant or Non Compos Defendant on Motion of Plaintiff.
- GUARDIAN AND WARD:**
Order Appointing General Guardian;
Order Appointing Guardian Nominated by Infant;
Order Directing Transfer of Funds to Non-resident Guardian;
Order on Interlocutory Account of Guardian;
Order To Publish Notice of Application To Sell Minor's Property;
Order Granting License To Sell Land of Minor;
Order Setting Aside Sale of Land of Ward;
Confirmation of Sale of Land by Guardian.
- HABEAS CORPUS:**
Order Remanding Prisoner;
Order That Prisoner Be Bailed.
- HEARING:**
Order of Reference Preparatory to a Hearing;
Order for Cause to Stand Over To Add Parties;
Order for Cause To Stand Over, To Add Proofs;

Order on Hearing Demurrer or Plea (a, b);

Order on Hearing of Exceptions for Inadmissibility;

Order for General Adjournment to Chambers;

Order That Master Settle Conveyance;

Order Reserving Further Directions;

Order, Reservation of Interest;

Order, Further Consideration Adjourned;

Order, Further Consideration Adjourned With Liberty To Apply at Chambers;

Order for Further Consideration of Cause and of Costs Adjourned;

Order Reserving Case for Full Court;

Order Reserving Demurrer for Full Court.

INFANTS:

Order Appointing Guardian;

Order Appointing Prochein Ami;

Order That Defendant Procure Appointment of Guardian;

Order Appointing Guardian for Infant Defendant on Failure To Procure Appointment by Infant;

Order Appointing Guardian of Person and Maintenance;

Order for Increase of Maintenance of Infant.

INJUNCTIONS:

Order for Injunction on Notice, or Ex Parte, on Undertaking;

Ex Parte Interim Order;

Order for Ex Parte Injunction;

Order, Injunction Dissolved or Continued on Motion;

Injunction Continued on Hearing;

Order Denying Motion for Injunction Without Prejudice;

Order To Show Cause Why Injunction Should Not Issue With Restraint Meanwhile;

Order Dissolving Injunction;

Order Dissolving Injunction on Ground of Abatement;

Order of Reference as to Damages by Injunction;

Order Confirming Report as to Damages by Injunction.

INSANE PERSONS:

Order Committing Insane Person to Hospital;

Order of Commitment of Insane Person by Court.

INTERPLEADER:

Order for Injunction in Interpleader on Payment Into Court;

Order for Injunction on Undertaking as to Subject-Matter;

Interpleader, Order for Judgment and Reference;

Order for Interpleader;

Order for Interpleader, Delivery of Specific Property and Application for Receiver Therefor.

INTERVENTION:

Order Bringing in Third Person as Party Defendant;

Order Permitting Intervention With Conditions.

ISSUES IN PLEADING AND PRACTICE:

Order in Chancery for Feigned Issue and for Reference To Settle Form;

Order in Chancery for Feigned Issue Where Issue Is Settled by Court;

Order for Feigned Issue, Amount of;

Order for Feigned Issue Respecting Receipt of Money;

Order for Issue as to Damages;

Order for Issue as to Right of Way;

Order for Issue as to Validity of Bond;

Order for Issues as to Clause in Will;

Order for Issue as to Sanity, and Validity of Deed; Fraud;

Order for Directions After Issues Awarded;

Order on Equity Reserved After Trial of Issue;

Order After Issue as to Clause in Will;

Order for an Issue in General (a, b);

Order for an Issue as to Fraud.

JUDGMENTS:

Order for Judgment on Verdict (in Assumpsit, Trespass, Case or Trover);

Order for Judgment on Verdict for Plaintiff in Debt;

Order for Judgment on Verdict for Defendant;

Order for Judgment of Respondeat Ouster;

Order for Judgment Ne Recipiat;

Order for Judgment on Cognovit;

Order for Judgment on Bond and Warrant;

Order for Judgment on Relicta;

Order for Judgment, With Leave To Turn Case Into Bill, Etc.;

Order for Judgment Non Obstante Verdicto;

Order To Set Aside Final Judgment as Irregular;

Order To Set Aside an Interlocutory Judgment for Irregularity;

- Order Vacating Judgment and for Re-assessment of Damages.
- JUDGMENTS AND DECREES, ENFORCEMENT OF:**
- Order To Set Aside Fieri Facias as Irregular;
 - Order To Set Aside a Capias Ad Satisfaciendum as Irregular;
 - Order Setting Aside Execution and Making Restitution (Code).
- JUDGMENTS AND DECREES, REVIVAL OF:**
- Order Reviving Dormant Judgment.
- JUDICIAL SALES:**
- Order Setting Aside Sale on Ground of Mistake and Inadequacy of Price;
 - Order Confirming Referee's Report of Sale;
 - Order Compelling Purchaser To Complete His Purchase;
 - Order Discharging Purchaser.
- JURIES AND JURORS:**
- Order of Certification of Jury List Nunc Pro Tunc;
 - Order for Foreign Jury.
 - Order for a Special or Struck Jury (a, b).
- MANDAMUS:**
- Order for a Mandamus (a, b);
 - Order Denying a Peremptory Mandamus.
- MORTGAGES:**
- Order Enlarging Time for Payment of Mortgage;
 - Final Order for Strict Foreclosure;
 - Order of Reference To Take Proof;
 - Order for Inquiry as to Occupation and Rent;
 - Order for Account of Repairs and Improvements;
 - Order That Profits Be Applied;
 - Order for Inquiry as to Deterioration;
 - Order for Inquiry as to Strip and Waste;
 - Order To Take Account of Insurance;
 - Order for Reference To Take Account in Action To Redeem;
 - Final Order Dismissing Action for Redemption.
- MOTIONS:**
- Notice of Motion for Order to Enter Order Nunc Pro Tunc;
 - Order to Show Cause, General Form.
- NE EXEAT:**
- Order To Show Cause Against Ne Exeat;
 - Order To Set Aside Ne Exeat.
- NEW TRIAL:**
- Order Granting Motion for New Trial;
 - Order Granting Motion, Unless Opposing Party Will Consent To Reduce His Verdict;
 - Order Setting Aside Nonsuit and for New Trial;
 - Order Denying New Trial.
- OFFICERS:**
- Order of Substitution of Officer's Successor.
- PARTIES:**
- Order Without Motion To Bring in Necessary Parties.
- PARTITION:**
- Order of Court To Appear and Plead in Partition;
 - Order To Amend Petition and Search for Incumbrances (Stat.);
 - Order To Admit Petitioner as Defendant in Partition;
 - Order for Judgment by Default and Appointment of Commissioners in Partition;
 - Order for Sale of Premises in Partition;
 - Order To Confirm Sale;
 - Order That Actual Partition Be Made;
 - Order for Appointment of Guardian in Partition.
- PATENTS:**
- Order, Motion To Stand Over, With Leave To Bring Action and Directions for Inspection, Defendant Keeping Account.
- PAUPERS:**
- Order To Admit In Forma Pauperis;
 - Order for Reference of Petition for Leave To Prosecute as a Poor Person;
 - Order Denying Leave To Prosecute as Poor Person.
- PERPETUATION OF TESTIMONY:**
- Order for Examination of Witnesses To Perpetuate Testimony.
- PHYSICAL EXAMINATION:**
- Order for Physical Examination.
- PRIVILEGE:**
- Order To Show Cause Why Defendant Should Not Be Discharged on Ground of Privilege.
- PROBATE OF WILLS:**
- Order Admitting Foreign Will.
- PROHIBITION:**
- Order To Show Cause Why Writ Should Not Issue.
- QUO WARRANTO:**
- Order To Show Cause for Leave To File Information.

RECEIVERS:

- Order for Appointment of Receiver of Real and Personal Estate;
- Order for Appointment of Receiver of Partnership Business;
- Order That Receiver and Manager of Testator's Business Be Appointed;
- Order Appointing Receiver of Property in Foreign Country, With Leave To Appoint Agent There To Litigate;
- Order, Receiver Continued at the Hearing;
- Order Appointing Temporary Receiver;
- Order on Notice of Motion To Review Appointment;
- Order That Receiver Give Sheriff Statement of Property He Claims;
- Order, Receiver To Repair Buildings;
- Order of Court on Request by Receiver for Authority To Compromise Notes and Accounts;
- Order for Receiver To Bring in Account;
- Order for Separate Accounts by Receiver of Rents and Personalty; Investment;
- Acceptance and Approval of Receiver's Account;
- Order of Reference as Compensation to Receiver, and Balance Remaining;
- Order on Receiver To Pay Taxable Costs, and Balance Reported by Master to Plaintiff;
- Order for Discharge of Receiver and Payment, Etc.

RECOGNIZANCES:

- Order for Exoneretur of Bail.

REFERENCES:

- Order for Reference of Cause on Consent;
- Order for Reference of Cause on Motion;
- Order for Reference at Trial;
- Order To Compel Report of Referee;
- Order To Set Aside Report of Referee on Merits;
- Order Denying Motion To Set Aside Report of Referee;
- Order for Judgment on Report of Referee;
- Order Referring Cause on Motion;
- Order Referring Cause, Without Motion;
- Order on Consent for Reference;
- Order of Reference To Take an Account in Case of Default;
- Order of Reference To Take Proof

- of Cause of Action, and Payments, Where Summons Was Served by Publication;
- Order of Reference Preliminary to Judgment in Divorce;
- Order of Reference To Take Testimony;
- Order of Reference To Take Testimony; as to Value of Use and Occupation, in Action for Specific Performance;
- Order of Reference To Take an Account as to Damages;
- Order of Reference for Accounting in Partnership Cause;
- Order of Reference Preliminary to Judgment for Partition;
- Order That Books and Papers Be Deposited With Referee Before Accounting.

REMOVAL OF CAUSES:

- Order To Show Cause on Motion To Remove Cause;
- Order Removing Cause to United States District Court.

REPLEADER:

- Order for Repleader.

REVIVOR:

- Order To Revive;
- Order To Revive on Marriage of Female Sole Plaintiff;
- Order Reviving Action;
- Order by Consent, Substituting Executors, Without Prejudice to Proceedings Already Had;
- Order To Show Cause on Petition by Defendant To Revive;
- Order To Show Cause on Petition by Defendant To Revive, Absolute;
- Order To Show Cause on Petition by Defendant To Revive, Alternative;
- Order Abating Action Unless Revived;
- Order of Revivor on Motion of Plaintiff on Death or Disability of Defendant;
- Order on Attachment, and Death of Defendant Before Publication Completed.

SCIRE FACIAS:

- Order for Default on Scire Facias.

SECURITY FOR COSTS:

- Alternative Order To File Security for Costs;
- Peremptory Order of Court To File Security for Costs (After Alternative Order).

SEQUESTRATION:

- Order for Sequestration;

Order for Sequestration on Return of Attachment (English);
 Order for Sequestration; Corporation;
 Order for Sequestration for Not Answering;
 Order for Examination of Claimant Pro Inter Esse Suo;
 Order Directing Tenants To Attorn, Etc., to Commissioners.

SERVICE OF PROCESS AND PAPERS:

Order for Service of Bill on Defendant Out of Jurisdiction;
 Order for Substituted Service of Decree or Order;
 Affidavit of Service of Judge's Order;
 Order for Publication, Defendant Foreign Corporation;
 Order for Publication, Where Defendant Has Departed or Concealed Himself;
 Order for Publication, Where Defendant Is Non-resident;
 Order for Publication, Where Action Relates to Specific Property;
 Order for Publication, Where Action Is for Divorce;
 Order for Publication, Where Residence of a Resident Cannot Be Ascertained;
 Order for Publication in Case of Unknown Owner;
 Order for Publication for Absent, Concealed or Non-resident Defendant;
 Order for Publication of Notice of Attachment Against Non-resident;
 Order of Publication of Notice of Attachment Against Absconding Debtor;
 Order Taking Bill as Confessed and Ordering Reference.

SHERIFFS AND CONSTABLES:

Order on Sheriff's Default for Not Returning;
 Order on Appearance of Sheriff on Attachment;
 Order of Court Imposing Fine on Sheriff for Contempt;
 Order Discharging Attachment Against Sheriff;
 Order on Default of the Sheriff To Appear on Attachment.

SPECIFIC PERFORMANCE:

Order To Inquire if Good Title Can Be Made.

STAY OF PROCEEDINGS:

Order for Stay of Proceedings To Move for New Trial;
 Order for Stay of Proceedings, De-

murrer to Evidence or Bill of Exceptions;

Order To Stay Proceedings on Appeal From Decision of Circuit Judge;

Order To Stay Proceedings for Motions in General;

Order for Perpetual Stay of Proceedings;

Order To Stay Proceedings on Payment of Debt and Costs;

Order of Revocation of Order Staying Proceedings;

Order by Court of Equity Staying Present and Future Action;

Order, Leave To Proceed With Action, But Execution Stayed;

Order by Court of Equity To Stay Sale, Where Execution Issued After Notice of Decree, With Injunction.

STRIKING OUT:

Order To Strike Out Counts;

Order To Strike Out Plea;

Order on Motion To Strike Out Irrelevant Answers;

Order on Motion To Strike Out Irrelevant or Redundant Matter.

SUPPLEMENTAL PLEADING:

Order on Motion for Leave To File Supplemental Complaint;

Order Granting Leave To Make Supplemental Pleading;

Order To Carry on Suit Against Assignees of Defendant.

SUPPLEMENTARY PROCEEDINGS:

Order for Examination of Judgment Debtor After Return of Execution;

Order That Debtor Pay Judgment;

Order Appointing Receiver in Supplementary Proceedings;

Order To Show Cause in Supplementary Proceedings on Contempt;

Order Adjudging Offender Guilty of Contempt in Supplementary Proceedings;

Order for Interrogatories After Return of Attachment Where Contempt Is Denied.

SURPLUSAGE AND SCANDAL:

Order To Expunge Scandal and Impertinence on Submission to Exceptions;

Order To Expunge Scandal and Impertinence From Answer on Report of Master.

TENDER:

Order for Leave To Pay Money Into Court.

TIME TO PLEAD:

Order for Further Time To Declare;
Order for Further Time To Plead;
Order Enlarging Time To Plead.

TOTAL:

Order for Trial;
Order for Total and Assessment of
Damages Contingent on Issues of
Law;

Order To Strike From Calendar (a,
b);

Order Denying Motion To Strike
From Calendar.

VIEW BY JURY:

Order Directing View by Jury.

WRIT OF ERROR:

Order for Judgment of Affirmance in
Error;

Order for Judgment of Affirmance in
Default;

Order for Judgment of Reversal.

I. Caption of Order of Court.

At a special (or general) term of the
superior court of the city of _____,
held at the _____ of said city, on
the _____ day of _____, 18____.
Present—Hon. _____, justice.
(Names of plaintiffs), against (Names
of defendants). 1 Abb. Forms 3.

II. Caption of Order in Court of Equity.

At a court of chancery held for the
state of _____, at _____, on
the _____ day of _____, 18____.
Present _____, chancellor (or
_____, vice chancellor of the
_____ circuit.

On reading and filing (recite papers
on which motion was founded) and on
motion of Mr. C. E. of counsel (or
solicitor) for complainant (or defend-
ant) no one appearing to oppose (or,
and on hearing Mr. W. C. N. of counsel
for the defendant [or complainant] in
opposition thereto, it is ordered, etc. 2
Barb. Ch. Pr. 512.

III. Order To Show Cause.

On service of this order, and a copy
of the affidavit upon which the same
is granted, let the plaintiff's (or, de-
fendant's) attorney show cause before
me, at my chambers in _____ on the
_____ day of _____ at _____
o'clock in the _____ noon why (state
what). Dated, etc.

_____, circuit judge.

Burr. App. 228, §477.

IV. Order in Alternative (General Form).

Let the defendant's (plaintiff's)

(state what) by the _____ day of
_____, at ten o'clock in the fore-
noon, or show cause at that time at
my chambers in _____ why he
should not (state what), or in default
of doing so, why (state consequences);
and in the meantime let all further
proceedings in this cause be stayed.

Dated _____, 18____.

_____, circuit judge.
Burr. App. 229, §481.

V. Order Nisi in Equity.

On reading and filing (state what
papers) and on motion of _____ for
plaintiff (defendant), ordered that
(state what) unless cause to the con-
trary thereof be shown within _____
days from the entry of this order. 2
Barb. Ch. Pr. 512.

VI. Notice of Settlement of Order.

Take notice, that the order of which
the within is a copy, will be presented
for settlement to the Hon. J. J., the
justice who made the same (or, to one
of the justices of the court), at
_____, on the _____ day of
_____ instant, at _____ o'clock
in the _____ noon.

(Signature.)

(Date.)

(Address.)

2 Abb. Forms 693.

VII. Notice of Decision of Circuit Judge and Order Thereon.

Sir:—Please to take notice, that the
within is a copy of the decision made
in this cause, by his honor (John W.
Edmonds, circuit judge of the first cir-
cuit), and that, on filing the same, an
order for judgment (or, for a new
trial), was thereupon duly entered in
the office of "William P. Hallett, es-
quire), one of the clerks of this court,
according to the rules and practice of
said court. Dated, etc.

Yours, etc.,

E. F., plffs. atty.

To G. H., atty. for deft.

Burr. App. 201, §387.

VIII. Introductory Part of Order on Cause Coming on for Further Hearing.

This cause coming on for further con-
sideration thereof, adjourned by the de-
cree (or order), dated, etc., in the pres-
ence of counsel for the plaintiff and
defendants, upon opening and debate
of the matter and hearing the said or-
der and the master's report, and what
was alleged on both sides, this court

Vol. IX

State, and has been sentenced by the said court to suffer the penalty of death on the 24 day of July next; and where as the said George Wilson has been recommended as a fit subject for the exercise of executive clemency by a numerous and respectable body of petitioners, praying for him a remission of the sentence of death, inasmuch as, in such a case, sentence of imprisonment for twenty years may yet be pronounced against him on the indictment to which he has pleaded guilty in the Circuit Court of the United States for the said district, and a still more severe imprisonment may be awarded him for the same acts in the criminal courts of Pennsylvania:

"Now therefore, I, Andrew Jackson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, have pardoned, and do hereby pardon the said George Wilson the crime for which he has been sentenced to suffer death, remitting the penalty aforesaid, with this express stipulation, that this pardon shall not extend to any judgment which may be had or obtained against him, in any other case or cases now pending before said court for other offenses wherewith he may stand charged.

"(L. S.) In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed to these presents. Given at the city of Washington this 14th day of June, A. D. 1830, and of the independence of the United States the fifty-fourth.

"Andrew Jackson.

"By the President,

M. Van Buren, Secretary of State."

United States v. Wilson, 7 Pet. (U. S.) 150, 8 L. ed. 640.

II. Record, Suggestion by Court on Pardon Understood To Have Been Granted.

"And now, to-wit, this 20th day of October, A. D. 1830, the district attorney of the United States moves the court for sentence upon the defendant, George Wilson; but the court suggesting the propriety of inquiring as to the effect of a certain pardon, understood to have been granted by the President of the United States to the defendant since the conviction on this indictment, although alleged to relate

to a conviction on another indictment, the case postponed till the 21st day of October, 1830." United States v. Wilson, 7 Pet. (U. S.) 150, 8 L. ed. 640.

Note. See notes on pardon in Arraignment and Plea.

PARENT AND CHILD.

- I. Declaration in Trespass, Debauching Daughter, 910
- II. Declaration in Case, Debauching Daughter, 911
- III. Complaint for Seduction of Plaintiff's Daughter, 911
- IV. Complaint by Parent for Services of Minor Son, 911
- V. Indictment for Solemnizing Marriage Without Consent of Parent, 912
- VI. Defense by Parent Alleging Support of Child Gratuitous, 912

CROSS-REFERENCE:

WORK AND LABOR:

Complaint for Tuition Bills.

I. Declaration in Trespass for Debauching Daughter and Servant.

For that the said defendant, heretofore, to-wit, on, etc., to-wit, at, etc., with force and arms, etc., assaulted, debauched, and carnally knew one H. B., then and from thence hitherto, being the (daughter and) servant of him the said plaintiff, whereby the said H. B. became pregnant and sick with child, and so remained and continued for a long space of time, to-wit, for the space of nine months then next following, at the expiration whereof, to-wit, on, etc., at, etc., aforesaid, she, the said H. B., was delivered of the child of which she was so pregnant aforesaid, to-wit, at, etc., aforesaid; by means of which said several premises, she, the said H. B., for a long space of time, to-wit, from the day and year first above mentioned, hitherto became, and was unable to do or perform the necessary affairs and business of the said plaintiff, so being her (father and) master as aforesaid, and thereby he, the said plaintiff, during all that time, lost and was deprived of the service of his said (daughter and) servant, to-wit, at, etc., aforesaid; and also by means of the said several premises, he, the said plaintiff, was forced and obliged to, and did necessarily pay, lay out and expend divers sums of money, in the whole

amounting to a large sum of money, to-wit, the sum of _____ dollars, in and about the nursing and taking care of the said H. B., his said (daughter and) servant, and in and about the delivery of the said child, to-wit, at, etc., aforesaid; and other wrongs to the said plaintiff, then and there did against the peace of the people of the state of New York, and to the damage of the said plaintiff of _____ dollars (any sum sufficient to cover the amount of the damages which it may be probable the jury will give), and therefore he brings his suit, etc.

F. & D., plaintiff's attorneys.

Burr. App. 300, §567; 2 Chit. Pl. 856, 643.

II. Declaration in Case for Debauching Daughter.

For that whereas the said defendant, contriving, and wrongfully and unjustly intending to injure the said plaintiff, and to deprive him of the service and assistance of H. B., the daughter and servant of him the said plaintiff heretofore, to-wit, on, etc., and on divers other days and times between that day and the day of exhibiting this bill (or, the commencement of this suit) at, etc., debauched and carnally knew the said H. B., then and there, and from thence, for a long space of time, to-wit, hitherto, being the daughter and servant of the said plaintiff, whereby the said H. B., became pregnant and sick with child, and so remained, and continued for a long space of time, to-wit, for the space of nine months then next following, at the expiration whereof, to-wit, on, etc., at, etc., aforesaid, she the said H. B., was delivered of the child with which she was so pregnant as aforesaid, to-wit, at, etc., aforesaid; by means of which said several premises, she the said H. B., for a long space of time, to-wit, from the day and year first above mentioned, hitherto became, and was unable to do or perform the necessary affairs and business of the said plaintiff, so being her father and master as aforesaid, and thereby he the said plaintiff, during all that time, lost and was deprived of the service of his said daughter and servant, to-wit, at, etc., aforesaid; and also by means of the said several premises, he, the said plaintiff, was forced and obliged to, and did necessarily pay, lay out and expend divers sums of money, in the

whole amounting to a large sum of money, to-wit, the sum of _____ dollars, in and about the nursing and taking care of the said H. B., his said daughter and servant, and in and about the delivery of the said child, to-wit, at, etc., aforesaid. To the damage of the said plaintiff of _____ dollars, and therefore he brings his suit, etc.

E. F., plaintiff's atty.

Burr. App. 307, §576; 2 Chit. Pl. 643.

III. Complaint for Seduction of Plaintiff's Daughter or Servant.

I. That at the times hereinafter mentioned, one M. N. was the servant (and the daughter) of the plaintiff.

II. That on the _____ day of _____, 18____, at _____, the defendant, well knowing the said M. N. to be the servant (and daughter) of the plaintiff, and wrongfully contriving and intending to injure the plaintiff, and to deprive him of her assistance and service, did, wickedly, wilfully, and maliciously, and without the privity or consent of the plaintiff (forcibly and against the will of the said M. N., abduct her, or, entice and persuade the said M. N. to leave the residence and service of this plaintiff, and did) then and there debauch and criminally know her.

III. That by reason of the premises, the said M. N. became pregnant and sick with child, and so remained for the space of _____ months; that during that time she was unable to attend to the duties of her service, and the plaintiff was thereby deprived of her service, and was obliged to and actually did expend _____ dollars in nursing and taking care of her in her said pregnancy and sickness, and was otherwise greatly injured, to his damage _____ dollars. 1 Abb. Forms 505.

IV. Complaint by Parent for Services of Minor Son.

I. That one C. B. rendered services to the defendant, at his request, as a clerk in his store at _____, from _____, 18____, until _____, 18____.

II. That said services were reasonably worth _____ dollars (or, that for said services the defendant promised to pay him _____ dollars per month).

III. That the said C. B. is the son of the defendant, and was then, and now is under twenty-one years of age.

IV. That no part of the same has been paid. 1 Abbe Forms 203.

V. Indictment for Solemnizing Marriage Without Consent of Parents.

United States, District of Columbia and County of Washington, to-wit:

The jurors for the United States for the District of Columbia and county of Washington, upon their oath, present that Andrew Thomas McCormick, late of the county of Washington, clerk, upon the twenty-third day of July, in the year of our Lord Christ one thousand eight hundred and two, with force and arms, at the county of Washington aforesaid, did unlawfully, knowingly, and wilfully solemnize matrimony between Henry Lawler, late of the county of Washington aforesaid, then a bachelor, and one Mary Ann Densley, then a single woman, daughter of one Hugh Densley, late of the county of Washington, without the consent of the said Hugh Densley, and without the consent of Mary Ann Densley, wife of the said Hugh Densley and mother of the said Mary Ann Densley first named, personally given or signified under the hand and seal of the said Hugh Densley, or the said Mary Ann his wife, and attested by two witnesses, the said Mary Ann Densley daughter to the said Hugh Densley, and Mary Ann his wife, then and there being under the age of sixteen years, and not before married; in contempt of the laws of the land, to the evil example of all others in like cases offending, against the form of the statute in that case made and provided, and against the peace and government of the United States. *United States v. McCormick*, 1 Cranch C. C. (U. S.) 106, 26 Fed. Cas. No. 15,662.

VI. Affidavit of Defense by Parent Alleging Support of Child Gratuitous.

The affidavit of defense averred: "that the plaintiffs therein are Edward McLaughlin and Mary McLaughlin, that said Mary is the wife of Edward McLaughlin and the sister of deponent's wife, who died some four years ago; that the claim in this case is for the board of deponent's minor child, now about five years of age, that when deponent's wife died, said Mary McLaughlin offered to take said child and

care for it, and deponent allowed her to have it until about the twenty-eighth day of October, 1892, when, upon a writ of habeas corpus being issued by deponent, she was compelled to surrender the said child to him, that deponent never contracted or agreed to pay any board for said child, neither did plaintiffs ever demand any board for said child, but, on the contrary, refused to receive or charge any board; in consequence thereof, deponent considering that he was indebted to plaintiffs for their kindness, made Mary McLaughlin presents, etc., far exceeding, as deponent believes, the value of the board of said child as charged in the statement filed. Deponent further says that during the time the child was with plaintiffs he furnished and paid for all of its clothes and other necessities.

"That the charges made, if proper claims against him, are excessive and entirely out of proportion. That plaintiffs are not entitled to a judgment for want of an affidavit of defense, as the claim entirely is upon a quantum meruit, and not upon a contract or promise to pay a certain amount, all of which deponent believes and expects to be able to prove upon the trial of the cause." *McLaughlin v. McLaughlin*, 159 Pa. 489, 28 Atl. 302.

PARTICULARS.—See **BILLS OF PARTICULARS**.

PARTIES.

I. Pleas, 913

- A. *Non-joinder of Plaintiff*, 913
- B. *Non-joinder of Defendant*, 913

II. Replication to Plea of Non-joinder, 913

III. Answers of Non-joinder, 914

- A. *Of One Party to a Contract*, 914
- B. *Of a Co-executor*, 914
- C. *Of a Co-administrator*, 914
- D. *In Case of Indorsement*, 914
- E. *Of Other Owners of Land*, 914
- F. *Of Tenant in Common of Goods*, 914
- G. *Joint Interest in Plaintiff and Third Person*, 914
- H. *Of Necessary Defendant*, 914
- I. *Of Partner*, 914

IV. Suggestions, 915

- A. *Of Death*, 915
- B. *Of Marriage*, 915

V. Demurrer in Equity for Want of Parties, 915

VI. Plea in Equity for Want of Proper Parties, 915

VII. Notice of Motion for Leave That Wife Answer Separately, 916

VIII. Order Without Motion To Bring in Necessary Parties, 916

CROSS-REFERENCES:

AMENDMENTS AND JOINTS:

Notice of Motion To Amend Complaint by Adding Defendant;

Notice of Motion To Amend Complaint by Striking Out Co-plaintiffs and Making Them Defendants.

BILLS AND ANSWERS:

Commencement, Bill by Attorney-General;

Commencement, Bill by Attorney-General on Relation of Others.

BONDS:

Complaint by Surviving Obligee in Joint Bond.

DECLARATION AND COMPLAINT:

Declaration, Commencement Against Several Defendants, Some Taken, Etc.;

Commencement of Declaration Against Defendant by Wrong Name.

DEMURRER:

Demurrer for Defective Parties;

Demurrer in Equity for Want of Parties, Nonjoinder.

EQUITY JURISDICTION AND PROCEDURE:

Examination of Party

HEARING:

Order for Cause To Stand Over, To Add Parties.

INTERVENTION:

Petition by Landlord To Be Made Defendant in Ejectment;

Affidavit by Owner of Chattels on Motion To Be Made Party;

Notice of Motion by Owner of Chattels To Be Made Party;

Order Bringing in Third Person as Party Defendant.

MORTGAGES:

Answer, Nonjoinder of Owner of Equity of Redemption.

PLEA IN EQUITY:

Plea of Want of Proper Parties.

QUO WARRANTO:

Demurrer for Want of Attorney-General as Party to Quo Warranto.

VERIFICATION:

Verification by One of Several Persons United in Interest and Pleading Together;

Verification by Two Parties Not

United in Interest, But Pleading Together.

I. Pleas.

A. Plea of Non-joinder of Plaintiff.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the force and injury, when, etc., and prays judgment, etc. (in the usual form), because he says that the said plaintiff neither at the said times when, etc., nor ever since, hath not, nor had anything in the said close in which, etc., nor in the trees and underwood in the said (bill) mentioned to be therein growing, nor in any of them, nor any part thereof, nor in the said goods and chattels in the said (bill) mentioned, nor in any of them, nor in any part thereof, but jointly and undividedly with I. J. and K. L., who are both still alive, to-wit, at, etc., aforesaid. And this he is ready to verify. Wherefore inasmuch as the said I. J. and K. L. are not named in the said (bill) together with the said plaintiff, he, the said defendant, prays judgment of the said (bill), and that the same may be quashed, etc. (Add affidavit.) Burr. App. 335, §605; 1 Wentw. Pl. 67.

B. Plea of Non-Joinder of Defendant.

And the said defendant, by E. F., his attorney, comes and defends the wrong and injury when, etc., and prays judgment of the said bill (or, if by original, or in C. P., instead of the word "bill" say "writ and declaration"), because he says that the said several supposed promises and undertakings in the said declaration mentioned, if any such were made, were, and each of them was, made by the said defendant jointly with one E. F., who is still living, to-wit, at, etc. (the venue), and not by the said defendant alone; and this he the said defendant is ready to verify, whereof inasmuch as the said E. F. is not named in the said bill (or, if by original, or in C. P., say "writ and declaration"), together with the said defendant, he the said defendant prays judgment of the said bill (or, if by original, or in C. P., say "writ and declaration"), and that the same may be quashed, etc. (add affidavit.) 3 Chit. Pl. 900.

II. Replication to Plea of Non-Joinder.

And the said plaintiff saith that his

said bill (or "the said writ") by reason of anything by the said defendant in her said plea above alleged, ought not to be quashed, because he saith that the said several promises and undertakings were not made by the said defendant jointly and together with the said E. P. in manner and form as the said defendant hath above in his said plea in that behalf alleged. And this be the said defendant prays may be inquired of by the country, etc. 1 Chas. Pl. 1142.

III. Answers of Non-Joinder.

A. *Answer in Abatement, Non-joinder of One Party to Contract.*

I. That the supposed contract (or other cause of action) mentioned in the complaint, if any such was made, was made with said ———, by the plaintiff (or by the defendant) and * ——— M. N., jointly (and if as partners, may add, as partners under the firm name of Y. Z. & Co.).

II. That the said M. N. is still living at ———. 2 Abb. Forms 28.

B. *Answer in Abatement, Non-joinder of a Co-executor.*

I. That the said M. N., the testator mentioned in the complaint, by his will duly appointed the plaintiff and one O. P., jointly, executors of his said will.

II. That on or about the ——— day of ———, 18—, letters testamentary thereupon were duly issued to said O. P. (together with the plaintiff) by the surrogate of the county of ———; and he thereupon duly qualified as executor, and still is such, and living at ———. 2 Abb. Forms 29.

C. *Answer in Abatement, Non-joinder of Co-administrator.*

That after the death of said M. N., and on or about the ——— day of ———, 18—, letters of administration were duly issued to one O. P., together with the plaintiff, by the surrogate of the county of ———; and said O. P. thereupon duly qualified as administrator, and still is such, and living at ———. 2 Abb. Forms 29.

D. *Answer in Abatement, Non-joinder in Case of Indorsement.*

I. That the supposed note in the complaint alleged to have been indorsed (or transferred) to the plaintiff was not indorsed (or transferred) to

him individually, but to the plaintiff and one (continue as in III, A, from the *). 2 Abb. Forms 29.

E. *Answer in Abatement, Non-joinder of Other Owners in Action Relative to Land.*

That M. N. and O. P., residing at ———, are tenants in common with the plaintiff in said lands, and necessary parties to this action. 2 Abb. Forms 29.

F. *Answer in Abatement, Non-joinder of Tenant in Common, as to Part of the Goods.*

That as to the taking (or converting) of said (here mention the part as designated in the complaint; or, if not there designated, say, a part of the goods mentioned in the complaint, to-wit, a wagon and harness), the same were at the time of said supposed trespass the property of the plaintiff and one M. N., as tenants in common, and not of the plaintiff alone.

II. That the said M. N. is still living at ———. 2 Abb. Forms 29.

G. *Answer in Abatement, Joint Interest in Plaintiff and Third Person.*

I. That the plaintiff had not, at the time of the alleged grievances in the complaint mentioned (nor at any time since) any title to or interest in the (property the subject of the action) therein mentioned, except jointly and undividedly with M. N. and O. P.

II. That said M. N. and O. P. are still living at ———. 2 Abb. Forms 30.

H. *Answer in Abatement, Non-joinder of Necessary Defendant.*

That the said work and labor were done, and money was paid by the plaintiff, at the request of the defendant, jointly with one M. N., who is still living at ———. 2 Abb. Forms 30.

I. *Answer in Abatement, Non-joinder of Partner of Defendants.*

I. That at the time of the making of the contract mentioned in the complaint, these defendants were in partnership with one M. N., under the firm of Z., N. & Co.

II. That said note was made by these defendants jointly with said M. N., and not otherwise (which the plaintiffs then well knew).

III. That said M. N. is still living at ———. 2 Abb. Forms 30.

IV. Suggestions.**A. Suggestion of Death of Defendant Between Declaration and Plea.**

(After entering the declaration, proceed as follows):

And the said C. D. and B. D., defendants in this suit, by G. H., their attorney, come and defend the wrong and injury when, etc., and pray leave to imparl to the said declaration until the _____ Monday of _____ next, before the justices of the supreme court of judicature aforesaid, at the _____ in the city of _____, and it is granted to them, etc. The same day is given to the said plaintiff at the same place. At which day, before the justices aforesaid, come as well the said plaintiff by his attorney aforesaid as the said defendant C. D. by his attorney aforesaid, and the said defendant B. D. comes not. And hereupon the said C. D. gives the court here to understand and be informed that after the last continuance of the plea aforesaid, and before this day, to-wit, on, etc., the said B. D. died, to-wit, at, etc. (the time and place of the death), and the said C. D. survived him: which allegation the said plaintiff doth not deny, but admits the same to be true. Therefore let all further proceedings in this cause against the said B. D. be stayed.

And the said C. D. defends the wrong and injury when, etc. (copy the plea of the surviving defendant, and go on with the proceedings against him only). Burr. App. 87, §166; Till. Forms 149.

B. Suggestion of Marriage of a Feme Plaintiff After Verdict or Interlocutory Judgment, and Before Final Judgment.

And hereupon the said plaintiff gives the court now here to understand, and be informed, that after the last continuance of the plea aforesaid (or after the finding of the verdict aforesaid), and before this day, to-wit, on, etc., the said plaintiff intermarried with J. N., and took him to husband, and was from thence hitherto, and now is, covert of the said J. N.; which the said defendant doth not deny, but admits the same to be true. Therefore it is considered that the said J. N. and A., his wife, do recover, etc. (judgment in the names of husband and wife). Burr. App. 90, §171; Archb. Pl. 437.

V. Demurrer in Equity for Want of Parties.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer sheweth that it appears by the said complainant's said bill that J. M., therein named, is a necessary party to said bill; inasmuch as it is therein stated that E. M., the testator in the said bill named, did in his lifetime, by certain conveyances made to the said J. M., in consideration of the sum of \$_____, convey to him, by way of mortgage, certain estates in the said bill particularly mentioned and described, for the purpose of paying the said testator's debts and legacies; but the said complainant hath not made the said J. M. a party to the said bill. Wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

J. E., sol. for deft.

W. H., of counsel.

2 Barb. Ch. Pr. 406.

VI. Plea in Equity for Want of Proper Parties.

This defendant (or these defendants respectively), by protestation, not confessing or acknowledging all, or any, of the matters and things in the said complainant's bill of complaint mentioned and contained to be true, in such sort, manner and form as the same are therein set forth and alleged for plea to the whole of the said bill (or to so much and such part of the said bill as prays, etc., or seeks an account from this defendant as executor and heir at law of D. H., deceased, in the said bill named, for what remains due and owing upon the bond in the said bill mentioned, bearing date the _____ day of _____, 1840, and payment by this defendant, as such executor and heir at law of the said H. D., deceased, of what shall be found due on taking such account. This defendant doth plead thereto, and for plea saith that no part of the sum of \$2000 for securing the repayment

whereof the said bond was executed, was paid to or received by the said H. D., but that the whole was paid unto A. H., in the said bond and in the said bill also named, and received by him for his sole use, and that the said H. D. was only a surety for the said A. H., and that the said complainant afterwards accepted a composition for what he alleged to be due on the said bond, from the said A. H., without the privity of the said H. D. in his lifetime, or of this defendant since the death of the said H. D., which took place on or about the _____ day of _____, as in the said bill mentioned: since which no demand has been made on this defendant for any money alleged to be due on the said bond; and that the said A. H. died several years ago seised and possessed of considerable real and personal estate; and that his heir at law, or the devisee of his real estate, and also the representative of his personal estate, ought to be, but are not, made parties to the said bill. Therefore this defendant doth plead the said (act of the legislature, want of proper parties, or release, etc., in bar) to the said complainant's bill (or to so much of the said bill as is hereinbefore particularly mentioned); and prays the judgment of this honorable court whether he should be compelled to make any further answer to the said bill (or to so much of the said bill as is hereinbefore pleaded to); and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. M. D., sol. for deft.

J. E., of counsel.

2 Barb. Ch. Pr. 408.

VII. Notice of Motion for Leave That Wife Answer Separately.

Please take notice that on the complaint, and the notice of appearance which is hereto annexed (or which has been served upon you), the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18____, at _____ o'clock in the _____—noon, or as soon thereafter as counsel can be heard, that the defendant W. Z., wife of the defendant Y. Z., may be at liberty to put in her answer to the plaintiff's said complaint, separate from her husband, and for such other or further order as may be just. 2 Abb. Forms 197.

VIII. Order Without Motion To Bring in Necessary Parties.

This cause coming on to be tried, and it appearing to the court that the presence of C. D. is necessary to a complete determination of the controversy:

Ordered that the summons and complaint in this action be amended by the addition of C. D. as a defendant therein: that the plaintiff cause the said C. D. to be duly served with a copy of the said summons and complaint, further amended as he may be advised, within _____ days from the date of this order; that the said C. D. have twenty days to answer the complaint, after such service; and that the trial of this cause be postponed until the action is in readiness to be brought to trial against the said C. D. 2 Abb. Forms 237.

PARTITION.

I. Declaration for Partition, 917

II. Pleas, 917

A. *Non Tenent Insimul*, 917

B. *Petitioner Not in Possession*, 917

C. *By Confession*, 917

III. Judgment by Confession, 918

IV. First Judgment, 918

V. Writ De Partitione Facienda, 918

VI. Return to Writ De Partitione Facienda, 919

VII. Final Judgment in Partition, 920

VIII. Proceedings at Law Under Statutes, 920

A. *Petition*, 920

B. *Order To Appear and Plead*, 920

C. *Notice of Presenting Petition*, 920

D. *Order To Amend Petition and Search for Incumbrances*, 921

E. *Petition To Be Admitted Defendant*, 921

F. *Order To Admit as Defendant*, 921

G. *Order for Default, and Appointment of Commissioner*, 921

H. *Report of Commissioners for Partition*, 922

I. *Report of Commissioners That Partition Cannot Be Made*, 922

J. *Order for Sale*, 923

K. *Report of Sale*, 923

L. *Order To Confirm Sale*, 923

M. *Judgment Record by Default*, 923

N. *Judgment Record on Verdict*, 924

IX. In Equity, 925

A. *Bill for Partition*, 925

B. *Decree for Partition and Commission*, 926

X. Under Codes, 926

A. *Complaint for Partition*, 926

B. *Complaint Setting Forth Source of Title*, 927

C. *Affidavit To Move for Judgment or Preliminary Reference*, 927

D. *Order That Actual Partition Be Made*, 928

XI. Guardians Ad Litem, 929

A. *Petition*, 929

B. *Order for Appointment*, 929

C. *Bond of Guardian*, 930

CROSS-REFERENCES:

JUDICIAL SALES:

Notice of Sale of Real Property Under Foreclosure, or Partition;

Referee's Report of Sale in Partition, Foreclosure, or Other Action;

Referee's Report of Sale in Partition, Foreclosure, or Other Action, Where Purchaser Has Not Completed His Purchase.

LIS PENDENS:

Notice of Pendency of Action for Partition.

REFERENCES:

Order of Reference Preliminary to Judgment for Partition;

Report of Referee Preliminary to Judgment for Partition.

I. Declaration for Partition, Tenants in Common.

_____ (to-wit), E. F., of _____, in the county aforesaid, was summoned to answer A. B. and C. D. of a plea, wherefore * whereas the said A. B., C. D. and the said E. F., hold together and undivided the manor of _____, with the appurtenances, etc. (specifying the premises according to the writ), of which the said E. F. denieth partition to be made between them according to the form of the statute in such case made and provided, and unjustly permitteth not the same to be done, and contrary to the form of the statute. And whereupon the said A. B. and C. D., _____, by their attorney, say that whereas they and the said E. F. hold together and undivided the tenements aforesaid, with the appurtenances, whereof it belongs to the said A. B. and C. D. and their heirs, to have one moiety of the tenements aforesaid, with the appurtenances, to hold them in severalty, so that the

said A. B. and C. D. of the moiety belonging to them of the tenements aforesaid, with the appurtenances, and the said E. F. of his moiety belonging to him of the tenements aforesaid, with the appurtenances, may severally apportion themselves, he the said E. F. denieth partition thereof to be made between them, according to the form of the statute in such case made and provided, and unjustly permitteth not the same to be done, and contrary to the form of the said statute; whereupon they say that they are injured, and have damage to the value of £_____, and thereof they bring suit, etc. 3 Chit. Pl. 1391.

II. Pleas.

A. *Plea Non Tenent Insimul*.

And the said C. D., by G. H., his attorney, comes and says that he did not hold the premises in the said petition of the said A. B. set forth, together with the said A. B. at the time of the commencement of the proceedings in this cause, as alleged in the said petition of the said A. B. And of this he the said C. D. puts himself upon the country. And the said A. B. doth the like, etc.

G. H., attorney for deft.

Burr. App. 570, §1111.

B. *Plea That Petitioner Was Not in Possession*.

And the said C. D., by G. H., his attorney, comes and says that the said A. B., the above named petitioner, at the time of presenting his said petition, was not in the possession of the premises in question, or any part thereof, as alleged in the said petition of the said A. B. And of this he the said C. D. puts himself upon the country. And the said A. B. doth the like, etc. Burr. App. 570, §1110.

C. *Plea by Confession in Partition*.

(Copy the declaration to the end, and proceed as follows): And the said F. S. and E., his wife, by J. F., their attorney, and the said W. B., B. B., the younger, T. B., A. R. and D., by O. P., who is admitted by the court of our lord the king now here to prosecute and defend for the said W. B., B. B., the younger, T. B., A. R. and D., who are respectively infants within the age of twenty-one years, as the guardian of the said W. B., B. B., the younger, T. B., A. R. and D., come and defend the force and injury when, etc.,

and say that they cannot deny the aforesaid action of the said B. B., the elder, and S., not but that partition ought to be made between them and the said B. B., the elder, and S., of the tenements aforesaid, with the appurtenances in form aforesaid, and they freely consent that partition thereof may be made between them, etc. 3 Chit. Pl. 1392.

III. Judgment on Confession in Partition.

Therefore it is considered that partition be thereof made between the said B. B., the elder, and S., and the said W. B., B. B.,* the younger, T. B., T. S. and E., his wife, A. R., and D., of the tenements aforesaid, with the appurtenances; and it is commanded to the sheriff that in his proper person he go to the tenements aforesaid, with the appurtenances, and there, in the presence of the parties aforesaid, by him to be forewarned, if they shall be willing to be present, the tenements aforesaid, with the appurtenances, by the oath of good and lawful men of his county, respect being had to the true value of the said tenements, with the appurtenances, he cause to be divided into two equal moieties, and one moiety thereof he cause to be delivered and assigned to the said B. B., the elder, and S., and the other moiety thereof to the said W. B., B. B., the younger, T. B., T. S., and E., his wife, A. R., and D., to be holden in severalty so that neither the said B. B., the elder, and S., nor the said W. B., B. B., the younger, T. B., T. S., and E., his wife, A. R., and D., may have more than respectively belongs to them of the tenements aforesaid, with the appurtenances; and that the said B. B., the elder, and S., of their moiety belonging to them of the tenements aforesaid, with the appurtenances, and the said W. B., B. B., the younger, T. B., T. S., and E., his wife, A. R. and D., of their moiety belonging to them of the said tenements, with the appurtenances, may severally approve themselves; and that partition by the said sheriff so distinctly and openly made, he have under his seal and the seals of those by whose oath he shall have made the same partition, together with the writ of our said lord the king to him thereupon directed, the same day is given to the parties aforesaid here, etc. 3 Chit. Pl. 1393.

IV. First Judgment in Partition.

Therefore it is considered that partition be made thereof between them, etc. And it is commanded to the sheriff, that in his proper person he go to the manor and tenements aforesaid, and in the presence of the parties aforesaid, being forewarned if they shall be willing, the manor and tenements aforesaid, with the appurtenances, by the oath of good and lawful men of his county, respect being had to the true value of the manors and tenements aforesaid, with the appurtenances, he cause to be divided into two equal parts (or as the case is), and one part of those parts he cause to be delivered and assigned to the said A. B. and C. D., and the other part thereof to the said E. F., to be holden to them and their heirs in severalty, so that neither the said A. B. and C. D., nor the said E. F., may have more of the manor and tenements aforesaid, with the appurtenances, than it belongeth to them to have; and that the said A. B. and C. D. of their part to them thereof belonging, and the said E. F., of his part to him thereof belonging, may severally apportion themselves; and that that partition, by the said sheriff so distinctly and openly made, he have here from the day of Easter in fifteen days, under his seal, and the seals of those, etc. 3 Chit. Pl. 1393.

V. Writ de Partitioe Facienda.

William the fourth, by the grace of God, of Great Britain and Ireland, king, defender of the faith, and so forth. To the sheriff of _____, greeting: Whereas E. F., late of _____, in your county, esquire, was summoned to be in our court, before our justices at Westminster, to answer A. B. and C. D. of a plea whereof the said A. B. and C. D. and the said E. F. hold together and undivided the manor of _____, with the appurtenances (specify the premises according to the declaration), and the said E. F. denied partition thereof to be made between them, according to the form of the statute in such case made and provided, and unjustly permitted not the same to be done, and contrary to the form of the statute, as they said; and the said E. F. appearing in our said court, freely consented that partition thereof might be made. Whereupon it was considered in our same

court, before our justices at Westminster, that partition should be made between them of the manor and tenements aforesaid, with the appurtenances; therefore we command you, that taking with you twelve free and lawful men of the neighborhood of _____ aforesaid, by whom the truth of the matters may be better known, in your proper person you go to the manor and tenements aforesaid, with the appurtenances, and there, in the presence of the parties aforesaid, by you to be forewarned, if they shall be willing to be present, the same manor and tenements with the appurtenances, by the oath of the said twelve free and lawful men, respect being had to the true value of the manor and tenements aforesaid, with the appurtenances, you cause to be divided into two equal parts, and one of those parts to be delivered and assigned to the said A. B. and C. D., and the other part thereof to the said E. F., to be holden to them and to their heirs in severalty, so that neither the said A. B. and C. D., nor the said E. F., may have more of the manor and tenements aforesaid, with the appurtenances, than it belongs to them to have; and that the said A. B. and C. D. of their part to them thereof belonging, and the said E. F. of his part thereof to him belonging, may severally apportion themselves. And that that partition by you so distinctly and openly made, you have here from the day of Easter, in fifteen days, under your seal and the seals of those by whose oath you shall have made that partition; and have you there the names of those by whose oath you shall have made the same partition, and this writ. Witness, Sir N. C. T., knight, at Westminster, the _____ day of _____, in the _____ year of our reign, etc. 3 Chit. Pl. 1394.

VI. Return to Writ de Partitioe Facienda.

At which day here come as well the said A. B. and C. D. as the said E. F., by their attorneys aforesaid. And the sheriff, namely, J. T., esquire, now here, returns a certain partition between the parties aforesaid of the tenements aforesaid, by the said sheriff, by virtue of the aforesaid writ, and according to the form thereof, by the oath of twelve free and lawful men of the neighborhood of _____ aforesaid made, which follows in these words,

to-wit, _____, to-wit, I, J. T., esquire, sheriff of the county aforesaid, humbly certify and return to his majesty's justices, at the day and place in the writ hereunto annexed mentioned, that by virtue of the said writ to me directed, on the _____ day of _____, in the 1st year of the reign of King William the fourth, of Great Britain and Ireland, king, defender of the faith, and so forth, and in the year of our Lord _____, having taken with me O. P., Q. R., S. T., etc., twelve free and lawful men of my bailiwick, and of the neighborhood in the said writ mentioned, by whom the truth of the matter may be better known, in my proper person did go to the manor and tenements in the said writ specified, and there, by the oath of the said jurors, in the presence of the parties in the said writ named, by me forewarned according to the command of the said writ, and by their assent, the said manor and tenements, with their appurtenances (respect being had to the true value of the same), I did cause to be divided into two equal parts, and one part thereof, that is to say, all those two messuages, two barns, and the land thereto belonging, called the _____, containing two hundred and twenty acres, two roods, and seven perches, more or less, late in the occupation of W. J., and now of M. D. and his assigns, and all that messuage, etc. (specifying in like manner the whole apportionment allotted to the demandants); and all commons, common of pasture, woods, and underwoods, and trees, ways, waters, easements, and appurtenances to the said several messuages, cottages, farms, lands, woods, grounds, and premises belonging or appertaining, or therewith used and enjoyed; all which said premises are situate, lying and being in _____, in my said county; and did cause the same to be delivered and assigned to the said A. B. and C. D., in the said writ named; and the other part thereof, that is to say, all the manor of _____, in the said county of _____, with the court baron of the same, and all rights, royalties, members, and appurtenances thereof, and all that barn, farm and lands, etc., etc. (specifying the whole apportionment allotted to the defendant); all which said messuages, cottages, farms, barns, lands, woods, grounds, and

premises, are situate, lying and being in the parish of _____, in my county, I did cause to be delivered and assigned to the said E. F., esquire, in the said writ named, to be holden to them and their heirs in severalty, as by the said writ I am commanded, so that neither the said A. B. and C. D., nor the said E. F., might have more of the manor and tenements aforesaid, with the appurtenances, than it belonged to them to have, and that the said A. B. and C. D. of their part to them thereof belonging, and the said E. F. of his part to him thereof belonging, may severally apportion themselves. In witness whereof as well I the said sheriff as the jurors aforesaid to this indented partition, have set our seals, the day and year and place above mentioned.

J. T., esquire, sheriff.

3 Chit. Pl. 1395.

VII. Final Judgment in Partition.

Therefore it is considered that the partition aforesaid be held firm and effectual forever. 3 Chit. Pl. 1407.

VIII. Proceeding at Law Under Statutes.

A. *Petition for a Partition.*

To the (justices of the supreme court of judicature of the people of the state of New York):

The petition of A. B., of _____, respectfully sheweth that your petitioner, together with C. D., of _____, J. K., of _____ (and some person or persons to your petitioner unknown) hold and are in possession of certain lands (or tenements, or hereditaments), to-wit (here describe the premises particularly), as joint tenants (or as tenants in common); that your petitioner has an estate of inheritance (or for his own life, or for the life of one R. S., or for the term of _____ years, as the case may be), in the said premises, being the one equal undivided moiety (or third, or fourth, or other part) thereof (according to the share or interest the petitioner claims); that the said C. D. has an estate of (describing it as above) in the said premises, being the one equal undivided, etc. (specifying the share or interest), that the said J. K. has an estate of (describing it as above), and that some person or persons to your petitioner unknown, have estates or interests, the nature and conditions of which are to

your petitioner unknown, in the residue.

And your petitioner being of full age, prays for a division and partition of the said premises, according to the respective rights of the parties interested therein; and for a sale of the said premises, if it shall appear that a partition thereof cannot be made without great prejudice to the owners; and also that commissioners may be appointed to make partition of the said premises, according to the form of the statute in such case made and provided. And your petitioner will ever pray, etc. Dated, etc. A. B.

E. F., attorney.

_____ county of _____, ss.: A. B., the above named petitioner, being duly sworn, deposes and says that the matters contained in the above petition are true, to the best of this deponent's knowledge, information and belief. And further says not. Sworn, etc. Burr. App. 553, §1086.

B. *Order of the Court To Appear and Plead in Partition.*

E. F., attorney.

On reading and filing the petition of A. B., praying for a division and partition of certain premises in the said petition set forth, between the said A. B. and C. D., J. K., and parties interested in the said premises, who are unknown to the said A. B., together with the notice to the said petition annexed, and due proof being made of the service and publication thereof, according to law, it is ordered, on motion of E. F., attorney for the said A. B., that the said C. D. and J. K. (and the persons interested in the said premises who are not known) appear and show title to the proportions which they may claim of the premises set forth in the said petition; and that they answer the said petition in twenty days, or judgment. Burr. App. 581, §1139.

C. *Notice of Presenting Petition.*

To C. D., J. K. (and all persons unknown, having or claiming any interest in the premises described in the above petition):

Please to take notice that a petition of which the above is a copy, will be presented to the _____ court of _____ of the _____ state of _____, at the _____ in the city of _____, on the (first Monday in January) next, at the opening of the

court on that day, or as soon thereafter as counsel can be heard; and that an application will be thereupon made to the said court, for the appointment of commissioners, pursuant to the prayer of the said petition. Dated, etc. Burr. App. 540, §1067; 1 Humph. Prec. 69.

D. Order To Amend Petition and To Search for Incumbrances.

F. M., attorney.

On reading and filing affidavits in this cause, and on motion of F. M., attorney for (the party moving), ordered that the plaintiff amend his petition by making (the creditors designated) parties to the proceedings in this cause, and it is further ordered that W. P. H., esquire, one of the clerks of this court, ascertain and report with all convenient speed whether the shares or interests of the said parties in this suit, or any of them, in the premises described in the said petition, are subject to any general lien or incumbrance by judgment or decree. Burr. App. 583, §1142.

E. Petition To Be Admitted a Defendant in Partition.

To the (justices of the supreme court of judicature of the people of the state of New York):

The petition of S. T., of ———, respectfully sheweth that your petitioner has an interest (or a claim by which he may at some future time become interested) in the premises set forth in a certain petition for a division and partition thereof, presented by A. B. to this honorable court, and that the said interest (or claim) of your petitioner in the said premises is (here set forth the interest or claim specifically, according to the facts).

And your petitioner further shows that he is not named as a party in the said petition for a partition; and therefore, according to the form of the statute in such case made and provided, prays that he may be admitted to appear and answer the said petition for partition as a defendant. And your petitioner will ever pray, etc. Dated, etc. S. T.

F. R., attorney.

(City and) county (of ———), ss.: S. T., the above named petitioner, being duly sworn, deposes and says that the matters set forth in the above petition of this deponent are true. Sworn, etc. S. T.

Burr. App. 553, §1087.

F. Order To Admit Petitioner as Defendant in Partition.

F. R., attorney.

On reading and filing the petition of S. T., stating that he had an interest (or as in the petition, VIII, E) in the premises set forth in the petition for a division and partition thereof, presented in this cause by the above named A. B.; that the interest (or claim) of the said S. T. in the said premises is (as in the petition), and that the said S. T. is not named as a party in the said petition for a partition; and praying to be admitted to appear and answer the said petition for a partition, as a defendant; and on reading and filing the affidavit of the said S. T. of his interest (or claim) as aforesaid, accompanying his said petition: it is ordered, on motion of F. R., attorney for the said S. T., that the said S. T. be, and he is hereby admitted to appear and answer the said petition of the said A. B. as a defendant. Burr. App. 582, §1140.

G. Order for Judgment by Default and Appointment of Commissioners in Partition.

The default of the defendants, for not appearing and showing title to the proportions which they claim of the premises set forth in the petition of the said A. B. in this cause, and for not answering the said petition, having been duly entered; and the said petitioner A. B. having, as required by the court, exhibited proof of his title, and an abstract of the conveyances by which the same is held, and the same being now filed with the clerk of this court; and the court having ascertained from the proofs so taken, declare the rights, title and interest of the said parties to the proceedings in this cause, plaintiff as well as defendant, so far as the same have appeared, to be as follows, to-wit (state the rights and interests of the parties respectively, and the several shares to which they are entitled, according to the facts, and then proceed as follows): And it is determined that the rights of the said parties in the said lands (or tenements, or hereditaments) are as above declared: And it is ordered and adjudged that partition be made between them according to their said rights. And it is further ordered, on motion of F. R., attorney for the petitioner, that O. P., Q. R., and S. T. (three reputable free-

holders), he and they are hereby appointed commissioners to make the partition so adjudged, quality and quantity relatively considered, according to the respective rights and interests of the said parties, as the same are herein ascertained and determined by the court (they leaving and designating the said ——— part of the said premises which shall remain undivided, for the said owners whose interests are unknown and not ascertained. Burr. App. 582, §1141; 1 Humph. Prec. 72.

H. Report of Commissioners for Partition.

We, O. P., Q. R., and S. T., commissioners appointed by the (state the court) to make partition of the lands and premises in question, in the above entitled cause, do certify and return to the said court that after our said appointment we took and subscribed the oath of office required by law, and then went to the lands and premises aforesaid, and in pursuance of the authority to us given for that purpose, made partition between the said parties, quality and quantity relatively considered, according to the respective rights, titles and interests of the said parties as ascertained, declared and determined by the said court, of all, etc. (describing the whole premises accurately). And we further certify and return that we caused the said premises above described to be divided into ——— equal fourth (or fifth, or sixth, or other, as the case may be) parts, quality and quantity relatively considered; and one equal fourth (or fifth, or sixth, or other) part thereof, to-wit, all that lot, piece or parcel of land, bounded and described as follows, to-wit (here describe the share with the quantity, courses and distances, and a description of the posts, stones, or other monuments thereof), we the said commissioners allotted and assigned to the said A. B., to hold to him, his heirs and assigns in severalty, as and for his right and portion of the said lands and premises aforesaid, as the same is adjudged to him by this court. And one other equal fourth (or fifth, or sixth, or other) part thereof, to-wit: All, etc. (describing the share in like manner as before), we the said commissioners, allotted and assigned to the said C. D., to hold to him, his heirs and assigns in severalty, as and for his right and portion of the lands and

premises aforesaid, as the same is adjudged to him by this court. And one other equal fourth (or fifth, or sixth, or other) part thereof, to-wit: All, etc. (describing the share in like manner as before), we the said commissioners, allotted and assigned to the said J. K., to hold to him, his heirs and assigns in severalty, and for his right and portion of the lands and premises aforesaid, as the same is adjudged to him by this court; and the remaining fourth (or fifth, or sixth, or other) part thereof, to-wit: All, etc. (describing the share in like manner as before), we the said commissioners left undivided, and designated as and for the equal share and portion of the said owners who are unknown, as the same is adjudged to them by this court. And we the said commissioners do further return, report and certify to the said court the items of our charges as follows (here insert a regular and particular account of the charges and expenses of making the partition, specifying the items). In testimony whereof, we have hereunto set our hands and seals this ——— day of, etc., ———, in the year, etc.

(Signatures and seals.)

Burr. App. 576, §1128; 1 Humph. Prec. 76.

I. Report of Commissioners That Partition Cannot Be Made.

We, O. P., Q. R., and S. T., commissioners appointed by the (name the court), to make partition of the lands and premises in question in the above entitled cause, do certify and return to the said court that after our appointment as such commissioners as aforesaid, we took and subscribed the oath directed by the statute in such case made and provided; and then proceeded to explore and examine the premises in question, for the purpose of making division and partition thereof, agreeably to the rule and order of the said court to that effect made; but having ascertained that (here state the facts and circumstances upon which the opinion of the commissioners is founded), we are of opinion that partition of the said real estate and premises in question in this cause cannot be made without great prejudice to the owners thereof; of which fact we do hereby make a return to the said court in writing under our hands, pursuant to the directions of the statute in such case made

and provided. Dated, etc. Burr. App. 577, §1128a.

J. Order for Sale of Premises in Partition.

On reading and filing the report of O. P., Q. R., and S. T., commissioners appointed to make partition of the lands and premises in question in this cause, between the said parties, whereby the said commissioners return that it appears to them that partition of the real estate in question in this cause cannot be made without great prejudice to the owners thereof, and the court being satisfied that such report is just and correct, it is ordered, on motion of E. F., in behalf of the said A. B., that the said commissioners sell the said premises in question at public auction to the highest bidder, after giving notice according to law, of the time and place of such sale. Burr. App. 583, §1143.

K. Report of Commissioners of Sale in Partition.

We, O. P., Q. R., and S. T., commissioners appointed by the supreme court of judicature of the people of the state of New York, to make partition of the lands and premises in question, in the above entitled cause, between the parties above named, do certify and return to the said court that in pursuance of the authority and directions to us given in the premises, we did, on, etc., at, etc., expose to sale all, etc. (describe the property sold with the like accuracy that would be required in a deed), and did sell the same premises at such auction for the sum of _____ dollars, being the highest sum bid for the same, to H. I., he being the highest bidder. (If the premises were sold in parcels, state the sale of each parcel separately, the amount bid therefor, and who the purchaser was.) And we do further certify that due notice was previously given according to law, of the time and place of such sale, by, etc. (state the notice). In testimony whereof, we have hereunto set our hands, this _____ day, etc.

Sworn, etc. Burr. App. 578, §1129; 1 Humph. Prec. 75.

L. Order To Confirm Sale.

On reading and filing the report of O. P., Q. R., and S. T., commissioners appointed to make partition between the said parties, of the lands and premises in question, whereby it appears

that (here insert the report in substance): It is ordered, on motion of E. F., on behalf of the said A. B., that the said sale be, and the same is hereby approved and confirmed by the court; and that the said commissioners, or any two of them, execute conveyances to the said H. I., for the said premises, pursuant to such sale: And it is further ordered that the costs and expenses of the proceedings in this suit be deducted from the proceeds of the said sale so made by the said commissioners, and be by them paid to the said A. B., or his attorney; and that the said commissioners also pay to the said A. B., or bring into court for his use, one (third) part of the moneys arising from said sale, after deducting therefrom the one (third) part of the said costs and expenses: And that they pay in like manner to the said C. D., or bring into court for his use, one (sixth) part of the moneys arising from the said sale, after deducting therefrom the one (sixth) part of the said costs and expenses; and that the said commissioners pay in like manner to the said J. K., or bring into court for his use, one (fourth) part of the moneys arising from the said sale, after deducting therefrom one (fourth) part of the said costs and expenses: And also that they bring into court, for the use of the said unknown owners, one (seventh) part of the moneys arising from the said sale, after deducting therefrom the one (seventh) part of the said costs and expenses. Burr. App. 583, §1144; 1 Humph. Prec. 75.

M. Judgment Record in Partition by Default.

Placita in the usual form, of the term of interlocutory judgment.)

County, ss.: Be it remembered that in the term of _____ last past, before the justices of the supreme court of judicature of the people of the state of New York, at, etc., on, etc. (in the usual form), came A. B., by E. F., his attorney, and brought into the said court, before the aforesaid justices thereof then there, his certain petition and notice for the partition of certain premises therein described, according to the provisions of the statute "of the partition of lands owned by several persons;" which said petition and notice follow in these words, that is to say:

To the supreme court, etc. (here in-

sert the petition, and the notice subjoined to it, and then proceed as follows):

And the said A. B. prays the court for such order on his said petition as is directed in and by the said statute; and also now here presents to the said court the following affidavits of the service (and publication) thereof, to-wit (here insert them).

And hereupon the said court do order (here insert the rule or order to appear and plead).

And now at this day, to-wit, on, etc., at, etc., until which day the said C. D., the said J. K. (and the said owners unknown), defendants in this suit, had leave to imparl to the said petition of the said A. B., and then to answer the same, etc., before the said justices of the supreme court of judicature aforesaid, at, etc., on, etc., comes the said A. B., by his attorney aforesaid,* and the said defendants, although solemnly demanded, come not, but make default; whereby the said A. B. remains therein undefended against them: wherefore the said A. B. ought to have partition of the said premises in question in this suit, according to the prayer of his said petition. And thereupon the said A. B., being thereunto required by the court here, exhibits proofs of his title, and an abstract of the conveyances by which the same is held. And now the said court here, according to the directions of the statute in such case made and provided, do ascertain from the said proofs so taken, and do declare their rights, titles and interests of the said parties to the proceedings in this cause, the plaintiff as well as defendants, so far as the same have appeared, to be as follows, to-wit (state the rights and interests of the parties respectively, and the several shares to which they are entitled); and the said court now here do determine the rights of the said parties to be as above declared.*

Therefore it is considered that partition of the said lands and premises in question in this suit be made between the said parties in this suit, according to their said respective rights as aforesaid. Whereupon, and on the prayer of the said A. B., the court now here do appoint O. P., of, etc., Q. R., of, etc., and S. T., of, etc., three reputable freeholders, commissioners to make partition of the said premises between

the said parties, quality and quantity relatively considered, according to the respective rights and interests of the said parties, as the same are herein ascertained and determined by the court here (they leaving the said parcel of the said premises which shall remain undivided for the said owners, whose interests are unknown, and not ascertained). And it is commanded to the said commissioners that they make report of what they shall do in the premises, to the justices of the supreme court of judicature aforesaid, at, etc., on, etc. The same day is given to the parties aforesaid, at the same place.

At which day, before the said justices of the supreme court of judicature aforesaid, at, etc., comes the said A. B., by his attorney aforesaid, and the said commissioners, to-wit, O. P., Q. R., and S. T., now here return a certain report in writing, under their hands, as follows, to-wit (here insert the report, and then proceed as follows): which, being seen, and mature deliberation thereupon had, the said return is by the court here confirmed.

Therefore it is considered that the partition aforesaid be firm and effectual forever, etc. And it is further considered that the said A. B. do recover of the said C. D. the sum of _____ dollars for the proportion of the said C. D. of the costs and expenses of the proceedings aforesaid. And also that the said A. B. do recover of the said J. K. (as in the award of costs, etc., against C. D., then add the like award against the owners unknown, and then conclude as follows): according to the form of the statute in such case made and provided; and that the said A. B. have execution thereof, etc. Burr. App. 530, §1053; 1 Humph. Prec. 77.

N. *Judgment Record on Verdict in Partition.*

(As in last form to the first *, then enter the plea, and then the order for trial, and postea, the latter being in the usual form, to the words, "say upon their oath," and then, if the issue was on a plea of "not in possession," as follows): that the said petitioner was (or, if for defendant, "was not") at the time of presenting his said petition, in the possession of the aforesaid described premises, and every (or any) part thereof; as the said petitioner hath in his said petition alleged.

(If the issue was on a plea of non

tenant insimul, the postea will vary, thus: "that the said defendant did [or did not] hold the premises in the petition aforesaid set forth, together with the said petitioner, at the time of the commencement of the proceedings in this cause as alleged in the said petition.")

(If the verdict was for the plaintiff, the record after the entry of the postea concludes with the judgment, thus):

Therefore it is considered that partition of the said lands and premises in question in this suit be made, etc. (as in last form from the last * to the end).

(If the verdict was for the defendant, the judgment is thus): Therefore it is considered that the said defendants do go thereof without day; and that the said petitioner be in mercy, etc. And it is further considered, etc. (judgment for costs). Burr. App. 531, §1054.

IX. In Equity.

A. Bill for Partition by Coheiresses.

Humbly complaining, show unto your honors your orators and oratrixes, T. K., of, etc., and C., his wife, L. G., of ———, and M., his wife, and J. V., of, etc., widow, that W. S., of, etc., deceased, the late father of your oratrixes, C. K., M. G., and J. V., and also G. E. F., wife of R. F., of, etc., the defendants hereinafter named, was in his lifetime, and at the time of his death, seized in fee simple, or of some other good estate of inheritance to him and his heirs, of and in all that messuage or dwelling house, etc., and also of and in all that other messuage, etc.; all which said messuages, lands and premises are situate, lying and being in, etc., and being so seized, he the said W. S. did many years since depart this life, intestate, leaving M. S., his wife, and your oratrixes and their sister E. F., his four daughters and only children and coheiresses him surviving; and upon his death the said messuages, etc., and premises descended upon and came to your oratrixes and the said E. F., as such coheiresses, subject only to the dower of their said mother M. S. And your orators and oratrixes further show unto your honors that the said M. S., the widow and relief of the said W. S., departed this life some time in or about the month of ———, whereupon your orators and oratrixes T. K. and C., his wife, and L. G., and M.,

his wife, in right of your oratrixes C. and M., and also your oratrix J. V. and the said R. F. and E., his wife, in right of the said E., have ever since been, and now are, severally seized in fee of and in the said messuages, etc., and premises in four equal undivided parts or shares as tenants in coparcenary. And your orators and oratrixes further show that they have frequently applied unto and requested the said R. F. and E., his wife, to join and concur with your orators and oratrixes in making a fair, just and equal partition of the said premises between them, in order that their respective shares and proportions thereof may be allotted, held and enjoyed in severalty. And your orators and oratrixes well hoped that the said R. F. and E., his wife, would have complied with such their reasonable requests, as in justice and equity they ought to have done. But now so it is, etc., etc., they the said defendants absolutely refuse to comply with such your orators' and oratrixes' reasonable requests as aforesaid, pretending that your orators and oratrixes and the said defendants have ever since the death of the said W. S. and M. S. respectively, their said father and mother, deceased, constantly and regularly divided the yearly rents and profits of all the said messuages, etc., and premises equally between them, and that it will not be to the benefit or advantage of either of them to make an actual partition thereof. Whereas your orators and oratrixes charge, and so the truth is, that a fair, just and equal partition of the said premises will tend greatly to the benefit and advantage of your orators and oratrixes and the said defendants, but they the said defendants, under divers frivolous pretenses, absolutely refuse to join or concur with your orators and oratrixes therein. All which actings, etc.

And that a commission of partition may be issued out of and under the seal of this honorable court, and directed to certain commissioners therein named, to divide and allot the said messuages, etc., and premises in equal fourth parts or shares; and that one full and equal fourth part or share may be allotted and conveyed unto your orator and oratrix, T. K. and C., his wife, and the heirs and assigns of your oratrix C. K.; that one other full and equal fourth

part or share may be allotted and conveyed unto your orator and oratrix, L. G. and M., his wife, and the heirs and assigns of your oratrix M. G.; and that one other full and equal fourth part or share may be allotted and conveyed unto your oratrix J. V., her heirs and assigns; and that your orators and oratrices T. K. and C., his wife, L. G. and M., his wife, and J. V., may severally hold and enjoy their respective allotments of the said premises according to the natures thereof in severalty; and that all proper and necessary conveyances and assurances may be executed for carrying such partition into effect, etc. May it please, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2059, 2060.

B. Decree for Partition and Commission To Issue.

The court doth order that a commission issue, directed to certain commissioners to be therein named, to divide the estate in question into moieties: And that one moiety thereof be allotted as the share of the plaintiffs, and the other moiety thereof as the share of the defendants; and that the plaintiffs and defendants hold and enjoy their respective moieties in severalty, according to such allotments; and that they execute mutual conveyances to each other of such respective moieties, according to their respective interests therein, such conveyances to be settled by the said master (or the court, or judge). (If no infants or married women interested, add: in case the parties differ about the same); and it is further ordered that all deeds and writings relating to the said estate, in the custody or power of any of the parties, be produced before the commissioners upon oath, as they shall require: And it is further ordered that the commissioners be at liberty to examine witnesses upon oath, and take the depositions in writing, and return the same with the commission. Liberty to plead. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2058.

X. Under Codes.

A. Complaint for Partition, General Form.

I. That the plaintiff, and the defendants Y. and Z., own and possess, as joint tenants (or as tenants in common) the following described premises (particular description of the premises); and that the plaintiff is desirous of a partition of the same.

II. That the plaintiff has an estate of inheritance therein of one undivided fourth interest in the fee thereof (or other estate).

III. That each of the defendants (cotenants have a similar estate of one undivided fourth interest in the same (or otherwise).

(Where there are unknown owners.) IV. That W. X., who, in his lifetime, had an estate of inheritance therein of one undivided fourth interest in the fee (or otherwise), several years since removed from this state to ———. That he subsequently married, and had children, some of whom are now living; but their names and places of residence are wholly unknown to the plaintiff, and, although he has made diligent inquiries for that purpose, he cannot ascertain the same, or either of them. That said W. X. and his said wife are now dead; and that said children and heirs, or the heirs at law of any who may be dead, are collectively entitled to the undivided fourth part of said premises to which said W. X. would be entitled if living.

(Where an infant is a party.) V. That the plaintiff owns no other land in this state in common with the said (cotenants).

(Where the lands are subject to dower.) VI. That the defendant (doweress) is the widow of M. N., the father of the said (cotenants), from whom they inherited said premises; and, as such widow, claims a right of dower which has not been admeasured in (the following described part of) said premises.

(Where they are subject to a judgment.) VII. That the defendant (judgment creditor) holds a judgment recovered by him (or by one M. N., and thereafter duly assigned to him), duly given in the ——— court (or, in an action before O. P., justice of the peace in and for the town of ———), on or about the ——— day of ———, 18—, against (one or more of the cotenants), for the sum of ——— dollars; which judgment was, on the ——— day of ———, 18—, docketed in said county of (the place where the premises are situated), and remains unpaid and unsatisfied of record.

(Where they are subject to a mortgage.) VIII. That the defendant (mortgagee) holds a mortgage upon

the said interest of (one of the co-tenants) for _____ dollars, payable on the _____ day of _____, 18—, with interest from the _____ day of _____, 18—.

(Wherefore the plaintiff asks judgment for (an accounting, and) a partition and division of said premises according to the respective rights of said parties; or, if a partition cannot be had without material injury to those rights, then for a sale of said premises, and a division of the proceeds between the parties according to their rights, after payment of the costs of this action. 1 Abb. Forms 606.

B. Complaint for Partition, Setting Forth Sources of Title.

I. That on or about the _____ day of _____, 18—, C. B., being owner in fee of the real property hereinafter described, died intestate as to the same, which real property is described as follows (description).

II. That the said C. B. left W. B., his widow, one of the defendants, who is entitled to dower in said premises.

III. That subject to said dower the premises descended to the following named persons, the only heirs of the deceased:

1. The plaintiff A. B., who is a son of said C. B., deceased.

2. The defendant E. B., a daughter of the said C. B., deceased, and wife of one L. B., of _____ county, in the state of _____.

3. The defendants F. M. and G. M., minor children of one F. B., a daughter of said C. B., deceased. The said F. B. intermarried with the defendant H. M., and afterwards died intestate, leaving issue of said marriage F. M. and G. M., her only children and heirs, who reside in the county of _____, and for whom their father H. M., who resides in _____ county, has been duly appointed guardian by the probate court of said county. The said H. M. is tenant by the curtesy of the estate of said children.

4. G. B., son and only heir of one H. B., deceased. The said H. B. was a son of said D. B., deceased. The said G. B., after said estate was cast upon him by descent as aforesaid, conveyed his estate in said premises, by deed duly executed, to the defendant X., who resides in _____.

IV. The parties above named have

now the following undivided estate in said premises:

1. The plaintiff, one undivided (fourth) in fee.

2. The defendant E. B., one undivided (fourth) in fee.

3. The defendants F. M. and G. M., each one undivided (eighth) in fee, subject to the curtesy of their father H. M.

4. The defendant X., one undivided (fourth) in fee.

(Allege specific incumbrances, and demand relief as in preceding form.) 1 Abb. Forms 608.

C. Affidavit To Move for Judgment, or for Preliminary Reference in Partition.

M. N., plaintiff's attorney herein, being duly sworn, says:

I. That this action is brought for a partition (or for a partition or sale) of real property situate in the town of _____, and county of _____, owned by the plaintiff and the defendants W. X. and Y. Z. as tenants in common, and in which the defendant U. V. has an estate of dower (or otherwise briefly indicate nature of property and ownership).

II. That a notice of the pendency of this action, a copy whereof is hereto annexed, was filed in the office of the clerk of the county of _____, more than twenty days since, and at or after the time of filing the complaint.

III. That all the defendants are of full age (except the defendant W. X.).

IV. That all the defendants have been duly personally served within this state with the summons (and complaint herein), more than twenty days since, as appears by the affidavit of O. P., annexed (except the defendant U. V., who was duly served by publication more than twenty days since, as appears by the affidavits of O. P. and Q. R. annexed).

V. That none of the defendants herein have appeared, except the defendants (naming those to whom notice of the motion has been given); and none of the defendants have answered or demurred, except the defendant W. X., who, by his guardian, has put in the usual general answer, not controverting any material allegation of the complaint.

(Where a sale is deemed necessary, add): VI. That (one of the several parcels) the land mentioned in the

complaint, and of which partition is sought herein (to-wit, designating one, and which exceeds in value the share to which either of the parties hereto will be entitled), is so circumstanced that actual partition thereof cannot be made without great prejudice to the owners, as deponent (is advised and) believes, after due regard being had to the power of the court to decree compensation for equality of partition, and to the ability of the parties to pay reasonable compensation to produce such equality.

(Or, where several plaintiffs desire their shares set off in common, it may be alleged here.) 2 Abb. Forms 524.

D. Order That Actual Partition Be Made.

This action having been brought on for hearing upon the pleadings and proceedings and the report of R. F., the referee herein (and on the exceptions taken by W. X., and by S. T., a creditor having a specific lien upon the share of W. X.), by which report, dated the _____ day of _____, it appears (here may briefly recite the findings as to the rights of the parties, and the practicability of actual partition), and on reading and filing proof of due service of notice of this motion on all the defendants who have appeared, now, on motion of M. N. for the plaintiff, after hearing O. P. for the defendant W. X. (or no one appearing) in opposition,

It is ordered and adjudged (that said exceptions be disallowed and overruled, and that said report be, and the same hereby is, in all respects confirmed, and) that the rights and interests of the several parties to this action, in and to the (several parcels of) land described in the complaint in this action, are as stated and set forth in the said referee's report.*

And it is further ordered and adjudged that partition be made of the lands and premises mentioned and set forth in the complaint in this action, and hereinafter described, among the parties to this action, according to their respective rights and interests as the same were reported by the said referee, and have been thus ascertained by this court and established by this judgment.

And it is further ordered that G. H.,

I. J. and K. L., three reputable freeholders of the county of _____, be, and they are hereby appointed commissioners for the purpose of making such partition; that the said commissioners, before proceeding to the execution of their duties as such, shall severally be sworn or affirmed before some officer authorized by law to administer oaths, honestly and impartially to execute the trust reposed in them, and to make partition as directed by this court; and that such oaths or affirmations be filed with the clerk of this court (in the county of _____), at or before the coming in of the report of the said commissioners, hereinafter directed to be made; and that the said commissioners shall divide the said lands and premises into equal parts, quantity and quality relatively considered, and that they allot to the plaintiff one of the said equal _____ parts of the said premises, and to each of the defendants U. V., W. X. and Y. Z., one of the said equal _____ parts of the said premises; to be held and enjoyed by the said parties in severalty, according to their rights and interests therein so ascertained and determined as aforesaid (where several shares are to be set off in common, say: and that they allot to the plaintiffs A. B. and C. D. two of the said equal _____ parts of said premises, to be held and enjoyed by them as tenants in common without partition or apportionment as between said A. B. and C. D.), and that the said commissioners shall designate the part or portions so allotted to each of the said parties, and the boundaries thereof, by sufficient description and monuments.

And it is further ordered that the said commissioners make a full report to this court of their proceedings, specifying therein the manner in which they shall have obeyed this order, and describing the lands divided, and the parts or shares allotted to each party, with the quantity, courses and distances of each, and a description of the posts, stones or other monuments thereof, and the items of their charges in the premises. That the said commissioners, or such two of them as shall sign the report, do acknowledge the same, or cause it to be proven in the same manner that deeds are required to be acknowledged or proven, to entitle the same to be reported, before

some officer authorized to take the proof or acknowledgment of deeds, and that such report be filed in the office of the clerk of this court (in the county of ———). That all the said commissioners do meet together in the performance of any of their duties under this order, but that the acts and decisions of a majority of such commissioners, when so met, shall be valid.

And it is further ordered that the said commissioners be authorized to employ a surveyor and to cause all necessary maps and surveys to be made. And all the parties in this action shall produce to and leave with the said commissioners for such time as the commissioners shall deem reasonable, all deeds, writings, surveys or maps relating to the said premises, or any part thereof.

And it is further ordered and adjudged that in case partition of such premises cannot be made with perfect equality between the said parties, according to their respective rights and interests therein, unless compensation be made by one or more of the said parties to the other of them, for equality of partition, that then and in that case the said commissioners, or such two of them as may make said partition, ascertain and report the proper compensation which ought to be made for equality of partition; and by which of the parties the same should be paid, and to which the same ought to be allowed. But the said commissioners shall not report compensation to be paid by an infant for equality of partition, unless it satisfactorily appears to them that he or they have sufficient personal estate to pay the same, and his or their shares of the costs and expenses of this action, and all other liens on his or their share of the premises, except in cases where, from the situation of the property and interests of the parties, it cannot be charged upon the share of an adult.

And it is further ordered that a commission issue out of this court, and under its seal, directed to said (naming commissioners), authorizing and directing them to make partition of said premises in the manner above directed.

The premises of which partition is hereby ordered are described as follows (description). 2 Abb. Forms 530.

XI. Guardians Ad Litem.

A. *Petition for Appointment of Guardian in Partition.*

To the (justices of the supreme court of judicature of the people of the state of New York):

A. B., of ———, respectfully represents that he intends to apply to this honorable court for a division and partition of certain premises, to-wit (here describe the premises, and state the rights of parties, etc., as in the petition for partition): according to the respective rights of the said parties interested therein; and for a sale of such premises, if it shall appear that a partition thereof cannot be made without great prejudice to the owners; that O. P. is a minor, who should be a party to the proceedings on that application, and that at least ten days' notice has been served on the said O. P. (or "on ———, the general guardian of the said O. P.") of an intention to apply to this honorable court for an order therein mentioned, that the said court shall appoint a suitable and disinterested person to be a guardian for the said minor, for the special purpose of taking charge of the interests of the said minor in relation to the proceedings for a partition.

The said A. B. therefore prays that this honorable court may appoint a suitable and disinterested person to be a guardian for the said minor, for the special purpose of taking charge of the interests of the said minor, in relation to the proceedings for a partition of the premises herein above specified.

Dated, etc.

A. B.

E. F., attorney. Burr. App. 552, §1085.

B. *Order for Appointment of Guardian in Partition.*

In the matter of the application of A. B. for the appointment of a guardian for O. P., a minor, etc.

E. F., attorney.

On reading and filing the representation of the said A. B., showing that he intends to apply to this court for a division and partition of certain premises in the said representation specified; and that the said O. P. is a minor who should be a party to the proceedings thereon, and on filing the affidavit of the said A. B. whereby it is satisfactorily proved that due notice has been served on the said O. P. (or on ———, the general guardian of the

said O. P., of an intention to apply in this court for the order therein mentioned. On motion of E. F., on behalf of the said A. B., it is ordered that I. J., a suitable and disinterested person, be, and he is hereby appointed to be guardian for the said O. P. for the special purpose of taking charge of the interests of the said O. P. in relation to the proceedings for a partition of the premises before mentioned; and that he, with _____, of, etc., and _____, of, etc., shall execute a bond in due form of law, in the penalty of _____ dollars, before he shall execute the duties of his said office, and the same shall be filed with the clerk of this court, at, etc. Burr. App. 545, §1077; 1 Humph. Prec. 68.

C. Bond of Guardian in Partition.

Know all men by these presents that we, I. J., of, etc. (names and residences of obligors), are held and firmly bound unto (the people of the state of New York, or as directed by law), in the sum of (such sum as the court may direct) to be paid to the said (people); to which payment well and truly, etc. (penal part in the usual form).

Whereas the above bounden I. J. has been appointed by an order of the supreme court of judicature of the said people), made the _____ day of _____, etc., on the application of A. B., to be guardian for O. P., a minor, for the special purpose of taking charge of the interests of the said O. P., in relation to the proceedings for a partition, in the said order mentioned:

Now therefore the condition of the above obligation is such that if the above bounden I. J. shall faithfully discharge the trust so committed to him and shall render a just and true account of his guardianship, in all courts and places, when thereunto required, then this obligation to be void, otherwise to remain in full force and virtue.

(Signatures and seals of obligors.)

Sealed and delivered in presence of (witnesses).

Burr. App. 514, §1033.

PARTNERSHIP.

I. Declarations, 931

A. *By Surviving Partner*, 931

B. *Count on Promise to Surviving Partner*, 931

C. *Against Surviving Partner*, 932

D. *Count on Promise by Surviving Partner*, 932

II. Complaints, 933

A. *Commencement, by or Against Partner*, 933

B. *Alleging Partnership*, 933

C. *By Surviving Partner*, 933

D. *To Dissolve Partnership*, 933

E. *For Dissolution and Accounting*, 934

F. *To Enjoin Late Partner From Continuing Business*, 934

G. *By Administrator of Deceased Partner Against Survivor*, 935

III. Answers, 936

A. *Overdrawing Done by Assent*, 936

B. *Term Not Expired*, 936

C. *Denial of Partnership*, 936

IV. Bills, 936

A. *For Dissolution and To Restrain Collecting Debts*, 936

B. *Prayer After Dissolution for Accounting and Lien*, 938

C. *Prayer for Accounting, Receiver, and Injunction*, 938

V. Decrees, 938

A. *For Account of Dealings and Transactions*, 938

B. *Requiring Surviving Partner To Account*, 939

C. *For Dissolution*, 939

D. *Infants Declared Entitled to Profit Against Survivor*, 939

E. *House Declared Partnership Assets*, 940

F. *Declaring Partnership Realty To Be Personalty*, 940

CROSS-REFERENCES:

ARREST IN CIVIL CASES:

Affidavit To Obtain Arrest, Money Received in Trust by Partners.

BANKRUPTCY:

Proof of Debt by Partnership.

BILLS AND NOTES:

Complaint on Note Made by Partners;

Complaint on Note Made by Partners, Averring Partnership;

Complaint by Partners on Note Payable to Order of Firm Name;

Complaint by Surviving Partner on Note Payable to Order of Late Firm;

Complaint by Receiver Against Payee, Against Partners, Makers;

Answer, Wrongful Transfer by Partner.

GARNISHMENT:

Motion To Dismiss Writ by Garnishee, Debt, if Any, a Balance in Partnership Account.

INDEMNITY:

Complaint by Retiring Partner on Bond To Indemnity;
Complaint by Retiring Partner on Remaining Partners' Promise To Indemnify Him Against Damage.

INJUNCTIONS:

Prayer for Injunction Against Receiving Partnership Debts (a, b);
Injunction Against Interfering With Partnership Matters;
Injunction Against Interfering With Partner's Rights.

RECEIVERS:

Order for Appointment of Receiver of Partnership Business.

REFERENCES:

Report of Referee in Partnership Cause;
Order of Reference for Accounting in Partnership Cause;
Referee's Report on Accounting in Partnership Cause.

I. Declarations.**A. Declaration by Surviving Partner.**

For that whereas the said defendant in the lifetime of one E. F. since deceased, to-wit, on, etc., at, etc. (venue) was indebted to the said plaintiff and the said E. F. in the sum of £—— of lawful money of Great Britain, for the work and labor, care, and diligence, of the said plaintiff and E. F. by the said plaintiff and E. F. before that time done, performed, and bestowed for the said defendant, and at his special instance and request. (Any other debt, "as for goods sold," etc., is to be described in the same manner.) And being so indebted, he the said defendant in consideration thereof, afterwards, and in the lifetime of the said E. F., to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, undertook, etc. (laying the promises to both the partners). The quantum meruit is as follows. "and whereas also afterwards, and in the lifetime of the said E. F. since deceased, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, in consideration that the said plaintiff and E. F. at the like special instance and request of the said defendant, had before that time done, etc. (Here state the subject-matter of the debt, and the promise to have been made to both the partners.) And the

said plaintiff avers, that he the said E. F. in his lifetime, therefore reasonably deserved to have, etc., whereof the said defendant afterwards, and in the lifetime of the said E. F., to-wit, on the day and year aforesaid, there had notice. (Here insert the account stated, with both the partners, and the promise to them; and if the transaction be for goods sold, etc., or on the money counts, such counts are to be framed as above. State the breach thus.) Nevertheless the said defendant not regarding his said promise and undertaking, but contriving and intending to deceive and defraud the said plaintiff and E. F. in the lifetime of the said E. F. and the said plaintiff, since the death of the said E. F. in this behalf, hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiff and E. F. or either of them (although often requested so to do); but he to do this hath hitherto wholly refused, and still doth refuse to pay the same to the said plaintiff, to the damage of the said plaintiff of £—— and therefore he brings his suit," etc. 2 Chit. Pl. 91.

B. Count on Promise to Surviving Partner.

And whereas also the said defendant afterwards, and in the lifetime of the said E. F. deceased, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, was indebted to the said plaintiff and E. F. in the further sum of £—— of like lawful money, for the work, labor, care, and diligence, of the said plaintiff and E. F. by them before that time done, performed, and bestowed for the said defendant, and at his special instance and request; and also in the further sum of £—— of like lawful money, for divers goods, merchandise and chattels, by the said plaintiff and E. F. before that time sold and delivered to the said defendant, and at his like special instance and request; and also in the further sum of £—— of like lawful money, for money by the said plaintiff and the said E. F. before that time lent and advanced to, and paid, laid out, and expended for the said defendant, and at his like special instance and request; and also in the further sum of £—— of like lawful money for the money by the said defendant before that time had and re-

received to and for the use of the said plaintiff and the said E. F. And the said defendant being so indebted, and the said several sums of money in this count mentioned, being and remaining wholly due, unpaid and unsatisfied, he the said defendant in consideration thereof afterwards, and after the death of the said E. F., to-wit, on, etc., at, etc. (venue) aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said several sums of money in this count mentioned, when he the said defendant should be thereunto afterwards requested. (Add the account stated with the plaintiff of moneys due to him only, and in the breach refer only to the counts in which the promises are stated to have been made to the plaintiff above, and conclude as usual.) To the damage of the plaintiff of £——, and therefore he brings his suit, etc. 2 Chit. Pl. 92.

C. Declaration Against Surviving Partner.

For that whereas the said defendant and one E. F. in his lifetime, now deceased, and whom the said defendant hath survived, on, etc., at, etc., were indebted to the said plaintiff for the work and labor, care, and diligence, of the said plaintiff by the said plaintiff before that time done, performed and bestowed, for the said defendant and E. F. at their special instance and request; and being so indebted, they the said defendant, and E. F. in consideration thereof, afterwards, and in the lifetime of the said E. F., to-wit, on the day and year aforesaid, at, etc., aforesaid undertook, etc. Quantum meruit as follows: And whereas also afterwards, and in the lifetime of the said E. F., to-wit, on the day and year aforesaid, at, etc., aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant and E. F. had before that time done, performed, and bestowed other his work and labor for the said defendant and E. F. they the said defendant and E. F. undertook, and then and there faithfully promised the said plaintiff to pay him so much money as he therefore reasonably deserved to have of the said defendant and E. F.; and the said plaintiff avers, that he therefore reasonably deserved to have of the said defendant and E. F. the further sum of £——,

whereof the said defendant and E. F. afterwards, and in the lifetime of the said E. F. on the day, and year aforesaid, there had notice. Nevertheless the said defendant and E. F. in the lifetime of the said E. F. and the defendant, since the death of the said E. F. not regarding the said several promises so by them made as aforesaid, but contriving to deceive and defraud the said plaintiff, have not, nor hath either of them as yet paid the several sums of money, or any or either of them, or any part thereof to the said plaintiff (although often requested so to do). But to pay the same or any part thereof, to the said plaintiff, the said defendant and E. F. in the lifetime of the said E. F. wholly refused, and the said defendant hath ever since the death of the said E. F. hitherto wholly refused, and still refuses so to do. 2 Chit. Pl. 93.

D. Count on Promise by Surviving Partner.

And whereas also the said defendant and E. F. afterwards, and in the lifetime of the said E. F. now deceased, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, were indebted to the said plaintiff in the further sum of £—— of like lawful money, for the work and labor, care, and diligence, of the said plaintiff, by the said plaintiff before that time done, performed, and bestowed, in and about the business of the said defendant and E. F. and for the said defendant and E. F. and at their special instance and request; and also in the further sum of £—— of like lawful money, for divers goods, wares, and merchandise, by the said plaintiff before that time sold and delivered to the said defendant and E. F. at their like special instance and request; and also in the further sum of £—— of like lawful money, for money by the said plaintiff before that time lent and advanced to, and paid out, laid out, and expended for the said defendant and E. F. and at their like special instance and request; and also in the further sum of £—— of like lawful money, for other money, by the said defendant and E. F. before that time had and received to and for the use of the said plaintiff, and being so indebted, and the said several sums of money in this count mentioned being and remaining wholly due and owing, unpaid

and unsatisfied, he the said defendant in consideration thereof afterwards, and after the death of the said E. F. to-wit, on, etc., at, etc., aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in this count mentioned when he the said defendant should be thereunto afterwards requested. (Add an account stated, and breach.) 2 Chit. Pl. 94.

II. Complaints.

A. Commencement of Complaint by or for Partners.

(Name of court, etc., and title of cause, giving individual, not firm, names of plaintiffs and defendants.)

The plaintiffs A. B. and C. D., partners, doing business under the firm name of A. B. & Co., complain of W. X. and Y. Z., partners, doing business under the firm name of X. and Z., and allege. 1 Abb. Forms 151.

B. Commencement of Complaint by or Against Partners, Alleging Partnership.

The plaintiffs, complaining of the defendants, allege:

I. That at the times hereinafter mentioned, the plaintiffs (or, defendants) A. B. and C. D. were doing business as merchants or traders (or otherwise) at the city of _____, under the firm name of A. B. & Co. 1 Abb. Forms 152.

C. Complaint by Surviving Partner on a Cause of Action Which Accrued to His Firm.

I. That at the time hereinafter mentioned, this plaintiff and one C. D. were partners doing business under the firm name of A. B. & Co.

II. (Set forth the cause of action.)

III. That thereafter and before this action (or, on the _____ day of _____), said C. D. died, leaving this plaintiff the sole surviving partner of the firm. 1 Abb. Forms 152.

D. Complaint To Dissolve Partnership.

I. That on the _____ day of _____, 18____, the plaintiff and the defendants (co-partners) formed a partnership for the purpose of (state business), under the following articles of partnership: (set out articles, or annex copy, and say, under articles of co-partnership, of which a copy is annexed as a part of this complaint, and marked Exhibit A).

(Or, if the agreement was not in writing, state its effect briefly, *e. g.*, under an agreement that the plaintiff should contribute the use of _____ dollar's capital, and that the plaintiff and the defendants (co-partners) should co-operate in the care and labors of the business, and that the plaintiff should receive one-half of the net profits, and upon a dissolution of the partnership, repayment of his capital, and that the defendants should receive each one-quarter of the net profits.)

II. That the plaintiff and defendants now own a valuable lease of premises No. _____, _____ street, in _____, and a large and valuable stock of goods; that they have also a large amount of debts due to them, and a valuable good will, which are of far greater value when taken together than if separated; and that no equitable divisions of the assets and good will of said partnership can be made without great loss to all parties, except by a sale thereof together, and a division of the proceeds thereof.

(Where the dissolution was by an assignment.) III. That on the _____ day of _____, 18____, the defendant (a partner) without the knowledge or assent of the plaintiff, by writing, assigned and transferred to the defendant (assignee), all his interest in said partnership, and all his right and title to any and all property belonging to said firm; whereby said partnership became dissolved.

(Or, where the dissolution is by exclusion of the plaintiff.) III. That on the _____ day of _____, 18____, the defendant (a partner) took exclusive possession of the partnership books and stock, and then and ever since prevented the plaintiff from having access to the same.

(Or where the dissolution is upon notice given by one of the partners.)

III. That on the _____ day of _____, 18____, the defendant (or the plaintiff) pursuant to the provision of said agreement, gave to the (defendant or plaintiff) a written notice of his intention to dissolve said agreement, of which a copy is annexed as a part of this complaint, and marked Exhibit B.

(Or where the dissolution is on the ground of the insolvency or arrest of a partner.) III. That the defendant before this action became insolvent, and on or about the _____ day of _____,

18—, was arrested on the day of 18—, at the suit of one M. N., for a debt of — dollars, and in consequence of such arrest, has ever since been a prisoner at —; and that by reason of such insolvency (and arrest) the partnership has been greatly discredited, and has sustained loss by the absence of said defendant therefrom.

Wherefore, the plaintiff demands judgment, that the said partnership be adjudged dissolved, that a receiver of the property, rights, and good will of said partnership be appointed, with power to dispose of the same, and to collect all debts for the benefit of all parties entitled thereto, and that the proceeds thereof be divided, after payment of all just debts of said partnership and the costs of this action, between the parties hereto, according to their respective rights 1 Abb. Forms 611.

E. Complaint for Dissolution of Partnership on Account of Defendant's Misappropriation of Funds.

I. (As in preceding form.)

II. That said plaintiff and defendant entered upon, and have ever since continued to carry on the said copartnership business, under and in pursuance of said agreement, no other articles or instrument having ever been executed between them

III. That since the commencement of said partnership, the defendant has, from time to time, applied to his own use, from the receipts and profits of said business, large sums of money, greatly exceeding the proportion thereof to which he was entitled, and, in order to conceal the same, said defendant, who has always had the management of the copartnership books, has never balanced said books.

IV. That on or about the — day of —, 18—, the plaintiff discovered that the defendant was greatly indebted to said copartnership, by reason of his applying the copartnership moneys to his own use, as aforesaid; that the plaintiff then requested the defendant to pay all copartnership moneys that he received into the — bank, in which the copartnership was accustomed to keep its accounts, and to draw therefrom only such sums as such copartnership had occasion for; that said defendant wholly

disregarded said request, and continued to apply the copartnership moneys received by him to his own use, without depositing the same in said bank, or any other bank, to the credit of the firm, and has also taken to his own use moneys received by the clerks of said firm, and has by such means greatly increased his debts to the copartnership, without affording to the plaintiff any adequate means of ascertaining the true state of his accounts.

V. That the defendant has received the sum of — dollars over and above his due proportion of the copartnership profits, and that he continues to collect the copartnership debts and appropriate the moneys to his own use.

Wherefore, the plaintiff demands judgment:

1. That the said copartnership may be dissolved, and an account taken of all the said copartnership dealings and transactions from the commencement thereof, and of the moneys received and paid by the plaintiff and defendant respectively in relation thereto.

2. That the property of the firm, real and personal, be sold, and the copartnership debts and liabilities be paid off, and the surplus, if any, divided between the plaintiff and defendant, according to their respective interests.

3. That in the meantime the defendant may be enjoined from collecting or receiving, or in any manner interfering or intermeddling with, or disposing of the partnership debts or moneys, or other property or effects of said partnership.

4. That a receiver of the partnership moneys, property, and effects may be appointed, with the usual powers and duties.

5. And for such other and further relief as may be just, with the costs of this action. 1 Abb. Forms 613.

F. Complaint To Enjoin Late Partner from Continuing Business After Dissolution.

I. That on the — day of —, 18—, the plaintiff and defendant being (or about to become) partners, carrying on the business of — at —, they both executed under their hands and seals articles of copartnership for the regulation of their said business; by which, in consideration of the premises, and of the mutual agreement thereto, it was

among other things provided, that in case of the dissolution of the partnership, neither of them should continue business in the building occupied by the firm, nor within one block thereof, for the space of _____ after such dissolution, without the consent of the other.

II. That on the _____ day of _____, 18____, said partnership was dissolved by mutual consent.

III. That the defendant is now, and within _____ after said dissolution, carrying on such business at No. _____, _____ street in said city, being within one block of the same premises occupied by the late firm, and declares his intention to persist in so doing. That he has put placards on the door announcing his establishment in said business there, and has attempted to advertise the same facts in the public papers; and is employing servants on the premises in the said business.

IV. That the plaintiff has not consented to these proceedings by the defendant, but has objected thereto, and requested him to desist therefrom, which he refuses to do.

V. That the plaintiff has not continued in business on the said premises, nor within one block thereof, but is endeavoring to establish himself in said business at No. _____ in _____ street; but is unable to do so by reason of the defendant's acts aforesaid, and the injury to the plaintiff by the acts complained of cannot be fully compensated in damages.

Wherefore, the plaintiff demands judgment that the defendant, his agents and servants be restrained by injunction from carrying on, or in any wise engaging in said business in the building known as No. _____ in _____ street, in the said city or within one block thereof, for the term of _____ from the _____ day of _____, 18____; and, also, from advertising or announcing in any manner his location in business there during such term, or putting or keeping up any signs or placards for that purpose; and that the plaintiff have his costs of this action. 1 Abb. Forms 550.

G. *Complaint by Administrator of Deceased Partner Against Survivor.*

I. As in II. D. substituting deced-

ent's name for the words "the plaintiff."

II. That the said copartnership business was entered upon pursuant to said agreement, and continued to be carried on under and pursuant to the same up to the time of the death of the said (decedent), which occurred on the _____ day of _____, 18____, said (decedent) having advanced large sums of money towards the capital stock.

III. That at the time of the death of the said (decedent) there was on hand partnership assets to the amount or value of about _____ dollars, as follows: a large amount of personal property, consisting of (naming it), of the estimated value of _____ dollars; real estate, situated (describe it), of the estimated value of _____ dollars; together with book accounts, notes, and other demands of the estimated value of _____ dollars; and the debts and liabilities of said firm amounted to about _____ dollars.

(Allege appointment of executor or administrator.)

IV. That ever since the death of said (decedent), the said defendant has continued, individually, in the possession of the store and all said real and personal property, and to manage and carry on said business, and dispose of said stock, and to collect the debts and things in action, and to pay debts and liabilities of said firm out of the avails thereof; and he has so collected large sums, the amount of which the plaintiff does not know and cannot ascertain.

V. That said defendant has not paid over to said plaintiff, as administrator of the estate of said (decedent), any moneys or other proceeds of said copartnership since the death of said (decedent), (except _____ dollars); nor has he assigned, transferred, or delivered over to said plaintiff any of the assets, securities, or other property of said copartnership (except, etc., describing what has been delivered, if any).

VI. That within a few weeks last past, said defendant has become embarrassed in business, and has stopped payment, and is unable to give any security for the payment to the plaintiff, as the representative of said (decedent), of the value of the inter-

out of said (decedent) in said copartnership.

VII. That the plaintiff has requested of said defendant a statement and account of said copartnership transactions, which the defendant refused to give; and that he has offered defendant to settle and wind up the affairs of said late copartnership in the manner specified in said agreement, which he has neglected to do.

Wherefore, the plaintiff demands:

1. That an account may be taken of all the said copartnership dealings and transactions, from the time of the commencement thereof to the time of dissolution by the death of said (decedent), and an account of the moneys received and paid by the said partners respectively in regard thereto; that the defendant may account with the plaintiff for all his dealings with, and transactions in regard to the property, assets, and effects of, said firm since its dissolution by the death of said (decedent), and the property sold or disposed of by him, either as surviving partner or otherwise, and of the moneys collected and received and paid out by him on account thereof.

2. That the defendant may be adjudged to pay the plaintiff, as administrator as aforesaid, what, if anything, shall, upon the taking of the said accounts, appear to be due said plaintiff as administrator of said (decedent); the said plaintiff, administrator as aforesaid, being ready and willing, and hereby offering to pay the defendant what, if anything, shall appear to be due him on such accounting.

3. That a receiver be appointed, with the usual powers and duties, and under the usual directions; and that the defendant may be restrained by order of this court from disposing of, or in any manner interfering with, the property and effects of said firm, or from collecting or receiving the copartnership debts or other moneys coming to said firm.

4. For such other or further relief as may be just, with costs of this action. 1 Abb. Forms 614.

III. Answers.

A. Answer, Overdrawing Done by Plaintiff's Assent.

Denies each and every allegation set forth in the (third separate cause of action in) said complaint, relative to the alleged misconduct of defendant,

and his alleged acts and doings in the management of the said partnership business, except the allegation of his drawing out from the funds of said copartnership more than his portion of the profits thereof, to-wit, the sum of ——— dollars, and investing the same in, etc., etc.; and as to such allegation, defendant alleges and states that it was done with the full knowledge of said plaintiff, and with his approbation and express assent. 2 Abb. Forms 168.

B. Answer, That Term of Partnership Is Not Expired.

Denies that the partnership between him and the plaintiff set forth in the complaint, was upon the terms, and according to the stipulations, agreements, and covenants alleged by plaintiff in his said complaint; but, on the contrary thereof, defendant alleges and states that said partnership was formed, and entered into, and carried on, under and in pursuance of a written agreement and articles of copartnership between him and said plaintiff; a copy of which is hereto annexed, and forms part of this answer, showing that the time for the continuance of said copartnership is yet unexpired, which agreement has never been altered or varied in writing or by parol; and that the copartnership formed and carried on in pursuance thereof, is the same set forth and alleged in said complaint. 2 Abb. Forms 168.

C. Answer, Denial of Partnership.

That the said (naming them) were not partners, as alleged.

Or, that the said A. B. was not a partner with the said (naming the others) as alleged. 2 Abb. Forms 38.

IV. Bills.

A. Bill for Dissolution and to Restrain Collecting Debts.

To, etc.

Humbly complaining sheweth unto your honors, the plaintiff P. C., of, etc., that in or about the month of ———, the plaintiff entered into an agreement with C. B., of, etc., and C. F., of, etc., the defendants herein-after named, to form a partnership with them in the business of auctioneers and appraisers, which agreement was reduced into writing, and signed by the plaintiff and the said defendants, and was of the following purport and effect, viz.: (stating the

same) as in and by the said agreement, reference being thereto had, will appear. And the plaintiff further sheweth that the said copartnership business was entered upon, and hath ever since continued to be carried on by the plaintiff and the said defendants, in pursuance of and under the aforesaid agreement, no articles or other instrument having ever been prepared and executed between them. And the plaintiff further sheweth that having much reason to be dissatisfied with the conduct of the said C. B., and being desirous, therefore, to dissolve the said partnership, the plaintiff, on or about ———, caused a notice in writing, signed by the plaintiff, to be delivered to the said C. B. and C. F., as follows, viz.: "In conformity," etc., etc., as in and by such written notice, now in the custody or power of the said defendants, or one of them, when produced, will appear. And the plaintiff further sheweth that the said C. B. has from time to time, since the commencement of the said partnership, applied to his own use from the receipts and profits of the said business, very large sums of money, greatly exceeding the proportion thereof to which he was entitled, and in order to conceal the same, the said C. B., who has always had the management of the said copartnership books, has never once balanced the said books. And the plaintiff further sheweth that, having in the beginning of the year of ——— discovered that the said C. B. was greatly indebted to the said copartnership, by reason of his application of the partnership moneys to his own use, the plaintiff, in order to form some check upon the conduct of the said C. B., requested that he would pay all copartnership moneys which he received in to his bankers, and would draw for such sums as he had occasion for; but the said C. B. has wholly disregarded such request, and has continued to apply the partnership moneys received by him, to his own use, without paying the same in to the bankers, and has also taken to his own use moneys received by the clerks, and has by such means greatly increased his debt to the partnership, without affording to the plaintiff and the said C. F. any adequate means of ascertaining the true state of his accounts. And the plaintiff further sheweth that he has, by him-

self and his agents, from time to time applied to the said C. B., and has requested him to come to a full and fair account in respect of the said copartnership transactions, with which just and reasonable requests the plaintiff well hoped that the said defendant would have complied, as in justice and equity he ought to have done.

But now so it is, etc., the said defendant C. B. absolutely refuses so to do, and he at times pretends that he has not received and applied to his own use more than his due proportion of the partnership profits; whereas the plaintiff charges the contrary thereof to be truth, and so it would appear if the said C. B. would set forth a full and true account of all and every his receipts and payments in respect of the said partnership transactions, and of the gains and profits which have been made in each year since the commencement of the said partnership. And the plaintiff charges that the said C. B. has in fact received the sum of \$——— and upwards beyond his own proportion of the partnership profits, and that he is nevertheless proceeding to collect in the partnership debts and moneys, whereby the balance due from him will be increased to the great loss and injury of the plaintiff and the said C. F. And the plaintiff charges that the said C. B. ought therefore to be restrained by the order and injunction of this honorable court from collecting and receiving any of the said partnership debts and moneys. And the plaintiff charges that the said C. F. refuses to join the plaintiff in this suit. All which actings, etc.

And that the said defendants may answer the premises; and that the said copartnership may be declared void, and that an account may be taken of all and every the said partnership's dealings and transactions from the time of the commencement thereof, and also an account of the moneys received and paid by the plaintiff and the said defendants respectively in regard thereto; and that the said defendants may be decreed to pay to the plaintiff what, if anything, shall upon the taking of the said accounts, appear to be due him, the plaintiff being ready and willing, and hereby offering to pay to the defendants or either of them what, if anything, shall upon the taking of the said accounts, appear to be due to

known or either of them from the plaintiff, and that in the meantime the said defendant C. B. may be restrained, by the order and injunction of this honorable court, from collecting or receiving the partnership debts or other moneys. (And for further relief, etc.) May it please, etc.

Pray subpoena against C. F. and subpoena and injunction against C. B. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1908.

B. *Prayer — Bill After Dissolution, for Accounting, Lien on Stock.*

And that an account may be taken of all and every the debts and demands which were due from the plaintiffs and the said P. J. B. in their partnership firm of ———, or in respect thereof at the time of the executing the said indenture of the ——— day of ———, and which have not been paid and satisfied by the said P. J. B. on the said other defendants, and that the said several defendants may be declared answerable for the amount of what shall be found due on such account. And that it may also be declared that the plaintiffs have a lien to the amount of what shall be found due on such account upon the partnership stock, premises, debts, and effects, which were assigned by the plaintiffs to the said P. J. B. in consideration of his engagement to exonerate the plaintiffs from the payment of such debts; and that, if necessary, the said partnership stock, premises, and effects may be sold and applied in satisfaction of such debts under the decree of this honorable court, and that all proper directions may be given in that behalf. And that the defendants may in the meantime be restrained, by the injunction of this honorable court, from selling, assigning, or disposing of the said partnership stock, premises, and effects, and that the said covenant in the said indenture of the ——— day of ———, whereby the plaintiffs are restrained from engaging in or carrying on any part or branch of making or manufacturing iron under any modification whatsoever, or any articles or utensils made of iron, within forty statute miles of ———, may be reformed according to the intent and agreement of the partners respecting the same as aforesaid. (And for further relief, etc.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1970.

C. *Prayer in Bill for Accounting, Receiver and Injunction in Partnership.*

1. That an account may be taken by and under the decree and direction of this honorable court, of all the said partnership dealings and transactions between the plaintiff and the defendant, and that what shall appear thereon to be due from the defendant may be decreed to be paid by him.

2. That a proper person may be appointed to receive, collect and get in all the outstanding debts and moneys due to or on account of the said partnership business or concern, and also to take possession of all the effects and property of or belonging to the said partnership.

3. That the defendant may be ordered to deliver up to such person all the effects and property of or belonging to the said partnership in his possession or power, and also all books of account, accounts, receipts, vouchers and papers of or belonging to the said partnership; and that the defendant may be restrained, by the order and injunction of this honorable court, from demanding, receiving, or obtaining possession of any debts, moneys, or property due or belonging to the said partnership; and also from in any manner intermeddling with the books, papers, bills or accounts of the said partnership; and that the said effects and property of or belonging to the said partnership may be sold and converted into money by and under the direction of this honorable court.

4. That out of the share of the defendant in the produce thereof, what shall be found due to the plaintiff in respect of the moneys of the partnership so improperly applied by the defendant as aforesaid, may be made good to the plaintiff.

5. That all such further directions as may be necessary may be given. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1970.

V. *Decrees.*

A. *Decree for Account of Dealings and Transactions.*

The court doth order and decree that it be referred, etc., to take an account of all partnership dealings and transactions between the plaintiff and the defendant (from the ——— day of ———); and that what, upon taking the said accounts, shall appear to be due from either of the said parties

to the other of them, be (within one month from the date of the master's report) paid by the party from whom, to the party to whom, the same shall be certified to be due (or adjourn further consideration, etc.) Liberty to apply. 2 Lindley Partn. (Eng. ed. 1860) 828. See also *ib.* for the method of taking an account under such decree. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2242.

B. Decree Requiring Surviving Partner, Who Has Retained Capital Stock to Account for the Profits.

It was ordered that it be referred to, etc., to inquire whether the concerns of the firm, as they stood at the death of M., were in any manner and how kept separate and distinct from the concerns of the firm that was carried on after his death, and whether the concerns of the new firm were in any manner, and how and to what extent, aided or supplied from the concerns of the old firm; and it was declared that the shares of profits which, after the death of M., were paid by De T., the defendant, to the junior partners of the concern, were to be considered as in the nature of wages, and to be allowed to De T. in discharge of the account of the profits of the concern; and the master was to inquire what would be a reasonable compensation to De T. for his personal attention and credit, which was also to be allowed to him. Upon appeal this decree was affirmed, with liberty for the defendant De T., in the proceedings before the master, to submit to the judgment of the master any claims as just allowances which he may be advised ought justly to be made to him, by reason or on account of the management, transacting, and carrying on the business or concern, at any period or periods by them the said De T., M. De P., and F. G., or any of them, or by them the said M., De P., and F. G., or either of them, or any other person or persons: "and it is ordered, that the said master do state in his report the facts and reasons upon which he shall have adjudged any allowances to be just allowances, if on the behalf of the plaintiff he shall be requested so to do, and state the facts and reasons upon which he shall have adjudged any allowances prayed not to be just allowances, if he shall

be requested on the behalf of the said defendant to make such statements." Affirmed on appeal to the House of Lords. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2246; *Brown v. De Tastet, Jacob* (Eng.) 284.

C. Decree for Dissolution of Partnership from Time of Notice.

This court doth "declare, that the partnership in the pleadings of their causes mentioned, called the _____ Co., is to be deemed dissolved as from the _____ day of _____, the date of the notice of dissolution given by Messrs. _____, as the solicitors and on behalf of the defendants F. and M., as in the pleadings mentioned (or as from the _____ day of _____, the date of the filing of the plaintiff's bill in this cause; and doth order and decree the same accordingly); and the court doth further declare, that the renewed leases of the freehold mines, lands, and premises, in such leases respectively comprised, granted by, etc., the respective lessors, to the defendants, dated respectively, etc., are, in equity, assets of the said partnership firm; and the court doth order and decree that it be referred, etc., to take and make the following account and inquiry, that is to say: 1. An account of the partnership dealings between, etc., all severally deceased, and the plaintiff and defendants respectively, since the grant by, etc., of the lease, dated, etc., and including in such account or dealings with the partnership assets, property, and estates, since the date of the dissolution; 2. An inquiry, of what the partnership estates, property, and effects now consist, and in what manner, and upon what terms and conditions the same may be sold most beneficially for all parties interested therein; and whether as a going concern, or as one finally wound up; and it is ordered that the said partnership estate, property, and effects be sold with the approbation of the master (or court, or judge) in such manner, and upon such terms and conditions as shall appear to be most beneficial for the parties interested therein." Receiver. Adjourn, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2242; 1 Seton Dec. (Eng. ed. 1862) 544, 545.

D. Decree, Infants Declared Entitled to Profits Against Survivor of Partnership, Also Executor.

This court doth declare that the

plaintiff E. B., and the defendants, the defendants, are entitled to an account of the profits made since the death of the testator in the trade carried on in his lifetime by him and the defendant R. B., as partners, and which, since his death, has been carried on by the said defendant R. B. And the court doth order that it be referred to A. B., one of, etc., to take an account of the profits of such trade, and of the value of the stock and effects therein, and of what such stock and effects consisted; and that the said master do inquire whether it would be more for the benefit of the plaintiff E. B., and the defendant G. B., to take the testator's share of the said stock in trade, or to accept the sum of \$—, with interest, as calculated by the report, dated, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2251; 1 Seton Dec. (Eng. ed. 1862) 556, 557.

E. Decease, House Where Business Was Carried on Declared Partnership Assets.

This court doth declare, that the leasehold house, etc., at, etc., in the plaintiff's bill mentioned, and comprised in the indenture of lease, dated, etc., and in the indenture of assignment, dated, etc., and wherein the partnership between the plaintiff and the defendant has been carried on, are assets of the said partnership; and it is ordered that the said leasehold property, together with the trade-fittings and fixtures thereon, be sold with the approbation of, etc., money to be paid into court; account of partnership dealings and transactions. Adjourn, etc. Liberty to apply in chambers for receiver. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2242; Raiker v. Pike, 1 Seton Dec. (Eng. ed. 1862) 543.

F. Decease Declaring Partnership Realty To Be Deemed Personalty.

This court doth declare, that the estates appearing by the master's report (or the said certificate) to have been purchased on account of the partnership, and out of the funds and effects thereof, did form, and are to be considered as part of, the capital and effects of the partnership, at the time of the decease of the testator, and that the testator's interest in the said estate, and such other real estates, if any, as formed part of the capital and effects of the partnership, at the time of his

decease, are to be considered in equity personal estate of the testator. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2250; Phillips v. Phillips, 1 Myl. & K. (Eng.) 649; 1 Seton Dec. (Eng. ed. 1862) 555.

PASSENGERS.

I. Declaration Against Proprietors of Stage Coach for Injuries, 940

II. Complaints, 941

A. Loss of Baggage, 941

B. Injuries, 941

1. Steamboat, 941

2. Railroad, 942

3. Stage Coach, 942

C. Wrongfully Ejecting Passenger From Train, 943

CROSS-REFERENCE:

INJURIES TO PERSONS:

Complaint Injuries Caused by Train

Falling Through Bridge;

Complaint, Injuries Sustained by Sudden Start of Train.

I. Declaration Against Proprietors of Stage Coach for Injuries from Overturning It.

For that whereas the said defendants, before and at the time of the making of their promise and undertaking hereinafter next mentioned, were the owners and proprietors of a certain stage coach or carriage, going and passing from a certain place, to-wit, from (London), to a certain other place, to-wit, to (Liverpool) for the carriage and conveyance thereby of passengers for certain reasonable hire and reward, to the said defendants in that behalf, to-wit, at, etc. (venue) and thereupon heretofore, to-wit, on, etc., at, etc. (venue) aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendants, would take and engage a place and seat in the said coach of the said defendants, to be carried and conveyed in and by the said coach from (London) aforesaid, to (Liverpool) aforesaid, at and for certain reasonable hire and reward, to-wit, the sum of £— to be therefore paid by the said plaintiff to the said defendants in that behalf, they the said defendants then and there undertook, and faithfully promised the said plaintiff, to carry and convey the said plaintiff in or by the said coach, from (London) aforesaid to (Liverpool) aforesaid and to use due care, and diligence in and about

so carrying and conveying him as aforesaid. And the said plaintiff in fact saith, that he, confiding in the promise and undertaking, of the said defendants, did afterwards, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, take and engage a place and seat in the said coach, to be carried and conveyed in and by the said coach from (London) aforesaid; to (Liverpool) aforesaid, and did then and there pay to the said defendants the sum of £——, the same being a reasonable hire or reward to the said defendants for the carriage and conveyance of the said plaintiff, as aforesaid. And although the said plaintiff, confiding in the said promise and undertaking of the said defendants, did afterwards, to-wit, on the day and year aforesaid, to-wit, at, etc. (venue) aforesaid, become and was such passenger in and by the said coach, to be carried and conveyed in and by the same from (London) aforesaid to (Liverpool) aforesaid, yet the said defendants not regarding their said promise and undertaking, so by them made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtly to deceive, defraud, and injure the said plaintiff in this behalf, did not nor would use due and proper care, skill and diligence, in and about the carrying and conveying the said plaintiff, in and by the said coach from (London) aforesaid to (Liverpool) aforesaid, but then and there wholly neglected and refused so to do; and on the contrary thereof, so carelessly, improperly, negligently, and unskilfully, drove and managed the said coach, that afterwards, and whilst the said coach was proceeding from (London) aforesaid to (Liverpool) aforesaid, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, by and through the mere carelessness, negligence, unskilfulness, and misconduct of the said defendants, the said coach was overturned, by means of which said several premises the right arm of the said plaintiff became and was fractured and broken, and he the said plaintiff, was then and there in other respects greatly hurt, bruised and wounded, and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to-wit, hitherto, during all which time he the said plaintiff suffered and underwent

great pain, and was hindered and prevented from performing and transacting his necessary affairs and business, by him during that time to be performed and transacted and also thereby he the said plaintiff was forced and obliged to, and did necessarily pay, lay out, and expend a large sum of money, to-wit, the sum of £—— of lawful money of Great Britain, in and about endeavoring to be cured of the bruises, wounds, sickness, soreness, lameness, and disorder aforesaid, occasioned as aforesaid, to-wit, at (venue) aforesaid. 2 Chit. Pl. 362.

II. Complaints.

A. *Complaint Against Proprietor of Stage Coach for Loss of Baggage.*

I. That on the —— day of ——, 18——, the defendant was a common carrier of passengers and their baggage.

II. That on that day he received into his —— the plaintiff with his baggage, to-wit (two trunks containing his wearing apparel and necessary money for his journey), to be carried from —— to ——, for hire.

III. That the defendant, not regarding his duty, did not use proper care therein, but, by the negligence and improper conduct of him and his servants, said trunks with their contents were wholly lost, to the damage of the plaintiff —— dollars. 1 Abb. Forms 415.

B. *Injuries.*

1. *Complaint Against Common Carrier of Passengers, by Steamboat, for Injuries.*

I. That at the time hereinafter mentioned, the defendants (being common carriers of passengers for hire, between the places hereinafter mentioned) were the proprietors of a steamboat, named the ——, employed by them in carrying passengers and merchandise on the —— river, from —— to ——.

II. That on the —— day of ——, 18——, the defendants received the plaintiff and his wife and his minor child into said boat, for the purpose of conveying them therein as passengers from —— to ——, for hire (or, for a reasonable compensation) paid (or, agreed to be paid) to them by the plaintiff.

(Or, II. That on the —— day of ——, 18——, the plaintiff was

lawfully, and by permission of the defendants, upon said boat, on the trip from _____ to _____.)

III. That the defendants so negligently and unskillfully conducted themselves in the management of said boat, that through the negligence and unskillfulness of themselves and their servants, the steam escaped from the boiler and engine, and burned and scalded the plaintiff, and his wife and child.

IV. That by reason thereof the plaintiff and his said wife and child became, and for a long time remained, ill; the plaintiff was deprived, and for a long time to come will be deprived, of the assistance and services of his wife and child, and was obliged to, and did expend about the sum of _____ dollars in attempting the cure of himself and his wife and child, and was, for a number of weeks, prevented from pursuing his business, and was otherwise injured, to his damage _____ dollars. 1 Abb. Forms 412.

2. Complaint Against Railroad for Injuries to Person.

I. That at the time hereinafter mentioned, the defendants, a corporation duly incorporated under the laws of this state, were the owners of a certain railroad, known as the _____ railroad, together with the track, cars, locomotives, and other appurtenances thereto belonging; and were common carriers of passengers thereupon for hire, between the places hereinafter mentioned.

II. That on the _____ day of _____, 18____, the defendants received the plaintiff into one of their passenger cars for the purpose of conveying him therein, and upon said railroad, as a passenger from _____ to _____, for the sum of _____ dollars (or, for reward paid, or agreed to be paid) to the defendants by the plaintiff.

(Where the accident was caused by a collision.)

III. That while he was such passenger at _____ (or, near the station at _____, or, between the towns of _____ and _____), a collision occurred on the said railroad, caused by the negligence of the defendants and their servants, by which said car was struck, and the plaintiff was much injured, being bruised and cut upon the head and face, and rendered insensible

(or otherwise, according to the fact).

(Where the accident arose from defect in the car or track.)

III. That the car used by the defendants to convey the plaintiff (or, the track of the defendants' road between _____ and _____) was at the time defective and unsound, and unfit to be used for that purpose; which the defendants might and would then and theretofore have known by due care; but not regarding their duty, they negligently suffered it to be used, and while said car was proceeding with the plaintiff therein, from _____ to _____, it was by reason of said defect and unsoundness (and the negligence of the defendants and their servants) thrown from the track, and one of the legs of the plaintiff was fractured, and the plaintiff otherwise bruised and injured.

(Where the plaintiff was obliged to leap off to save himself.)

III. That the defendants and their servants, in managing their cars in which plaintiff was thus a passenger, were so careless and negligent that it was unsafe for him to remain in one of them; and that, in order to free himself from the danger, he was obliged to jump from the car, and in doing so was much injured (etc., as above).

IV. That by reason thereof, the plaintiff became for a long time ill; was obliged to, and actually did, expend about the sum of _____ dollars for surgical and other treatment and attendance in attempting to cure himself; was compelled to have his leg amputated, and has thereby become a cripple; and prevented for life from actively pursuing his business; and was otherwise injured, to his damage _____ dollars. 1 Abb. Forms 413.

3. Complaint Against Proprietor of Stage Coach for Injuries to Person.

I. That on the _____ day of _____, 18____, the defendant was a common carrier of passengers by stage coach from _____ to _____, for hire.

II. That on that day, at _____, he received the plaintiff upon his coach, to be carried thence to _____, for hire.

III. That not regarding his duty, he did not use due care therein, but, by the negligence and improper conduct of the defendant and his servants, the

coach was overturned, and the plaintiff was bruised and wounded (or, the plaintiff was thrown off the coach, and thereby bruised and wounded), inasmuch that he became ill and lame, and was prevented for _____ months from attending to his business) and for a long time to come will be so prevented), and necessarily incurred expenses to the amount of _____, in getting to _____, and in endeavoring to be cured, to his damage _____ dollars. 1 Abb. Forms 414.

C. Complaint, Wrongfully Ejecting Passenger From Train.

“III. That on the afternoon of the 21st day of June, 1896, the plaintiff boarded the defendant's train at Charleston, S. C., for the purpose of taking passage to Columbia, having previously purchased a ticket from Charleston to Columbia, and the defendant having received its usual charge for said ticket and transportation between said places. IV. That when the said train had gotten only a few miles from Charleston, the defendant's agent in charge of the said train demanded of the plaintiff his fare, and refused to accept their aforesaid ticket, which the plaintiff tendered to him, and which he had purchased in good faith; but the plaintiff, well knowing that his ticket was perfectly good, and that defendant had received its usual charge therefor, declined to pay any more, and persisted in riding on his said ticket. V. That thereupon the defendant caused its train to be stopped between stations, and at a place with no shelter or convenience for passengers, and while it was then raining, and with intent to degrade, humiliate, mortify, and wound the plaintiff in his person and feelings, caused him to be forcibly ejected from the said train, violently, wilfully, and unlawfully, and without regard to the rights of the plaintiff, and with a design to injure and oppress him in the exercise of his lawful rights. VI. That after the plaintiff had been so unlawfully and violently ejected from the said train, he again entered it, and, under protest, paid on money the fare demanded of him by the conductor to Branchville. That thereafter, and after proceeding some distance, the defendant's agent, who had ejected him, approached the plaintiff, refunded him the money he had paid him to Branchville, and asked

for his ticket, which he had before refused, which said ticket he then punched and returned to the plaintiff, and recognized the said ticket as good and valid for passage from Charleston as far as Branchville. VII. That after leaving Branchville, another conductor in the employment of the defendant, and who then had charge of the said train, or car, on which the plaintiff was traveling from Branchville to Columbia, accepted the aforesaid ticket as passage from Branchville to Columbia, it being the identical ticket that plaintiff had tendered before he was ejected from the train. VIII. That by the aforesaid wrongful and unlawful acts and violence of the defendant, and disregard of the plaintiff's rights, the plaintiff has been injured in his person and feelings to his damage \$5,000.” *Iseman v. So. Carolina, etc. R. Co.*, 52 S. C. 566, 30 S. E. 488.

PATENTS.

- I. Bill To Restrain Infringement, 943
- II. Declaration for Infringement, 945
- III. Order, Motion To Stand Over, With Leave To Bring Action, 946
- IV. Decrees, 947
 - A. *Staying Infringement, After Verdict*, 947
 - B. *Staying Infringement, as to Machinery*, 947
 - C. *Staying Infringement, as to Bricks*, 948
 - D. *Declaring Validity of Patent*, 948

CROSS-REFERENCES:

FRAUD AND DECEIT:

Plea, False Representation as to Existence of Patent.

SUPPLEMENTAL PLEADING:

Supplemental Bill, Extension of Patent.

I. Bill To Restrain Infringement of Patent Right.

To the judges of the circuit court of the United States for the district of Massachusetts. In Equity.

E. H., Jr., of B., in the state of New York, and a citizen of the state of New York, brings this bill against C. W., of B., in the state of Massachusetts and a citizen of the state of Massachusetts:

And thereupon your orator complains

and says that he, being the original and first inventor of a new and useful improvement in sewing machines, fully described in the letters patent issued to him therefor, as hereinafter stated, and not known or used by others before his invention thereof, and not at the time of his application for letters patent therefor, in public use or on sale with his consent or allowance as the inventor; and being a citizen of the United States and having made due application, and having fully and in all respects complied with all the requisitions of the law in that behalf, did obtain letters patent therefor, issued in due form of law to him in the name of the United States and under the seal of the patent office of the United States, and signed by N. P. T., acting secretary of state, and countersigned by H. H. S., acting commissioner of patents, bearing date the tenth day of September, in the year of our Lord eighteen hundred and forty-six, whereby was granted and secured, according to law, to your orator, his heirs, administrators or assigns, for the term of fourteen years from said date, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement in sewing machines therein specified and claimed, as in and by said letters patent, or a certified copy thereof, here in court to be produced, will more fully appear.

And your orator further shows unto your honors, that certain assignments of certain rights in said patent have been made and duly recorded in the patent office of the United States, whereby your orator, prior to the infringements herein complained of, became and now is the sole owner of said patent; as in and by said assignments or certified copies thereof here in court to be produced will more fully appear.

And your orator further shows unto your honors, that the said improvement in sewing machines, patented to him as aforesaid, has hitherto been in the exclusive possession of your orator or his grantees; and has hitherto been and still is of great value and profit to your orator; and that a license fee or patent rent, under his said patent, has hitherto been and still is paid to your orator for the largest portion of all the sewing machines manufactured

and sold in the United States; yet the said defendant, well knowing the premises, but contriving how to injure your orator, and without his consent or allowance, and without right, and in violation of said letters patent, and your orator's exclusive rights secured to him aforesaid, has made, used, or vended, and still does make, use, or vend to others to be used in said district and in other parts of the United States, a large number of sewing machines, but how many your orator cannot state, but prays that the defendant may discover and set forth each, embracing substantially the improvement in sewing machines, or a material part thereof, patented to your orator as aforesaid, and thereby the said defendant has infringed, and still does infringe, and cause your orator to fear that in the future he will infringe upon the exclusive rights and privileges intended to be secured to your orator in and by his said letters patent.

And your orator further shows unto your honors, that heretofore the validity of his said patent has been uniformly affirmed after severe and repeated contestation, namely, by a verdict and judgment thereon at law, in 1852, and by six final decrees in equity in the circuit court of the United States for the district of Massachusetts, and by one final decree in equity in the circuit court of the United States for the southern district of New York, all obtained in favor of said patent prior to August, 1854.

And your orator further shows unto your honors, that the sewing machines made and sold by the defendant, as herein complained of, are, in their essential parts and character, substantially like the sewing machines against which injunctions were obtained in the suits aforesaid, by your orator, or by your orator and his co-owner of said patent.

And your orator has requested the said defendants to desist from making, using, or vending to others to be used, the said sewing machines, embracing the said improvement patented to your orator, and to account with and pay over to your orator the profits made by said defendant by reason of the unlawful making, using, or vending of said sewing machines embracing said patented improvement of your orator. But

now, so it is, may it please your honors, that said defendant has combined and confederated with other persons, to your orator unknown, but whom, when discovered, your orator prays leave to make defendants hereto to resist and destroy the exclusive rights and privileges secured to your orator as aforesaid, and to make, use, and vend said improvement in sewing machines patented to your orator as aforesaid, without the license of your orator and in violation of his just rights in the premises, all of which is contrary to equity and good conscience. To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief herein prayed, and may, under oath, and according to his best and utmost knowledge, remembrance, information, or belief, full, true, direct, and perfect answer make to all and singular the premises, and more especially may answer, discover, and set forth, whether during any and what period of time, and where, he has made, used, and vended to others to be used for any and what consideration, any and how many, sewing machines, and whether or not the same embrace the said improvement in sewing machines, or any substantial part thereof, patented to your orator as aforesaid, or how the same differed from your orator's said patent, if at all.

And that the said defendant may answer the premises, and may be decreed to account for and pay over to your orator all gains and profits realized from his unlawful making, using, or vending of sewing machines, embracing said improvement patented to and vested in your orator as aforesaid, and may be restrained by an injunction to be issued out of this honorable court, or by one of your honors, according to law in such case provided from making, using, or vending any sewing machines embracing said improvement, or any substantial part thereof, patented to your orator as aforesaid, and that the infringing machines, now in the possession or under the control of the defendant, may be delivered up to your orator or be destroyed; and for such further and other relief in the premises as the nature of the case may require, and to your honors may seem meet.

May it please your honors to grant unto your orator, not only a writ or writs of injunction, conformable to the

prayer of this bill, but also a writ or writs of subpoena to be directed to the said C. W. and confederates, when discovered, commanding him and them, at a certain time, and under a certain penalty, therein to be limited, personally to be and appear before your honors in this honorable court, then and there to answer unto this bill of complaint, and to do and receive what to your honors shall seem meet in the premises.

E. H., Jr.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2004.

II. Declaration for Damages for Infringement of Patent.

"John B. Emerson, a citizen of the state of New York, by Peter Clark, his attorney, complains of Peter Hogg and Cornelius Delamater, citizens of the same State, defendants, in custody, etc., of a plea of trespass on the case.

"For that, whereas, the said plaintiff was the original inventor of a certain new and useful improvement, in the letters patent hereinafter mentioned and described, the same being a certain improvement in the steam engine, and in the mode of propelling therewith either vessels on the water or carriages on the land, which was not known or used before his said invention, and which was not, at the time of his application for a patent, as hereinafter mentioned, in public use with his consent or allowance. And the said plaintiff being so as aforesaid the inventor thereof, and being also a citizen of the United States, on the eighth day of March, one thousand eight hundred and thirty-four, upon due application therefor, did obtain certain letters patent therefor, in due form of law, under the seal of the United States, signed by Andrew Jackson, then President, and countersigned by Louis McLean, then Secretary of State, bearing date the day and year aforesaid, whereby there was secured to him, the said plaintiff, his heirs, executors, administrators, or assigns, for the term of fourteen years from and after the date of the said patent, the exclusive right and liberty of making, using, and vending to others to be used, the said improvement, as by the said letters patent in court to be produced will fully appear. And the said plaintiff further says, that the said defendants, well knowing the said several premises, but contriving, and

wrongfully and injuriously intending to injure the plaintiff, and deprive him of the profits, benefits, and advantages which he might, and otherwise would, have derived and acquired from the making, using, and vending of the said invention or improvement, after the making and issuing of the said letters patent, and within the term of fourteen years in said letters patent mentioned, to-wit, on the first day of January, eighteen hundred and forty, and on divers other days and times between that time and the commencement of this suit, at the city of New York and within the southern district of New York, wrongfully and unjustly, without the leave or license, and against the will, of the plaintiff, made and sold divers, to-wit, ten machines for propelling boats, in imitation of the said invention and improvement, or a part of the said invention or improvement, to the benefit, use, and enjoyment whereof the said plaintiff was and is entitled as aforesaid, in violation and infringement of the said letters patent, and of the exclusive right and privilege to which the plaintiff was and is entitled as aforesaid, and contrary to the form of the statutes of the United States in such case made and provided.

"And the said plaintiff further says, that the said defendant, well knowing the said several premises, but further contriving and intending as aforesaid, after the obtaining of the said letters patent by the said plaintiff as aforesaid, and within the said term of fourteen years, to-wit, on the said first day of January, eighteen hundred and forty, and at divers other times between that day and the commencement of this suit, within the southern district of New York aforesaid, wrongfully and unjustly, without the leave or license, and against the will, of the plaintiff, did make and sell divers, to-wit, ten improved machines for propelling boats or vessels upon the water, constructed in a similar form and acting upon the same principle as the said machine or improvement, to the benefit, use, and enjoyment whereof the said plaintiff was and is entitled by his said letters patent, as aforesaid, in violation and infringement of the exclusive right so secured to the said plaintiff by the said letters patent as aforesaid, and con-

trary to the form of the statute in such case made and provided.

"And the said plaintiff further says, that the said defendant, well knowing the said several premises, but contriving and intending as aforesaid, after the obtaining of the said letters patent by the said plaintiff as aforesaid, and within the said term of fourteen years, to-wit, on the said first day of January, eighteen hundred and forty, and at divers other times between that day and the commencement of this suit, in the southern district of New York aforesaid, wrongfully and unjustly, and without the consent or allowance, and against the will, of the plaintiff, did imitate in part and make a certain addition to the said invention or improvement, to the benefit, use, and enjoyment whereof the plaintiff was and is entitled as aforesaid, in breach of the said letters patent, and in violation and infringement of the exclusive right and privilege so secured to the said plaintiff as aforesaid, and contrary to the form of the statute in such case made and provided.

"By means of the committing of which said several grievances by the said defendants as aforesaid, the said plaintiff is greatly injured, and has lost and been deprived of divers great gains and profits which he might and otherwise would have derived from the said invention and improvement in the said letters patent described and set forth, and in respect whereof he was and is entitled to such privilege as aforesaid, and was and is otherwise damnnified to the damage of the said plaintiff of ten thousand dollars, and therefore," etc. *Hogg v. Emerson*, 6 How. (U. S.) 427, 12 L. ed. 505.

III. Order, Motion To Stand Over, With Leave To Bring Action and Direction for Inspection; Defendant Keeping an Account.

Defendants undertaking to keep an account of all mohair cloths, and other textile fabrics, finished by or for them, or any or either of them, in the manner in the plaintiffs' bill complained of, it is ordered that this motion stand over, with liberty to the plaintiffs to bring such action at law, in, etc., against the defendants, as they may be advised; and it is ordered, that the defendants permit and suffer the plaintiffs, with such two viewers as the plaintiff shall think proper, to go over all or

any of the manufactories of the said defendants, or of any or either of them, and inspect the machinery set up there for finishing mohair cloth, or other textile fabrics, and to observe the method or methods of finishing such mohair cloth, or other textile fabrics, by the said defendants, or any or either of them, for which purpose the said defendants are to put their machinery to work in the presence of the said plaintiffs and such viewers, and to afford every facility to them to ascertain the process of finishing cloth by means of such machinery and every part thereof, it being the object and intention of this court to enable the plaintiffs to give such evidence to the court and jury, on the trial of such action, as will enable them to make out, if the fact be so, the infringement complained of by their said bill. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2317; *Beardsell v. Schwann* (1857), 2 Seton Dec. (Eng. ed. 1862) 910.

IV. Decrees.

A. Decree Staying Infringement of Patent, After Verdict Establishing Patent.

The court doth order, that an injunction be awarded to restrain the defendants D., etc., their agents, servants, and workmen, during the continuance of the letters-patent in the plaintiffs' bill mentioned, and whilst the same may be in force, from using or employing, without the leave or license of the plaintiffs, in or for the purpose of the folding of the flaps of envelopes in succession one after the other, or for the gumming or cementing together the edges of such flaps and causing such edges to adhere together whilst in course of being folded, any machines similar to the machine which was produced for inspection at their factory on the ——— day of ———, as in the plaintiffs' bill stated, or any machinery, mechanism, or mechanical contrivance made or arranged, according to the plaintiffs' said patent inventions, or differing therefrom only colorably or by the substitution of mere mechanical equivalents for the same, and from folding the flaps of envelopes in succession one after the other, and gumming or cementing the edges of such flaps and causing the same to adhere together whilst such flaps are in course of folding by means of any such ma-

chine, machinery, mechanism, or mechanical contrivances, and from selling or offering for sale any envelopes which have been heretofore manufactured by the said defendants, their agents, servants, or workmen, and in the manufacture whereof any such machine, machinery, or mechanical contrivances hath, or have, been used or employed for the purpose of folding the flaps of such envelopes in succession, or for gumming or cementing, or causing the same to adhere together whilst such flaps have been in course of being folded, and generally from making, using, exercising, putting in practice, or vending plaintiffs' patent inventions, or any or either of them, without their license or authority, and from or in any wise counterfeiting, imitating, or resembling the same; until, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2317; *De la Rue v. Dickinson* (1857), 2 Seton Dec. (Eng. ed. 1862) 911.

B. Decree Staying Infringement of Patent as to Machinery.

This court doth order, that an injunction be awarded to restrain defendants W.; etc., their servants, agents, and workmen, during the continuance of the letters-patent firstly and secondly in the plaintiff's bill stated and set forth, and whilst the same may be in force, from manufacturing, selling, using, offering or exposing for sale, or making any other profitable use or disposition of any wool-combing machines, or parts of wool-combing machines, made, constructed, contrived or arranged so as to comb wool by machinery, apparatus, arrangements, operations, contrivances, means or appliances, similar to the machinery, apparatus, contrivances, arrangements, means or appliances, the subject of the plaintiff's inventions, or either of them, or differing therefrom colorably, or by mere mechanical equivalents, and generally from counterfeiting, imitating, or resembling plaintiff's inventions, or either of them, or any part thereof, or making any addition thereto or subtraction therefrom, and parting with the custody of any wool-combing machines, or parts of machines, whether finished or in progress, now in their or either of their possession, which have been so made, constructed, contrived, or arranged; until, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2316; *Lister v.*

Wood, (1868) 2 Seton Dec. (Eng. ed. 1862) 999.

C. Decree Staying Infringing Patent as to Books.

The court gave order that an injunction be awarded to restrain the defendants, H., his agents, servants, and workmen, from making or vending any perforated bricks upon the principle of the inventions in the plaintiff's bill mentioned, belonging to the plaintiffs or either of them, during the remainder of the respective terms of the patents in the plaintiff's bill mentioned, and from counterfeiting, imitating, or assembling the same inventions, or either of them, or making any addition thereto or subtraction therefrom; until, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2316; Beart v. Hewitt, (1853) 2 Seton Dec. (Eng. ed. 1862) 909.

D. Decree, Declaration of Validity of Patent; Infringement Account; Perpetual Injunction.

This cause having been brought to a final hearing upon the pleadings and proofs, and counsel for the respective parties having been heard, and the same having been duly considered by the court; it is found and hereby ordered, adjudged and decreed (declared) that the letters-patent, No. 12,649, granted unto the said R. W., April 3, 1855, is a good and valid patent, being the patent referred to in the plaintiffs' bill, and that the said R. W. was the original and first inventor of the improvement described and claimed in the said patent; and also, that the said defendants have infringed upon the said patent, and upon the exclusive rights of the plaintiffs under the same.

And it is further ordered, adjudged, and decreed, that the plaintiffs do recover of the defendants the profits, gains, and advantages which the said defendants, or any or either of them, have received or made, or which have arisen or accrued to them, or either of them, from said infringement of the said patents, by the manufacture, use, or sale of the improvements described and secured by the said letters-patent at any and at all times since the 17th day of November, 1856.

And it is further ordered, adjudged, and decreed, that the said plaintiffs do recover of the defendants their costs and charges and disbursement in this suit, to be taxed.

And it is further ordered, adjudged,

and decreed, that it be referred to K. G. W., one of the masters of this court, residing in the city of N. Y., to ascertain, take, state, and report to the court, an account of the gains, profits, and advantages which the said defendants, or either of them, have received, or which have arisen or accrued to them, or either of them, from infringing the said exclusive rights of the said plaintiffs by the manufacture, use, and sale of the said improvements patented in said letters-patent, since the said 17th day of November, 1856.

And it is further ordered, adjudged, and decreed, that the plaintiffs, on such accounting, have the right to cause an examination of said defendants, and each of them, ore tenus, or otherwise, and also the production of their books, vouchers, and documents of each of them, and that the said defendants attend for such purpose before said master, from time to time, as said master shall direct.

And it is also further ordered, adjudged, and decreed, that a perpetual injunction be issued in this suit against the said defendants, according to the prayer of the bill. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2318.

PAUPERS.

- I. Notice of Application To Prosecute in Forma Pauperis, 948
- II. Petition for Admission To Sue in Forma Pauperis, 949
- III. Order To Admit in Forma Pauperis, 949
- IV. Order of Reference of Petition, 949
- V. Order Denying Leave To Prosecute as Poor Person, 949
- VI. In Equity, 950
 - A. Affidavit To Sue or Defend in Forma Pauperis, 950
 - B. Petition To Be Admitted To Sue in Forma Pauperis, 950
- VII. Support, 950
 - A. Declaration Against Town for Board of Pauper, 950
 - B. Complaint Against Town for Medical Services, 950
- I. Notice of Application for Admission To Prosecute In Forma Pauperis.

Please to take notice that a petition, of which the above (or within) is a copy, will be presented to the

supreme court of judicature of the people of the state of New York, at the next special term thereof, to be held at the capitol in the city of _____, on the _____ Tuesday of _____, next, at the opening of the court on that day, or as soon thereafter as counsel can be heard; and that a motion will then and there be made, that the same be granted. Dated, etc.

Yours, etc.,

A. B., in person.

Burr. App. 535, §1060.

II. Petition for Admission To Sue in Forma Pauperis.

To the honorable the _____ of the _____ court of _____:

The petition of A. B., of _____ (residence and occupation) respectfully sheweth:

That C. D. is indebted to your petitioner in the sum of _____ dollars, for work and labor done and performed by your petitioner for the said C. D. and at his request (or otherwise, according to the nature of the demand), and that your petitioner desires to commence (or has commenced) a suit in the (state what court) for the recovery thereof: And your petitioner further shows, that he is not worth the sum of (twenty) dollars, excepting the wearing apparel and furniture necessary for himself and his family, and excepting the subject-matter of the said action.

Your petitioner therefore prays your honors that he may be admitted to prosecute his said action as a poor person, and that I. J. may be assigned to him as counsel, and E. F. as his attorney to prosecute the same.

And your petitioner will ever pray.

A. B.

(City and) county of _____, ss: A. B., the petitioner above named, being duly sworn, says that the above petition is true in substance and matter of fact.

A. B.

Sworn, etc.

I, I. J., a counsellor of _____ court of the state of _____, do hereby certify that I have examined the claim of A. B. against C. D. mentioned in the foregoing petition, and that I am of opinion that the said A. B. has a good cause of action therefor.

I. J.

Dated, etc.

Burr. App. 546, §1079; Archb. Forms 515.

III. Order to Admit In Forma Pauperis.

On reading and filing the petition and affidavit of A. B., and the certificate of counsel thereto annexed, and on motion of I. J.*, ordered, that the said A. B. be admitted to prosecute this action (or the action mentioned in the said petition) as a poor person; and that I. J. be assigned to him as counsel, and E. F., as his attorney, to prosecute the same. Burr. App. 579, §1134.

IV. Order for Reference of Petition for Leave To Prosecute as a Poor Person.

As in V, to the *.

Ordered, that it be referred to G. H. Esq., a counselor of this court, to examine into the circumstances of the case set forth in said petition, and to report whether, in his opinion, the said petitioner has a meritorious cause of action against the said Y. Z., which is cognizable in this court, and whether he is entitled to prosecute the same as a poor person. And it is further ordered, that if the said referee is satisfied that such petitioner is entitled to prosecute as a poor person, and has reasonable grounds for bringing an action in this court, he do also report the name of a suitable person to be assigned as his attorney and counsel to prosecute such action. 1 Abb. Forms 35.

V. Order Denying Leave To Prosecute as Poor Person.

In the matter of the petition of A. B. (or, if suit is already pending, title of the cause). (At a special term, etc.)

On reading and filing the petition of A. B. for leave to prosecute as a poor person, and to have attorney and counsel assigned to conduct the action, and on hearing P. Q. for the petitioner (and R. S. of counsel for the defense opposed): And it appearing that this motion has been unreasonably delayed until after the cause has been at issue, and noticed for trial (or, that the cause has already proceeded to a hearing upon the defendant's demurrer to the petitioner's complaint, and that the demurrer has been sustained by the court):

Ordered, that the petition be denied. 1 Abb. Forms 35.

VI. In Equity.*A. Petition To Be Admitted To Sue or Defend, In Forma Pauperis.*

1. A. B., of, etc., the above named plaintiff (or the above named defendant), make oath and say, that I am not worth the sum of five pounds in all the world, my just debts being first paid, and my wearing apparel and the matter in question in this cause only excepted. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2176.

B. Petition of Plaintiff To Be Admitted To Sue In Forma Pauperis.

Showeth,

That your petitioner having filed his bill in this honorable court against the said defendant, thereby setting forth, that (here state concisely the purport of the bill).

That your petitioner is not worth £5 in all the world, his wearing apparel and the matters in question in this cause only excepted, and he is utterly unable to prosecute his said suit, unless he is admitted to do so in forma pauperis.

Your petitioner therefore humbly prays, that he may be admitted to prosecute his said suit in forma pauperis, and that Mr. _____ may be assigned his counsel, and Mr. _____ his solicitor.

And, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2157.

VII. Support.*A. Declaration Against Town for Board of Pauper.*

"And also for that whereas one Albion Dike, to-wit, on the fifth day of October, A. D. 1850, at said Unity, was a poor person, and was unable to support himself, and had no relatives in the line of father or grandfather, mother or grandmother, children or grandchildren, of sufficient ability to relieve him, and was then, and for a long time previous had been, a resident of said Unity; and whereas the said defendants were by law liable to furnish all necessary relief and maintenance to said Dike, and being so liable the said defendants, in consideration that the plaintiff would board and support the said Dike, then and there promised the plaintiff to pay him therefor at the rate of five dollars each week for the first two weeks, four dollars each week for the next two

succeeding weeks, and three dollars each week for such remaining time during which he should furnish such board and support of the said Dike, until he, the said plaintiff and the said defendants should make a new bargain.

And the plaintiff avers that he did board and support the said Dike from the said fifth day of October, A. D. 1850, to the day of the date of this writ, being in all twenty-two weeks and four days, which, at the rates aforesaid, amounted in the whole to the further sum of seventy-three dollars and seventy-one cents, to-wit, at Unity aforesaid; which said last mentioned sum the said defendants became liable to pay the plaintiff, according to their said promise last aforesaid, but which they have never paid." Glidden v. Unity, 33 N. H. 571.

B. Complaint Against Town for Medical Services to Pauper.

"Alonzo G. Boynton and Dubois Hawley, partners as Boynton & Hawley, complain of the Board of Commissioners of Bartholomew county and say, the defendant is indebted to plaintiffs in the sum of thirty-eight dollars for medical services rendered to one Samuel P. Taggart, a pauper of Sand Creek township in said county, on the order of John Newson, Trustee of said township, a bill of particulars of which is filed herewith. Plaintiffs aver that during all the time of the rendition of said services said defendant had not contracted with physicians to attend upon the poor generally in said county, and had not contracted with a physician to attend upon the poor of said township. Plaintiffs demand judgment for \$38.00." Board of Commissioners v. Boynton, 30 Ind. 359.

PAWNBROKERS.**CROSS-REFERENCE:****LICENSES:**

Indictment for Not Having License as Pawnbroker.

PAYMENT.**I. Pleas, 951**

- A. *In Assumpsit*, 951
- B. *In Debt*, 951
- C. *Solvi Post*, 951
- D. *In Covenant*, 951

II. Replication to Plea of Payment,
952

III. Answers, 952

- A. *Payment, 952*
- B. *Plaintiff Has Taken Higher Security by Judgment, 952*
- C. *Bill Accepted in Payment, 952*
- D. *Note Given, 952*
- E. *Endorsed Bill to Plaintiff, 952*
- F. *Accepted Bill, 952*
- G. *Higher Security by Bond, 952*
- H. *Denying Part, Payment as to Residue, 953*
- I. *Reducing Value and Pleading Payment, 953*
- J. *Payment in Services, 953*
- K. *Plaintiff Took Mortgaged Property, 953*

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Answer Alleging Accounting and Payment.

ANSWERS:

Answer, Denial of Request To Pay, Etc.;

Answer, Accounting and Payment.

BILLS AND ANSWERS:

Statement in Answer of Making Deed and Payment.

COMPROMISE AND SETTLEMENT:

Answer, Compromise and Payment.

PERFORMANCE:

Plea in Excuse of Non-performance, Non-payment of Purchase Price.

I. Pleas.

A. *Plea in Assumpsit of Payment.*

(First plea general issue; second plea as follows):

And the said defendant by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, for further plea in this behalf, says, that the said plaintiff, his action aforesaid against the said defendant, ought not to have or maintain, because the said defendant says that after the said supposed promises and undertakings of the said defendant, and before the commencement of the said action of the said plaintiff against the said defendant in this behalf, to-wit, on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ the said defendant paid to the said plaintiff the said several sums of money in the declaration of the said plaintiff mentioned. And this he is ready to verify. Wherefore, etc. (usual conclusion). Burr. App. 351, §639.

B. Plea of Payment in Debt.

And the said C. D., defendant in this suit, by S. & S., his attorneys, comes and defends the wrong and injury, when, etc., and craves oyer of the said writing obligatory in the said declaration mentioned, and it is read to him, etc. He also craves oyer of the condition of the said writing obligatory, and it is read to him in these words (here set forth the recitals, if any, and the condition, verbatim, which, being read and heard, the said defendant says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he the said defendant, on the said _____ day of _____, in the year one thousand eight hundred and _____ aforesaid (the day of payment mentioned in the condition), in the said condition of the said writing obligatory mentioned, paid to the said plaintiff the said sum of _____ dollars, in the said condition mentioned, together with all interest then due thereon, according to the form and effect of the said condition, to-wit, at, etc. (the venue), aforesaid. And this he is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc.

S. & S., defts. attys.

Burr. App. 357, §649; 3 Chit. Pl. 973.

C. Plea of Solvi Post.

Because he says that he the said defendant, after the said _____ day of _____, A. D. _____, in the said condition mentioned, and before the exhibiting of the bill of the said plaintiff in this behalf (or if in C. P., or by original, "before the commencement of this suit"), to-wit, on, etc., at, etc. (venue), aforesaid, paid to the said plaintiff the said sum of £_____, in the said condition mentioned, together with all interest then due thereon. And this, etc. (conclude with a verification). 3 Chit. Pl. 975.

D. Plea of Payment in Covenant.

Because he says that the said defendant on the said, etc., aforesaid, at, etc. (venue), aforesaid, did pay to the said A. B. the said sum of £_____ in the said indenture mentioned. And of this the said defendant puts him self upon the country, etc. 3 Chit. Pl. 1001.

II. Replication to Plea of Payment.

Because he saith that the said defendant did not pay to the said plaintiff the said sum of £ _____ in the said condition mentioned, with lawful interest for the same, in manner and form as the said defendant hath above in his said plea in that behalf alleged. And this the said plaintiff prays may be inquired of by the country, etc. 2 Chit. Pl. 1175.

III. Answers.

A. Answer, Payment (a).

That before action he satisfied and discharged the plaintiff's claim by payment. 2 Abb. Forms 47.

Answer, Payment (b).

That before this action (and on or about the _____ day of _____, 18—) this defendant paid to the plaintiff _____ dollars, in full (or in part) payment of the said note (or other indebtedness). 2 Abb. Forms 48.

B. Answer, Plaintiff Has Taken Higher Security by Judgment.

(I. As in III, F.)

II. That in pursuance of said agreement this defendant confessed judgment in the _____ court of _____, to the plaintiff for said sum; which judgment was on the _____ day of _____, 18—, duly entered in the office of the clerk of the county of _____, 2 Abb. Forms 50.

C. Answer, Bill Accepted in Payment, Which Plaintiff Has Lost.

I. That before this action the plaintiff drew his bill on the defendant for the amount of said account (or other indebtedness alleged), dated on the _____ day of _____, 18—, and payable _____ months after said date; which the defendant then accepted.

II. That the plaintiff received said acceptance on account of said indebtedness, and afterwards (and before the same became due and payable) lost the same, and cannot produce it to the defendant. 2 Abb. Forms 48.

D. Answer, That Defendant Gave His Note or Acceptance.

That after the accruing of the alleged debt, and before this action, the defendant delivered to the plaintiff, and the plaintiff received from him, for and on account of said debt, a bill of exchange,* drawn by the plaintiff upon and accepted by the defendant (or a promissory note made by the defend-

ant), for the sum of _____, payable to the plaintiff, or order, _____ months after date, which period had not elapsed at the commencement of this action. 2 Abb. Forms 49.

E. Answer, That Defendant Indorsed Bill to Plaintiff.

(As in the preceding form to the *), drawn by the defendant (or by M. N. on and accepted by O. P., and indorsed by the defendant, whereby the defendant (or said M. N.) required the said O. P. to pay the defendant or order _____ dollars, _____ months after the date thereof. 2 Abb. Forms 49.

F. Answer, That Defendant Accepted Bill for Part of Debt Which Plaintiff Has Negotiated.

First. As to the sum of _____ dollars, a part of the alleged cause of action:

I. That after the statement of the account (or otherwise refer to the cause of action) mentioned in the complaint, and before the commencement of this action, to-wit, on the _____ day of _____, 18—, the plaintiff made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff's order _____ dollars, for value received, _____ months after date thereof, and that the defendant, at the request of the plaintiff, then accepted said bill, and delivered the same to the plaintiff, who then accepted and received the same in discharge of the said sum of _____ dollars (or for and on account of the said sum of _____ dollars).

II. That the plaintiff has indorsed and delivered said bill to some person to the defendant unknown, who from thence hitherto hath been, and still is, the holder thereof, and entitled to sue the defendant thereon. 2 Abb. Forms 49.

G. Answer, That Plaintiff Has Taken Higher Security by Bond.

I. That after said account or note, (or other simple contract debt) became due, and before this action, the plaintiff and this defendant agreed that the defendant should give the plaintiff his bond under seal (or should confess judgment to the plaintiff) for said sum so due.

II. That in pursuance of said agreement, this defendant, on the _____ day of _____, 18—, gave to the plaintiff his bond under seal in the

penal sum of _____ dollars, conditioned for the payment by him to said plaintiff of said sum of _____ dollars so due, on the _____ day of _____, 18—, at _____, with interest. 2 Abb. Forms 50.

II. Answer, Denying the Promise as to Part and Pleading Payment as to Residue.

I. That he promised to pay the plaintiff _____ dollars only.

II. That he has paid that sum to the plaintiff. 2 Abb. Forms 51.

I. Answer, Reducing Value and Pleading Payment.

I. That the goods (or services) mentioned therein were worth no more than _____ dollars.

II. That he has paid that sum to the plaintiff. 2 Abb. Forms 51.

J. Answer, Payment in Services.

I. That after the said promissory note was made (or became payable), and before this action, to-wit, on the _____ day of _____, 18—, the said plaintiff agreed to receive, and the said defendant agreed to give to the said plaintiff, his work, as a carpenter, to the amount due and payable on the said note.

II. That defendant afterwards, according to the said agreement, did for the said plaintiff carpenter work to the full amount due and payable on the said note. 2 Abb. Forms 51.

K. Answer, Plaintiff Took Mortgaged Property.

I. That at the time of giving said note (or incurring other debt alleged), he gave a chattel mortgage upon said goods (or briefly designate the subject of the mortgage, e. g., thus: the household furniture contained in his dwelling at _____), which mortgage was upon condition that if the said note (or other debt) was not paid when due, the plaintiff might take the (goods) and dispose of them at public or private sale, and out of the avails retain the amount due (upon the note), with costs and expenses, paying over the surplus, if any, to the defendant.

II. That on the _____ day of _____, 18—, and before this action, the plaintiff took possession of the (goods) to dispose of them; and that the same have not since been returned to the defendant.

III. That said (goods) were then of the value of _____ dollars, and suffi-

cient wholly to satisfy the plaintiff's demand. 2 Abb. Forms 51.

PEACE.—See BREACH OF THE PEACE.

PEDDLERS.—See HAWKERS AND PEDDLERS.

PENALTIES, FORFEITURES AND FINES.

I. Declarations, 953

- A. *In Qui Tam Action*, 953
- B. *By Common Informer*, 954
- C. *For Penalty Given by Statute*, 954
- D. *In Debt for Violation of Excise Law*, 955

II. Complaints, 955

- A. *For Penalties, General Form*, 955
- B. *For Selling Liquors Without License*, 955
- C. *For Selling Liquors on Sunday or Election Day*, 956
- D. *By Wife or Husband for Illegally Selling*, 956
- E. *Against Witness for Disobeying Subpoena*, 956
- F. *For Violation of Ordinance*, 957

III. Information Qui Tam, 957

CROSS-REFERENCES:

ADMIRALTY:

Final Decree of Forfeiture on a Libel of Information.

ARREST IN CIVIL CASES:

Capias, Penalty and Forfeiture.

DEMURRER:

Demurrer to Discovery Where It Would Subject Defendant to Pains, Penalties and Forfeitures.

HAWKERS AND PEDDLERS:

Complaint in Action To Recover Penalty.

INTOXICATING LIQUORS:

Complaint, Recovery of Penalty;
Complaint To Recover a Penalty for School Fund.

LOGS AND LOGGING:

Declaration in Debt for Penalty.
Converting Logs.

I. Declarations.

A. *Declaration in Qui Tam Action.*

A. B., who sues as well for (the people of) the state of New York (or the poor of the [town of C., in the] said county of W.) as for himself in this behalf, plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea that the said defendant

reside to the said people (or to the said poor of the [said town and] county aforesaid), and to the said plaintiff, who sues as aforesaid, the sum of _____ dollars of lawful money, etc., which he owes to, and unjustly detains from them: For that, etc. (here set forth the offense, referring to the statute as in I. B., and proceed thus): whereby, and by force of the said statute, the said defendant forfeited and became liable to pay for his said offense the sum of _____ dollars. By reason whereof, and by force of the said statute in such case made and provided, an action hath accrued to the said plaintiff who sues as aforesaid, to demand and have for the said (people) (or poor), and for himself in this behalf, of and from the said defendant, the said sum of _____ dollars, so by him forfeited as aforesaid, parcel of the said sum of _____ dollars above demanded.

And whereas also, etc. (add other counts if necessary).

Nevertheless the said defendant. (although often requested) hath not as yet paid the said sum of _____ dollars above demanded, or any part thereof, to the said people (or poor), and the said plaintiff who sues as aforesaid, or to either of them; but to pay the same, or any part thereof, to the said people (or poor), and the said plaintiff who sues as aforesaid, or to either of them, the said defendant hath hitherto wholly refused and still refuses so to do: To the damage of the said plaintiff, who sues as aforesaid, of _____ dollars, and therefore he brings his suit, etc.

E. F., plaintiff's attorney.

Burr. App. 289, §556c. See 7 Wentworth's Pl. 170 et seq.

B. Declaration by a Common Informer.

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea that he render to the said plaintiff the sum of _____ dollars (the total of the sums claimed in the different counts), of lawful money, etc., which he owes to, and unjustly detains from him: For that whereas the said defendant, heretofore, and within _____ months next before the commencement of this suit, and between the _____ day of _____ and the first _____ in _____, in the

year of our Lord one thousand eight hundred and _____, to-wit, on the _____ day of _____, in the year last aforesaid, at _____, in the county aforesaid,* killed and destroyed one (heath hen) contrary to the provisions of the _____ section of the _____ title of the _____ chapter of _____, of the revised statutes of this state, entitled "Of the preservation of deer, and certain game and animals," whereby, and by force of the _____ section of the said statute, an action hath accrued to the said plaintiff (being the person who first prosecuted for the said offense), to demand and have of and from the said defendant the sum of _____ dollars, parcel of the said sum of _____ dollars, above demanded.

And whereas also the said defendant heretofore, and within, etc. (as in first count to the *, and then as follows): had in his possession one (heath hen) contrary to the provisions of the _____ section, etc. (as in the first count to the end, inserting the word "other" before "parcel").

And whereas also (third count for exposing to sale, if necessary, being the same as the first count, substituting the words "exposed to sale" instead of "killed and destroyed").

Nevertheless the said defendant (although often requested, etc.), hath not paid the said sum of _____ dollars, or any part thereof, etc. (conclusion in usual form). Burr. App. 289, §556b; Wentworth's Pl. 142.

C. Declaration for Penalty Given by Statute.

For that whereas the said defendant, heretofore, to-wit, on the _____ day of _____, in the year, etc., to-wit, in the city of _____, in the county of _____ aforesaid, was indebted to the said plaintiff in the sum of _____ dollars,* for so much money before that time had and received of the said plaintiff by the said defendant, contrary to the provisions of section _____ of article _____ of title _____ of chapter _____ part _____ of the revised statutes of this state, entitled (whatever the title is), whereby an action hath accrued to the said plaintiff* to demand and have of and from the said defendant the said sum of money above demanded, according to the provisions of the said statute. Nevertheless the said defendant (al-

though often requested, etc.), has not yet paid the said sum of money above demanded, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, the said defendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiff of _____ dollars, and therefore he brings suit, etc. Burr. App. 288, §556.

D. Declaration in Debt for Violation of Excise Law.

A. B. and I. J., as overseers of the poor of the town of _____, in the county of _____, plaintiffs in this suit, by O. A., their attorney, complain of C. D., defendant in this suit, being in custody, etc., of a plea that the said defendant render unto the said plaintiffs, as such overseers as aforesaid, the sum of (the aggregate of penalties declared for) dollars, which he owes to and unjustly detains from them.

For that whereas the said defendant, heretofore, to-wit, on the _____ day of _____, in the year one thousand eight hundred and _____, at the _____ of _____, in the county of _____, was indebted to the said plaintiffs as such overseers as aforesaid, at the place aforesaid, in the sum of _____ dollars, parcel of the said sum above demanded; whereby an action hath accrued to the said plaintiffs as such overseers as aforesaid, at the place aforesaid, to demand and have of and from the said defendant, the said sum of _____ dollars, according to the provisions of the statute (relating to excise and to licensing retailers of intoxicating liquors), passed _____, 18—, and to the _____ section thereof, and to the title, part and chapter of the revised statutes in said section mentioned.

And whereas also the said defendant, afterwards, to-wit, on the same day and year, and at the place aforesaid, was indebted to the said plaintiffs, as such overseers as aforesaid, other _____ dollars, part and parcel of the said sum of _____ dollars above demanded; whereby an action hath accrued to the said plaintiffs as such overseers as aforesaid, at the place aforesaid, to demand and have of and from the said defendant the said sum of _____ dollars in this count mentioned, according to the provisions of said statutes

in the first count mentioned. (Add counts for other penalties if necessary.)

Nevertheless the said defendant, although often requested, etc., has not yet paid the said sum of (the whole debt first mentioned) dollars above demanded, or any part thereof, to the said plaintiffs; but to pay the same, or any part thereof, to the said plaintiffs, the said defendant has hitherto refused, and still does refuse: To the damage of the said plaintiffs, as such overseers as aforesaid, of _____ dollars, and therefore they bring suit, etc.

O. A., plffs. atty.

Burr. App. 555, §1089.

II. Complaints.

A. Complaint for Penalties, General Form.

I. That on the _____ day of _____, 18—, at _____, the defendant (here state acts constituting a violation of the statute, either following the words of the statute, or setting forth the facts more specifically).

II. That thereby the defendant became indebted in the amount of (the penalty or forfeiture) to the (one for whose use the same is given); whereby an action accrued, according to the provisions of (stating the title or subject-matter of the statute, and naming the section, title and chapter, as the case may require, or in some other similar terms referring to such statute). 1 Abb. Forms 539.

B. Complaint for Selling Liquors Without License, Alleging Both Sales in Small Quantities and Sales to Drink on the Premises.

First. For a first cause of action:

I. That the defendant, being a resident of _____, did, at his house or shop known as No. _____ street, therein, on (each and every day between the _____ day of _____, 18—, and) the _____ day of _____, 18—, sell strong or spirituous liquors or wines* in quantities less than five gallons at a time,* without having a license therefor as provided by the act to ("Suppress Intemperance, and to Regulate the Sale of Intoxicating Liquors"), passed _____, 18—.

II. That thereby the defendant became, and is, indebted to the said plaintiff in the penalty and sum of (fifty dollars) for each act of selling; whereby this action accrued, according to the provisions of said act, for the ag-

_____, a certain amount or sum of _____ dollars.

Second. For a second cause of action.

Repeat above allegations, substituting for the words between the asterisks the following: to be drunk in his said house or shop, or in an outhouse, yard, or garden appertaining thereto (or either of them). 1 Abb. Forms 540.

C. Complaint for Selling Liquors on Sunday or Election Day.

I. That the defendant, on the _____ day of _____, 18—, that day being Sunday (or being a day of a public election within said district), at the city of _____, and in the county of _____, within the Metropolitan police district of the state of New York, did publicly keep (or did publicly dispose of) intoxicating liquors.

II. That by reason thereof the defendant is indebted to the plaintiffs in the penalty and sum of fifty dollars; and an action has accrued according to the provisions of the act of the legislature of the state of New York, entitled ("An Act to Establish a Metropolitan Police District, and to Provide for the Government Thereof"), passed _____, 18—. 1 Abb. Forms 541.

D. Complaint by Wife or Husband Against Dealer in Intoxicating Liquors for Illegally Selling to Plaintiff's Husband or Wife.

I. That on the _____ day of _____, 18—, at _____, on complaint against the defendant, and satisfactory proof by this plaintiff, then and ever since the wife (or the husband) of M. N., that her husband (or his wife), said M. N. was an habitual drinker of intoxicating liquors, the overseers of the poor of said town (or other magistrates) duly gave and issued written notice to the defendant, a dealer in intoxicating liquors, forbidding the defendant to sell or give such liquor to the plaintiff's husband (or wife) for the term of six months from the date of the notice, under a penalty of fifty dollars, with costs, for each and every sale or giving of such liquor.

II. That after such notice was given to the defendant, and before the expiration of the said six months, the defendant sold (or gave) such liquors to the plaintiff's husband (or wife),

whereby he (she) became intoxicated.

III. That thereby the defendant became indebted to the plaintiff in the amount of fifty dollars; and this action accrued according to the provisions of section _____ of the ("Act to Suppress Intemperance, and to Regulate the Sale of Intoxicating Liquors"), passed _____, 18—. 1 Abb. Forms 541.

E. Complaint Against Witness for Disobeying Subpoena.

I. That on the _____ day of _____, 18—, at _____, the plaintiff caused the defendant to be duly served with a subpoena commanding him to attend as a witness in the _____ court, in and for the county of _____ (or to attend as a witness before M. N., an officer of the _____ court, duly empowered to receive evidence, or to attend as a witness before M. N., a commissioner appointed by the _____ court to take testimony, or to attend as a witness before M. N., a referee appointed by the court, to— briefly designating object of reference) on the _____ day of _____, 18—, there to give testimony in behalf of the plaintiff in proceedings there pending, wherein this plaintiff was the plaintiff, and one O. P. was defendant (or otherwise briefly designate the proceedings).

II. That at the same time the plaintiff caused _____ cents, the lawful fees of the said witness, to be paid (or tendered) to him.

III. That the defendant, not regarding his duty, failed (and wilfully refused) to attend as commanded. Whereby the defendant became indebted to the plaintiff in the amount of fifty dollars, according to the provisions of section _____ of the Rev. Stats., entitled ("Of Witnesses, their Privileges, and Compelling their Attendance").

IV. Allege special damage, if any, thus: The plaintiff further says that thereby the plaintiff, when said action was called for trial, was compelled, for want of the testimony of said defendant, without whose testimony he could not safely proceed to the trial of said action, to move the said court there to postpone (or continue) the said action; and the said court did postpone (or continue) the same, at the costs of the said plaintiff, and the plaintiff was com-

pelled to pay on said postponement (or continuance), as costs thereof, _____ dollars, which sum he was so compelled to pay by reason of the said refusal of the said defendant; to the plaintiff's damage _____ dollars.

Or, IV. That the plaintiff, when said action was called for trial, was nonsuited for want of the testimony of the defendant, and his action was dismissed, with costs (or otherwise state the substance of the judgment of nonsuit), and the plaintiff was compelled to pay the same, and the sum of _____ dollars, his costs, counsel fees and disbursements in the said action; and that the defendant in said action having become insolvent (or the demand upon which said action was brought having meanwhile become barred by the statute of limitations), the plaintiff lost his demand, to recover which said action was brought, all which was caused by said refusal of the defendant; to the plaintiff's damage _____ dollars.

V. That by reason of the premises the defendant forfeited to the plaintiff the sum of fifty dollars. 1 Abb. Forms 542.

F. Complaint for Violation of Ordinance of Board of Supervisors.

I. That on or about the _____ day of _____, 18—, the board of supervisors of the county of Queens, in pursuance of the power in them vested by law, passed a law entitled ("An Act to Provide for Shell Fish and Trout within the Waters of Queens County"), a copy of which is annexed as a part of this complaint.

II. That since the passing thereof, to-wit, on the _____ day of _____, 18—, the defendant entered the waters of Cow Bay, in said town of _____, in said county, the same being the public waters in said county, and then and there took oysters from the waters in said Cow Bay by means of the process called or known as dredging, and did also throw or cast an instrument called or known as a dredge in said waters, contrary to the provisions of the third section of the said law above mentioned; whereby an action has accrued to the plaintiff, as such supervisor, to demand and have of the said defendant _____ dollars, being the penalty imposed by the third section of said law. 1 Abb. Forms 543.

III. Information, Qui Tam.

Westmoreland. Be it remembered, that A. B., of _____, in the county of _____, gentleman, who, as well for our sovereign lord the now king, as for himself, doth prosecute in this behalf, cometh before the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of Westmoreland; and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at their general quarter sessions of the peace holden at _____, in and for the said county, on _____, the _____ day of _____, in the _____ year of the reign of, etc., in his proper person, and as well for our said lord the king as for himself, giveth the court here to understand and be informed that C. D., late of the parish of _____, in the county of Westmoreland, yeoman, on, etc., at, etc., aforesaid, not regarding the laws and statutes of our said lord the king, but intending to, etc., with force and arms, etc. (here insert the offense with the same precision as in an indictment), against the form of the statute in that case made and provided, whereupon the aforesaid A. B., as well for the said lord the king as for himself, prayeth the advice of the court in the premises; and that the aforesaid C. D. may forfeit the sum of £—, according to the form of the statute aforesaid, and that he, the same A. B., may have one moiety thereof, according to the form of the said statute; and also that the aforesaid C. D. may come here into court, to answer concerning the premises, and there are pledges of prosecuting, to-wit, John Doe and Richard Roe; and hereupon it is commanded to the said C. D. that all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county, to answer as well to the said lord the king as to the said A. B., who, as well for the said lord the king as for himself doth prosecute of and concerning the premises, and further to do and receive what the said court shall consider in this behalf. 2 Chit. Cr. L. 11.

PENDENCY OF PRIOR SUIT.—See
ANOTHER ACTION PENDING

PERFORMANCE.

I. Pleas, 958

- A. *Performance in Covenant*, 958
- B. *Excuse for Non-performance*, 958
- C. *Performance in Debt on Bond*, 958
- D. *Excuse in Debt on Bond, Non-performance of Condition Precedent*, 958
- E. *Excuse of Non-performance, Non-payment of Purchase Price*, 959

II. Answers, 959

- A. *Performance*, 959
- B. *Denial of Plaintiff's Performance*, 959
- C. *Traverse of General Allegation of Performance*, 960
- D. *Excuse for Non-performance*, 960
- E. *That Plaintiff Failed To Perform, Preventing Defendant*, 960

I. Pleas.

A. *Plea of Performance in Covenant.*
And the said C. D., defendant in this suit, by B. D. S., his attorney, comes and defends the wrong and injury, when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against the said defendant, because he says that the said defendant did, etc. (here state the performance in the words of the covenant, if such covenant were in the affirmative, and conclude as follows): according to the form and effect of the said indenture, and of the said covenant of the said defendant by him in that behalf made as aforesaid, to-wit, at, etc. (the venue), aforesaid. And of this the said defendant puts himself upon the country, etc.

B. D. S., defts. atty.,

Burr. App. 359, §652; 3 Chit. Pl. 1001.

B. *Plea in Excuse for Non-performance in Covenant, Apprentice Left Service.*

Because he says that the said T., after the making of the said indenture, and before the expiration of the second year of the said term of three years in the said indenture mentioned, to-wit, on, etc., at, etc. (venue), aforesaid, wrongfully and without the license or consent of the said defendant, deserted from and left the service of the defendant, and did not at any time afterwards return thereto; and the said defendant further says that the said defendant did continually from and after the making of the said indenture until the said T. so deserted and left

the service of the said defendant as aforesaid, find unto the said T. sufficient meat, drink and lodging, to-wit, at, etc. (venue), aforesaid, and did, during that time, to-wit, on, etc., at, etc. (venue), aforesaid, in lieu of all other necessities, pay unto the said T. £—— for the first year of the said term, and during the residue of the said term was ready and willing to have found, and would have found, him the said T. sufficient meat, drink and lodging, and paid him the other sums of money by the said defendant stipulated to be paid to him, according to the form and effect of the said indenture, and the said covenant of the said defendant in that behalf, if he the said T. had not so deserted from and left, or had returned to the service of the said defendant. And this, etc. (conclude with a verification). 3 Chit. Pl. 1003.

C. *Plea of Performance in Debt on Bond.*

(Actio non, after craving oyer of the bond and condition, and setting out the latter.) Because he saith that he the said defendant did from time to time, and at all times after the making of the said writing obligatory, and the said condition thereof, well and truly observe, perform, fulfil and keep all and singular the articles, clauses, payments, conditions and agreements in the said condition of the said writing obligatory specified, comprised and mentioned, in all things therein contained on his part and behalf to be observed, performed, fulfilled and kept, according to the tenor and effect, true intent and meaning of the said condition of the said writing obligatory. And this, etc. 3 Chit. Pl. 985.

D. *Plea in Excuse of Performance in Debt on Bond, Non-performance of Condition Precedent.*

(Actio non, after craving oyer of the bond and condition, and setting out the latter, or, if the bond be conditioned for the performance of a covenant in an indenture, and the plaintiff has neglected to perform a condition precedent therein, then set forth the indenture, and the reference thereto, as in the precedent, and then state the plaintiff's non-performance, as follows): And the said defendant as to the said covenant in the said indenture contained, that he the said defendant would, during the continuance of the said demise, re-

pair and keep in repair the said demised premises, with the appurtenances, being allowed timber in the rough, sufficient and proper for such repair, from time to time to be provided and set out by the said plaintiff, his heirs and assigns (this is to be according to the words of the particular covenant qualified by the condition precedent), the said defendant saith that at the time of the making of the said demise, the said premises were ruinous, prostrate and in great decay, for want of needful and necessary reparation and amendment thereof, and that after the making of the said indenture, to-wit, on the _____ day of _____, A. D. _____, at, etc. (venue), aforesaid, there was need and occasion for a large quantity, to-wit, _____ loads of timber in the rough, to repair the said demised premises, with the appurtenances; and the said defendant then and there requested the said plaintiff to allow him the said defendant timber in the rough sufficient and proper for the repair of the said demised premises, with the appurtenances, and to provide and set out the same accordingly, yet the said plaintiff did not, nor would, when he was so requested, as aforesaid, or at any time before or since, allow to him the said defendant timber in the rough sufficient or proper for the repair of the said demised premises, with the appurtenances, or provide or set out the same, but then and there wholly neglected and refused, and hath thence hitherto wholly neglected and refused so to do, to-wit, at, etc. (venue) aforesaid; and the said defendant further saith that he the said defendant hath always, since the making the writing obligatory, well and truly observed, performed, fulfilled and kept all and singular other the covenants, articles, clauses, provisos, payments, conditions and agreements in the said indenture comprised and mentioned, which on the part and behalf of him the said defendant and his assigns were or ought to be observed, performed, fulfilled or kept according to the true intent and meaning of the said indenture. And this, etc. (conclude with a verification). 3 Chit. Pl. 989.

E. Plea in Excuse of Non-performance, Non-payment of Purchase Price.

(Actio non.) Because he says that the said defendant before the said

_____ day of, etc., in the said agreement mentioned, to-wit, on, etc., at, etc. (venue), was ready and willing, and offered to the said plaintiff to produce a clear and perfect title in the law, of and in the said messuages and tenements, and to execute a proper conveyance thereof to the said plaintiff, to hold to him the said plaintiff, his heirs and assigns forever, upon his the said plaintiff's paying to the said defendant the full sum of £_____, as and for the purchase money thereof, whereof the said plaintiff then and there had notice; but that the said plaintiff then and there required the said defendant not ever to produce the same, or to execute the said conveyance to the said plaintiff, and the said plaintiff then and there forbid the said defendant then or ever so to do; and the said plaintiff then and there declared to the said defendant that he would not, nor did he ever, pay to the said defendant the said sum of £_____, etc., as for the said purchase money, and the said plaintiff then and there wholly declined and disavowed, and discharged the said defendant from the carrying of the said agreement in the said declaration mentioned into execution, for which reason and no other the said defendant did not, upon or before the said _____ day of, etc., produce, nor hath he at any time since hitherto produced a clear and perfect, or other, title in the law, of and in the said freehold messuages and tenements, and premises, or any part thereof, to him the said plaintiff, to hold the same to him the said plaintiff, his heirs and assigns forever, according to the tenor and effect, true intent and meaning of the said agreement in that behalf, and this, etc. (conclude with a verification). 3 Chit. Pl. 989.

II. Answers.

A. Performance by Defendant (a).

That he made the said (articles), and on the _____ day of _____, 18____, delivered the same to the plaintiff (or tendered the same to the plaintiff, and has ever since been, and now is, ready and willing to deliver them). 2 Abb. Forms 104.

Answer, Performance (b).

I. That he duly performed said contract upon his part in all things.

II. That on the _____ day of _____, at _____, he delivered to the plaintiff (or otherwise proceed to

state the act of performance). 2 Abb. Forms 63.

B. Answer, Denial of Plaintiff's Performance.

That the plaintiff has not performed the conditions of said agreement on his part; but, on the contrary, has wholly omitted (here may state breach as to a complaint against him). 2 Abb. Forms 104.

C. Answer, Traverse of Plaintiff's General Allegation of Performance.

That the plaintiff has not duly performed all the conditions of said contract on his part, but, on the contrary (here may set forth particular breach as in complaints; and if the provision broken does not appear in the complaint, it may be stated thus, although said contract contained a provision, of which the following is a copy: copy of contract), the defendant did not, etc. 2 Abb. Forms 56.

D. Answer, Excuse for Non-performance.

That on the _____ day of _____, 18—, and before the time for the defendant to perform said contract on his part, the plaintiff gave notice in writing to the defendant that he had determined not to take (land); and the plaintiff abandoned the agreement, and ever since wholly failed to perform it. 2 Abb. Forms 107.

E. Answer, That Plaintiff Failed to Perform His Contract, Which Prevented Defendant's Performing.

I. That at the time of making said agreement the plaintiffs agreed, in writing, with this defendant, that in consideration that he would deliver to them, at their warehouse in _____, the said quantity of shelled corn, they the said plaintiffs would pay this defendant twenty cents a bushel therefor, and would furnish to this defendant a thresher to thresh said corn for one cent a bushel.

II. That the said plaintiffs failed and refused to furnish said thresher, though this defendant, on the _____ day of _____, 18—, requested them so to do; whereby this defendant was disabled from performing his said contract. 2 Abb. Forms 104.

PERJURY.

I. Indictments, 960

- A. On Trial at Assizes, 960
- B. At Trial in State Court, 961
- C. In Affidavit To Hold to Bail, 962
- D. In Affidavit for a Continuance, 963
- E. For Subornation of Perjury, 963
- F. For Attempt To Suborn, 964

I. Indictments.

A. Indictment for Perjury Upon a Trial at the Assizes.

Surrey, to-wit: The jurors for our lady the queen upon their oath present that heretofore, to-wit, at the (assizes holden for the county of Surrey, on the thirteenth day of March, in the eighth year of the reign of our sovereign lady Victoria, at Kingston upon Thames, in the said county, before Sir J. L., knight, one of the justices of our said lady the queen assigned to hold pleas in the court of our lady the queen before the queen herself, and Sir J. B. B., knight, one of the justices of our said lady the queen of the bench at Westminster, justices of our said lady the queen assigned to take the assizes in and for the said county of Surrey), a certain issue between one J. L. and one J. W., in a certain plea of trespass and assault, wherein the said J. L. was plaintiff, and the said J. W. defendant, came on to be tried in due form of law, and was then and there tried by a jury of the country in that behalf duly sworn and taken between the parties aforesaid; upon which said trial J. S., late of the parish of B., in the county of S., laborer, then and there appeared as a witness for and on behalf of the said J. W., the defendant in the plea aforesaid, and was then and there duly sworn and took his corporal oath upon the holy gospel of God, before the said Sir J. L., knight, and the said Sir J. B. B., knight, so being such justices as aforesaid, that the evidence which he the said J. S. should give to the court there, and to the said jury so sworn as aforesaid, touching the matter then in question between the said parties, should be the truth, the whole truth, and nothing but the truth (they the said Sir J. L., knight, and Sir J. B. B., knight, justices as aforesaid, then and there having sufficient and competent authority to administer the said

oath to the said J. S. in that behalf). And the jurors first aforesaid, upon their oath aforesaid, do further present that, at and upon the trial of the said issue so joined between the said parties as aforesaid, it then and there became and was a material question whether the said J. W. assaulted and beat the said J. L. And the jurors first aforesaid, upon their oath aforesaid, do further present that the said J. S., being so sworn as aforesaid, not having the fear of God before his eyes, nor regarding the laws of this realm, but being moved and seduced by the instigation of the devil, and contriving and intending to pervert the due course of law and justice, and unjustly to aggrrieve the said J. L., the plaintiff in the said issue, and to deprive him of the benefit of his suit then in question, and to subject him to the payment of sundry heavy costs, charges and expenses, then and there, on the trial of the said issue, upon his oath aforesaid, falsely, corruptly, knowingly, wilfully and maliciously, before the said jurors so sworn as aforesaid, and before the said Sir J. L., knight, and Sir J. B. B., knight, justices as aforesaid, did depose and swear (amongst other things) in substance and to the effect following, that is to say, that (here set out the evidence, namely, the examination or cross-examination [upon whichever you mean to assign the perjury], together with the necessary innuendos). Whereas in truth and in fact (etc., etc., proceeding to assign the perjury; see I, C, and next form). And so the jurors aforesaid, upon their oath aforesaid, do say, etc., etc.; see I, C, and next form). Archb. Cr. Pl. 573.

B. Indictment for Perjury at State Court.

"At the term of the county court began and held at Newport within and for the county of Orleans aforesaid, on the first Tuesday of February, A. D. 1887, a certain issue was joined in the aforesaid court in a certain action then and there pending in the said county court, which said action the said county court had full jurisdiction to try and determine, and wherein one Isaac Henry Pierson Rowell, in his individual capacity, and the said Isaac Henry Pierson Rowell as surviving partner of the late firm of J. & H. Rowell, which co-partnership consisted of the said Isaac Henry Pierson Rowell and one Joseph

Rowell, now deceased, was plaintiff, and the estate of one Warren Fuller, deceased, was defendant; and that afterwards, to-wit, at the term aforesaid of the county aforesaid, said issue came on to be tried in the due form of law by the jury of the country in that behalf duly impaneled and sworn to try such issue; and upon the trial of aforesaid issue, and, to-wit, on the 4th day of February, A. D. 1887, one John W. Smith, of Berlin, in the county of Washington and state of Vermont, did then and there appear and was produced as a witness, and was received to give evidence on behalf of the said Isaac Henry Pierson Rowell, plaintiff as aforesaid, in said cause; and the said John W. Smith in and before said court was then and there duly sworn by the clerk of the said court, and did then and there take his corporal oath that the evidence he the said John W. Smith would give to the court and jury sworn between the parties aforesaid, touching the matters in question in the said issue, should be the truth, the whole truth, and nothing but the truth, the said court, by the said clerk, then and there having full power and authority by law to administer an oath on such occasion; and then and there upon the trial of such issue it became and was a material question on the said issue whether he, the said Warren Fuller, in his lifetime, on, to-wit, the 5th day of June, A. D. 1884, or on any other day, had signed his the said Warren Fuller's name to and delivered or caused to be delivered unto the said Isaac Henry Pierson Rowell a certain writing or document in the words and figures following, to-wit: 'Montpelier, Vt., June 5th, 1884. I hereby acknowledge that my promissory note for the sum of ninety-seven dollars and seventy-four cents (\$97.74), dated November 24, 1857, and payable to J. & H. Rowell or bearer, one day from date, and interest annually, is not paid, and promise to pay the same on demand. And I also acknowledge that the promissory notes taken by me from J. & H. Rowell for collection, and described in my receipt given for the same, and dated July 16th, A. D. 1857, have not been accounted for except as shown by endorsements on the back of said receipt; and promise to pay on demand the amount due from me on account of the said promissory notes, with an-

anal interest. Warren Fuller.' And that thereupon the said John W. Smith, having been so sworn as aforesaid, did then and there feloniously, wilfully and corruptly testify and say in substance and effect, that he the said John W. Smith was in the hotel then called and known as the 'American House,' in the village of Montpellier, in the town of Montpellier aforesaid, in the county of Washington, on the day and date of the said writing or document hereinbefore named and described; and that, while he the said John W. Smith was in the said American House as aforesaid, said Warren Fuller came into the same room in said American House in which the said John W. Smith then was as aforesaid, and that, while the said Warren Fuller was in the said room in said American House as aforesaid, he the said John Smith saw said Warren Fuller sign his the said Warren Fuller's name to said writing or document hereinbefore named and described; whereas in truth and in fact the said John W. Smith did not see the said Warren Fuller in said American House on the day of the date of said writing or document hereinbefore named and described; nor did the said Warren Fuller sign his the said Warren Fuller's name to said writing or document hereinbefore named and described in said American House or elsewhere, on the day of the date of said writing or document hereinbefore named and described, or on any other date. And so the jurors aforesaid, upon their oath aforesaid, do say that the said John W. Smith, on the trial of the issue aforesaid, on the day and year aforesaid, before the said county court, falsely, maliciously, wilfully, knowingly and wickedly, in manner and form aforesaid, did commit wilful and corrupt perjury, contrary to the form, force and effect of the statute in such cases made and provided, and against the peace and dignity of the state." *State v. Smith*, 14 Cr. L. Mag. 74, 75.

C. Indictment for Perjury in an Affidavit to Hold to Bail.

London, to-wit: The jurors of our lady the queen upon their oath present that J. S., late of London, grocer, wickedly and maliciously contriving and intending unjustly to aggrieve one J. N., and to put him the said J. N. to great expense, and also unjustly and maliciously to cause him the said J. N. to

be arrested for the sum of fifty pounds, by virtue of a certain writ of our lady the queen, called a capias, to be sued out and prosecuted at the suit of him the said J. S., on the third day of August, in the ninth year of the reign of our sovereign lady Victoria, at London aforesaid, at the parish of Saint Dunstan in the West, in the ward of Faringdon Without, came in his proper person before Sir J. P., knight, then being one of the justices of the court of our lady the queen before the queen herself, and then and there produced a certain affidavit in writing of him the said J. S., and then and there before the said Sir J. P., knight, in due form of law was sworn, and took his corporal oath upon the holy gospel of God concerning the truth of the matters contained in the said affidavit (he the said Sir J. P., knight, then and there having a lawful and competent power and authority to administer the said oath to the said J. S. in that behalf); and that the said J. S., being so sworn as aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, upon his oath aforesaid, before the said Sir J. P., knight (the said Sir J. P., knight, then and there having a lawful and competent power and authority to administer the said oath to the said J. S. in that behalf), falsely, corruptly, knowingly, wilfully and maliciously, in and by his said affidavit in writing, did depose and swear (amongst other things) in substance and to the effect following, that is to say, that J. N. (meaning the said J. N. above mentioned) was then justly and truly indebted unto him the said J. S. in the sum of fifty pounds, for goods sold and delivered by the said J. S. to the said J. N., and at his (meaning the said J. N.'s) request; as in and by the said affidavit of the said J. S. affiled in the said court of our said lady the queen before the queen herself, more fully and at large appears: Whereas in truth and in fact the said J. N., at the time the said J. S. took his said oath and made his affidavit aforesaid, was not indebted to him the said J. S. in the sum of fifty pounds for goods sold and delivered by the said J. S. to the said J. N.; and whereas, in truth and in fact, the said J. N. was not then indebted to the said J. S. in a sum of fifty pounds

on any account whatsoever; and whereas, in truth and in fact, the said J. N. was not then indebted to the said J. S. in any sum whatsoever, on any account whatsoever. And so the jurors aforesaid, upon their oath aforesaid, do say that the said J. S., on the third day of August, in the year last aforesaid, at London aforesaid, in the parish and ward aforesaid, before the said Sir J. P., knight (he the said Sir J. P., knight, then and there having such power and authority as aforesaid), by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, falsely, wickedly, wilfully and corruptly did commit wilful and corrupt perjury; to the great displeasure of Almighty God, in contempt of our lady the queen and her laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our lady the queen, her crown and dignity. Archb. Cr. Pl. 566.

D. Indictment for Perjury in Affidavit for Continuance.

The grand jurors of the county of Knox, upon their oath, do present that one George W. Anderson, on the 20th day of January, 1885, at the county of Knox and state of Indiana, did then and there, for the purpose of obtaining a continuance to another day, of the trial of a certain civil action then and there pending before Edward McCrissoken, a justice of the peace of Vincennes township, Knox county, Indiana, wherein the state of Indiana, on the relation of Ella Walker, was plaintiff, and said George W. Anderson was defendant, did then and there feloniously and wilfully, corruptly and voluntarily, make a certain false affidavit, and did then and there subscribe his name to said affidavit, for the purpose of obtaining said continuance; and then and there feloniously, wilfully, corruptly and voluntarily took upon himself his corporal oath, and was then and there duly sworn that the contents of said affidavit were true in substance and in fact, which said oath was then and there administered to him by said Edward McCrissoken, justice of the peace as aforesaid, and who then and there had competent authority to administer oath in that behalf; that in said affidavit, made as aforesaid, for the purpose aforesaid, he the said George W. Anderson did then and there say, in

behalf of himself, who was then and there defendant in said cause, then pending in said court, under oath: "Defendant says he is informed and believes, if he is granted the time under the law so to do, that he can prove by two men, at least, residing in La Porte, in La Porte county, in the state of Indiana, and they will testify that during her (Ella Walker's) stay there, in June and July, 1884, and since that time, they, each of said men, had sexual intercourse with her, and that during said time in La Porte she became pregnant, if at all, with a bastard child, and this defendant is not the father of said bastard child. Defendant says he cannot give the names of said men at this day nor time, because he has not been able to go to La Porte to ascertain their said names for this reason: that on the 8th day of January, 1885, he was arrested in this case, while just going out on his boat on a trip, and he did not return until the 17th day of January, 1885;" which said affidavit was then and there, to-wit, on the 20th day of January, 1885, subscribed by the said George W. Anderson, and sworn to by him before Edward McCrissoken, justice of the peace as aforesaid. (Whereas, etc.). State v. Anderson, 7 Cr. L. Mag. 507.

E. Indictment for Subornation of Perjury.

That heretofore, to-wit, at the session of oyer and terminer of our lord the king, holden at K. in the county of S., on, etc., before Sir R. E., knight, one of the justices of his majesty's court of king's bench, and Sir W. C., knight, then one of, etc., then justices of our said lord the king, assigned, etc. (set out commission of oyer and terminer), by the oath of H. V., esquire, etc. (the names of the grand jury), good and lawful men of the county aforesaid, then and there sworn and charged to inquire for our said lord the king, for the body of the county aforesaid, it was presented in manner and form following, to-wit (here set out the indictment). Wherefore the sheriff of the county aforesaid was commanded not to omit, for any liberty in his bailiwick, but to take the said C. D. to answer the premises, which said indictment the above named justices of our said lord the king, afterwards, to-wit, at the delivery of the gaol of our said lord the king, holden for the said

county of _____, on the said, etc., before the aforesaid Sir R. E., knight, Sir W. C., knight, and others, their associates, then justices of our said lord the king assigned to deliver his said gaol of the prisoners therein, etc.; and afterwards at the same delivery of the said gaol of our said lord the king, and for the county aforesaid, at, etc., aforesaid, in the said county, on the said, etc., before the said justices of our said lord the king, and other their associates aforesaid, came the said C. D. in the custody of T. C., esquire, sheriff of the county aforesaid, in whose custody in the said gaol for the cause aforesaid, he had been before committed, being brought to the bar here in his proper person, who was committed to the said sheriff, and forthwith concerning the premises in the said indictment above specified and charged on him as above, being asked in what manner he would be tried, the said J. G. said he was not guilty thereof, and concerning which, for good and ill, he did put himself upon his country, upon which said issue such proceedings were had, that afterwards, to-wit, on the said delivery of the said gaol of our said lord the king, so held as aforesaid, a certain trial was held by a jury of the said county, taken between our said lord the king, and the said C. D., as by the record thereof doth more fully appear, upon which said trial evidence was given on behalf of our said lord the king, that the felony and robbery in the said indictment above specified was committed by the said C. D. about half an hour after six in the afternoon, on the fourth day of June, in the eighth year, etc. And the jurors, etc., now here sworn and charged to inquire for our said lord the king, for the body of the said county of _____ upon their oath aforesaid, do further present that A. B., late of, etc., being a person of wicked and evil mind and disposition, and devising and intending as much as in him lay to prevent the due course of law and justice, and to cause and procure the said C. D. to be entirely acquitted of the said felony and robbery charged on him, and by the said indictment to escape unpunished for the same, did, before the said trial, to-wit, on, etc., at, etc., unlawfully and wickedly solicit, incite and endeavor to persuade one E. F. to appear as a witness on the said trial

so as aforesaid had, for and on the behalf of the said C. D., and on the said trial falsely to depose, say and give in evidence upon his oath, to the jury of the county aforesaid, that the said C. D. carried a suit of clothes on the fourth day of June last (meaning the fourth day of June, in the eighth year, etc., the day on which the said felony and robbery in the said indictment above specified were proved as aforesaid to have been committed) to the said C. D. at his lodgings (meaning the lodgings of him the said C. D.), at the Queen's Head in the Ship Yard (meaning Ship Yard, in the county last aforesaid), between four and five (meaning, etc.) in the afternoon of the same day, and that he the said E. F. stayed there an hour, and that the said C. D. was then sick, and did not buy his clothes, whereas in truth and in fact the said E. F. did not go to the said C. D. on the fourth day of June, in the year last above mentioned, at any time in the same day, at the Queen's Head in the S. Yard, aforesaid, or at any other place whatsoever, on any account whatsoever, and whereas in truth and in fact, at the time when the said A. B. did so solicit, incite and endeavor to persuade the said E. F. to give such evidence upon his oath as aforesaid, he the said A. B. well knew that he the said E. F. would not give his evidence according to the truth, and that the same evidence so to be given was false, feigned and altogether fictitious, to the evil example, etc., and against the peace, etc.
2 Chit. Cr. L. 478.

F. Indictment for Attempt to Suborn Perjury.

Shropshire. The jurors for our lord the king upon their oath present that at the assizes, etc. (here state the caption of the assizes holden at Shrewsbury, and that there was an issue between A. B. and C. D.). And the jurors aforesaid, now here sworn, on their oath aforesaid, do further present that before the trial of the said issue, and during the time the same was depending, to-wit, on, etc., A. B., late of, etc., not having, etc., but being moved and seduced, etc., and wickedly contriving and intending, as much as in him lay, to prevent justice and pervert the due course of law, and mind-ing and intending unjustly to aggrieve the said C. D., the defendant above

named, and wickedly to cause and procure the said C. D. to be convicted of the premises alleged against him in the said issue, and thereby to subject him to the payment of great sums of money for damages and costs, to be recovered against him in the suit then in question between him and the said A. B. as aforesaid, then and there, to-wit, on the same day and year last aforesaid, at, etc., aforesaid, did unlawfully and wickedly solicit, instigate, and as much as in her lay, endeavor to persuade one E. F., spinster, to be and appear as a witness, on the part and behalf of the said A. B., the plaintiff aforesaid, at the trial of the said issue so as aforesaid joined, and upon the same trial, falsely to swear and give in evidence to and before the jurors of the said jury so sworn and taken between the said parties to try the said issue aforesaid, of and concerning the premises alleged by the said A. B. against him the said C. D. in the said issue, in substance and effect following, that is to say, that the face of the said A. B. was blue after the blow (meaning a supposed blow alleged in the declaration of the said A. B.), contained in the said issue to have been given and struck by the said C. D., the defendant aforesaid, in and upon him the said A. B., whereas in truth and in fact the face of the said A. B. was not blue, nor any ways changed in color by reason of any blow he had received from the said C. D., nor did he the said C. D. ever assault the said A. B., or give him the said A. B. any blow so as to cause the face of the said A. B. thereby to become blue or any ways changed in color; but in truth and in fact the said A. B., at the time she solicited, instigated, and endeavored to persuade the said E. F. to swear and give in evidence as aforesaid, had caused the face of him the said A. B. to be stained with ink, to-wit, at, etc., aforesaid, and he the said A. B. did thereupon then and there tell the said E. F. that he the said E. F. might safely swear the face of the said A. B. was blue after the blow in contempt, etc., in manifest subversion of justice, to the evil and pernicious example of all others, and against the peace of our said lord the king, his crown and dignity. 2 Chit. Cr. L. 482.

PERPETUATION OF TESTIMONY.

I. Bill To Perpetuate Testimony, 965

II. Under Statutes, 966

- A. *Affidavit for Order for Examination*, 966
- B. *Affidavit for Order for Examination, Suit Not Pending*, 966
- C. *Order for Examination*, 966

I. Bill To Perpetuate Testimony.

Humbly complaining, sheweth unto your honors your orator, A. B., of, etc., that C. D., late of, etc., deceased, before and at the time of making his will hereinafter mentioned, was seized in fee of and in, divers freehold estates, which are hereinafter more fully mentioned and described; and the said C. D. being so seized as aforesaid, and being of sound and disposing mind, memory, and understanding, duly made and published his last will and testament in writing, bearing date the _____ day of _____, signed by him, the said C. D., and subscribed and attested according to law; and which said will with the attestation thereof, is in the words and figures following, that is to say (set out the will and the attestation verbatim), as by the said will and the attestation clause thereof, reference being thereto had, will appear.

And your orator further sheweth unto your honors, that the said C. D. departed this life on or about the _____ day of _____, without having revoked or altered his said will, leaving his brother E. D., of, etc., the defendant hereinafter named, his heir at-law; and upon the death of the said testator, your orator, under and by virtue of the said will, entered upon and took possession of all the said freehold estates thereby devised to your orator for life, and your orator is now in possession thereof. And your orator hoped that no disputes would have arisen respecting the devises contained in the said will, or the validity thereof. But now so it is, etc., the said E. D. pretends that the said will is void and ineffectual; and although he will not dispute the validity thereof during the lives of the subscribing witnesses thereto, yet he threatens and intends to do so when they are dead, so that your orator may be deprived of their testimony.

And your orator further sheweth, that all of the said subscribing wit-

witnesses are upwards of seventy years of age and in feeble health (or are about to depart from the commonwealth or state), and that your orator fears the testimony of the said witnesses may be lost by their death (or departure from the commonwealth or state) before the cause can be investigated in a court of law.

In consideration whereof, etc., and that your orator may be at liberty to have the several subscribing witnesses to said will examined, and that your orator, if necessary, may have a commission or commissions for the examination of the said subscribing witnesses to the said will, to the end that their testimony may be preserved and perpetuated; and that your orator may be at liberty to read and make use of the same on all future occasions, as he shall be advised. May it please your honors, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2075.

II. Under Statutes.

A. *Affidavit for Order for Examination of Witnesses Where Suit Pending.*

(Kings) county, ss.: A. B. of the (city of Brooklyn in the said county) being duly sworn, deposes and says, that he is a party to a suit actually pending in the (supreme court of this state), in which he is plaintiff (or defendant), and one C. D. is defendant, (or plaintiff), concerning (state briefly the cause of action) and that the testimony of I. J., of (residence of witness), within this state, is material and necessary to the prosecution (or defense), of such suit. Sworn, etc. Burr. App. 501, §1014.

B. *Affidavit for Order for Examination of Witnesses Where Suit Not Pending.*

(Kings) county, ss.: A. B., of, etc., being duly sworn, deposes and says, that he has good reason to expect to be made a party to a suit in the (supreme court of this state); and that the testimony of I. J., of (residence) is material and necessary to the prosecution (or defence), of such suit; and deponent further says, that the party expected to be adverse to this deponent, to-wit, C. D., resides within this state, and is of full age. Sworn, etc. Burr. App. 502, §1014a.

C. *Order for Examination of Witnesses To Perpetuate Testimony.*

I do hereby order that I. J., the wit-

ness within (or above) named, be examined before me, upon the within (or above) application; and I hereby appoint the _____ day of _____ next (or instant), at my office in, etc., for the time and place of such examination. Dated, etc.

(Officer's signature.)

Burr. App. 543, §1071.

PERSONAL INJURIES.—See INJURIES TO PERSONS.

PETITION (A PLEADING). — See DECLARATION AND COMPLAINT.

PETITIONS.

I. General Form, 968

II. Captions, 968

A. *Of Preliminary Petition to Court,* 968

B. *Of Preliminary Petition to Judge,* 968

C. *Of a Paper in a Proceeding Pending, Not in Action,* 968

III. Verification of a Petition, 968

CROSS-REFERENCES:

BANKRUPTCY PROCEEDINGS:

Debtor's Petition and Schedules;
Partnership Petition;
Creditor's Petition;
Petition and Order for Sale by Auction of Real Estate;
Petition and Order for Redemption of Property From Lien;
Petition and Order for Sale Subject to Lien;
Petition and Order for Private Sale;
Petition and Order for Sale of Perishable Property;
Petition for Removal of Trustee;
Bankrupt's Petition for Discharge;
Petition for Meeting To Consider Composition.

CROSS-BILL:

Petition To Use Depositions in Cross-Cause.

DECEDENTS' ESTATES:

Petition To Compromise Claim Due Estate;
Petition for Order To Pay Claims Against Estate;
Petition for Leave To Convey Real Estate of Deceased;
Petition To Reopen Account.

DISCOVERY:

Petition for Order Requiring Production of Documents.

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Petition Stating Nonsuit, Action

See "How To Use This Volume," Introduction, page v.

Without Consent of Part of Plaintiffs.

DIVORCE:

Petition for Alimony and Expenses;
Petition for Custody of Minor Children.

DOWER, PROCEEDINGS TO RECOVER:

Petition for Admeasurement of Dower.

EJECTMENT:

Petition for Order To Stay Waste.

EMINENT DOMAIN:

Petition for Condemnation of Land for Railroad Bridge;
Petition, Acquiring Land for Railroad;
Petition To Condemn Right of Way Across Tracks of Another Company;
Petition To Condemn Certain Lots for State Capitol;
Statement of Petition for Condemnation for Telegraph Line;
Statement of Object of Improvement, Petition for Condemnation.

EQUITY JURISDICTION AND PROCEDURE:

Petition for Leave To Withdraw Replication and Amend Bill;
Petition To Amend Bill by Adding Defendant;
Petition To Amend Bill Requiring Further Answer;
Petition To Amend Bill Not Requiring Further Answer;
Petition by Plaintiff To Dismiss His Bill With Costs;
Petition for Leave To File Bill of Review on Ground of Discovery of New Matter;
Petition To Withdraw Plea or Demurrer;
Petition That Feme Covert May Answer Separate From Her Husband;
Petition To Enter Decree Nunc Pro Tunc.

GUARDIAN AD LITEM:

Petition for Guardian Ad Litem of Infant Plaintiff Over Fourteen;
Petition by General Guardian, or Relative, or Friend, for Appointment of Guardian Ad Litem for Infant Plaintiff Under Fourteen;
Petition by Infant Defendant for the Appointment of a Guardian Ad Litem;
Petition for Guardian Ad Litem by Relative or Friend of Infant Defendant;
Petition for Guardian Ad Litem in Case of Publication;

Petition To Assign Guardian Ad Litem by Infant Defendant;
Petition for Appointment of a Guardian Ad Litem for Infant Defendant by Plaintiff.

GUARDIAN AND WARD:

Petition for Appointment of a General Guardian;
Petition for Leave To Transfer Fund to Non-resident Guardian;
Petition for Leave To Sell Real Estate for Support and Education of Infant;
Petition for Leave To Mortgage Infant's Real Estate;
Petition, Action To Set Aside Sale of Real Estate, Insufficient Price, No Confirmation.

HABEAS CORPUS:

Petition for Habeas Corpus;
Petition for Habeas Corpus, Prisoner Unable To Furnish Copy of Proceedings;
Petition for Habeas Corpus Where Prisoner Is Ignorant of Cause;
Petition for Habeas Corpus To Obtain Custody of Infant (a, b);
Petition for Habeas Corpus by Third Person on Behalf of Prisoner;
Petition Where It Is Feared That Person May Be Carried Out of the State, or Suffer Some Injury Before Writ Can Issue;
Petition for Habeas Corpus by One Committed by Legislative Body.

INFANTS:

Petition for Appointment of Guardian for Infant Defendant;
Petition for Appointment of Prochein Ami for Infant Plaintiff.

INSANE PERSONS:

Petition for Inquest of Insanity;
Petition for Commitment of Insane Person;
Petition for Guardian for Insane;
Petition for Guardian of Insane Person Where Appointee Has Failed To Qualify.

INTERSTATE COMMERCE COMMISSION:

Complaint Against Joint or Connecting Carriers;
Complaint Against a Single Carrier.

INTERVENTION:

Petition by Landlord To Be Made Defendant in Ejectment;
Petition by Owner, Goods Seized on Attachment;
Petition for Intervention by Execution Creditor, Suit Against Levying Officer.

MANDAMUS.

Petition for Writ, To Draw Warrant;

Petition for Writ of Mandamus Requiring Payment to Schools;

Petition for Writ To Declare Relator Elected to Office;

Petition by Attorney-General for Writ Requiring Stopping of Trains at Particular Station.

NE EXEAT:

Application for Ne Exeat by Petitioner.

PARTITION:

Petition for a Partition;

Petition To Be Admitted a Defendant in Partition;

Petition for Appointment of Guardian in Partition.

PAUPERS:

Petition of Plaintiff To Be Admitted To Sue or Defend, In Forma Pauperis;

Petition for Admission To Sue In Forma Pauperis.

PROBATE OF WILLS:

Petition To Revoke Probate.

RECEIVERS:

Receiver's Petition for Leave To Sell;

Petition for Receiver's Discharge.

REMOVAL OF CAUSES:

Petition for Removal Into United States District Court.

REVIVOR:

Petition by Receiver or Assignee of Plaintiff's Title, To Revive Action in His Own Name;

Petition, After Marriage, of Female Plaintiff, Filed by Husband To Revive in Joint Names;

Petition by Executor, Administrator or Heir of Deceased Plaintiff;

Petition by Surviving Plaintiff To Compel Representative To Revive;

Petition by Defendant To Revive Action, Plaintiff Dead.

SEARCH AND SEIZURE:

Petition To Return Private Papers, Books and Other Property Unlawfully Seized.

SERVICE OF PROCESS AND PAPERS:

Petition for Appointment of Guardian Ad Litem for an Infant After Publication of an Order To Appear.

I. Petition, General Form.

Title if action is pending.)

To the honorable (the justices of the supreme court of judicature of the people of the state of _____).

The petition of A. B. of _____ (residence and occupation) respectfully sheweth:

That (body of petition).

Your petitioner therefore prays your honors that (relief desired).

And your petitioner will ever pray.

A. B.

(Jurat.)

A. B.

Sworn, etc. Burr. App. 546, §1079; 2 Archb. Forms 515.

II. Captions.

A. *Caption of a Preliminary Petition to the Court.*

To the supreme court of the state of _____ (or other court, giving its full official designation).

The petition of _____, of the city of _____, shows. 1 Abb. Forms 2.

B. *Caption of a Preliminary Petition to a Judge.*

To Hon. _____, one of the justices of the supreme court of the state of _____ (or other court or magistrate, as above).

The petition of (etc., as above). 1 Abb. Forms 2.

C. *Caption of a Paper in a Proceeding Pending, Not an Action.*

Supreme court, county of _____. In the matter of the application of A. B., an infant (or other description).

The petition of (etc., or other introduction appropriate to the character of the paper). 1 Abb. Forms 2.

III. Verification of Petition.

_____ of _____ (and _____ of _____ severally) being duly sworn says (each for himself) he is an agent of the plaintiff (or other description of the deponent).

That he has read (or, heard read) the foregoing petition subscribed by him, and knows the contents thereof; and that the same is (or, where such papers are annexed, and that the same and the accounts and inventories hereunto annexed are) true of his own knowledge, except as to the matters therein stated on information and belief and as to those matters he believes it (or, them) to be true. 1 Abb. Forms 8.

PHYSICAL EXAMINATION.

Order for Physical Examination.

"Supreme Court, New York county.

Emma Bell, plaintiff, against Jacob Litt, defendant.

"On reading the affidavit of Jacob Litt, verified the 29th day of September, 1896, and upon all the pleadings and proceedings herein, now, on motion of Burr & Delacy, attorneys for the defendant, it is ordered that Emma Bell, the plaintiff herein, attend before Thomas L. Feitner, Esq., counsellor at law, who is hereby appointed referee herein, at his office, No. 56 Wall street, in the city of New York, on the 27th day of October, 1896, at two o'clock in the afternoon thereof, and at such other times and places as the said referee may appoint, and that she submit to an examination concerning the matters relevant to the allegations of the complaint; and it is further ordered that at the same time and place the said plaintiff submit herself for a physical examination as to the nature, character, and extent of her injuries, as set forth in her said complaint, to Dr. Mary Putnam Jacobi, a physician of No. 156 W. 34th street, in the city of New York, who is hereby appointed to make such examination, and that thereupon the testimony of said physician relative to said examination be taken on behalf of the defendant and reduced to writing by the said referee. Service of a copy of this order and the accompanying affidavit shall be made on the defendant and upon her attorneys on or before the 22d day of October, 1896. Dated New York, October 7th, 1896. Chas. F. MacLean, J. S. C." Bell v. Litt, 12 App. Div. 626, 42 N. Y. Supp. 112.

PHYSICIANS AND SURGEONS.

- I. Declaration as Surgeon, and for Medicines, 969
- II. Complaint Against Surgeon for Maltreatment, 970
- III. Complaint, Negligently Performing Operation, 970
- IV. Indictment for Practicing Without License, 970
- V. Information for Practicing Without License, 970
- VI. Indictment, Illegal Practice of Medicine, Failure To Record Certificate, 971

CROSS-REFERENCE:

PAUPERS:

Complaint Against Town for Medical Services to Pauper.

I. Declaration as Surgeon and for Medicines.

The indebitatus count, inserting these words, "for the work and labor, care, diligence, journeys, and attendance of the said plaintiff by the said plaintiff before that time done, performed, and bestowed, as a surgeon and apothecary for the said defendant, and at his special instance and request, in and about the healing and curing of the said defendant and divers other persons of divers diseases, disorders and maladies under which they had before then respectfully labored and languished, in and about the endeavoring to heal and cure the said defendant and divers other persons of divers other diseases, disorders and maladies under which they had before then also respectively labored and languished, and for divers medicines, chattels and other necessary things before that time found and provided, administered, delivered, and applied by the said plaintiff on those occasions, for the said defendant and at his like special instance and request; and being so indebted," etc. The quantum meruit thereon is by inserting as follows, "had before that time done, performed, and bestowed other his work and labor, care, diligence, journeys, and attendance as a surgeon and apothecary, in and about the healing and curing of the said defendant and divers other persons of divers other diseases, disorders and maladies under which they had before then respectively labored and languished, and also in and about the endeavoring to heal and cure the said defendant and divers other persons of divers other diseases and disorders under which they had before then also respectively labored and languished, and had also at the like special instance and request of the said defendant, before that time found and provided, administered, delivered and applied divers other medicines, chattels, and necessary things on those last-mentioned occasions for the said defendant, he the said defendant under took," etc. (Add counts for work and labor, and journeys, for goods sold, money paid, account stated, and breach.) 2 Chit. Pl. 83

II. Complaint Against Surgeon for Maltreatment.

I. That the defendant, being a surgeon, the plaintiff, at ———, in the month of ———, 18 —, employed him as such (to set and heal the leg of the plaintiff, which was broken), and for that purpose he undertook as a surgeon to attend and care for the plaintiff.

II. That the defendant so negligently and unskillfully conducted himself (in setting and attempting to heal the same, as to bring on inflammation, and make it necessary to have the leg of the plaintiff amputated).

III. That by reason of the defendant's said negligence, the plaintiff was made sick, and kept from attending to his business for ——— months, and was put to great expense, and has been, and still is, disabled from attending to his said business, to the damage of the plaintiff ——— dollars. 1 Abb. Forms 362.

III. Complaint, Negligently Performing an Operation.

"The said John O'Hara, plaintiff, complains of the said Osceola O. Wells, defendant, and for cause of action says: That the said plaintiff, before and at the times hereinafter mentioned, had had the bone and ligaments of his left arm broken and fractured and displaced, and that the said defendant was a physician and surgeon, practicing as such in the city of Beatrice, Gage county, Nebraska; that on, to-wit: the 30th day of October, A. D. 1878, the said plaintiff at the special instance and request of the said defendant, retained and employed the said defendant for a reasonable reward to be paid therefor as such physician and surgeon, to set and reduce the said broken and fractured bone and ligaments of his said arm to their proper position and place, and to attend to, cure and heal the same; and the said defendant undertook and entered upon said retainer and employment; yet the said defendant, not regarding his duty in the premises, so carelessly, negligently, and unskillfully set and reduced the said fracture of said arm and the displacements thereof, and so negligently and unskillfully bound up and dressed and bandaged the same, and unskillfully and negligently nursed and attended to the said fracture and injury, that the said plaintiff, by reason of

such unskillfulness and negligence, has wholly lost the use of his said arm, and his said arm has become and still is permanently crooked, and the bones, ligaments, and joints thereof permanently displaced and out of their natural state, position and condition, whereby plaintiff has been greatly and permanently injured, rendered unfit and unable to follow his lawful business, and has also been put to great expense, to-wit: the sum of \$200, in and about endeavoring to straighten and improve and cure his said arm to the damage of the said plaintiff \$10,200; wherefore the plaintiff prays judgment against the said defendant for the said sum of \$10,200, his damage so as aforesaid sustained, and his costs of suit." *O'Hara v. Wells*, 14 Neb. 403, 15 N. W. 722.

IV. Indictment for Practicing Without License.

"And the said Antle did then and there engage in the practice of medicine, without having first furnished to the clerk of the District Court of said Caldwell County his certificate of qualification, said county being then and there the county in which said Antle did then and there reside," etc. *Antle v. State*, 6 Tex. App. 202.

V. Information, Practicing Without License.

The information accused the defendant of a misdemeanor, "committed as follows, to-wit: The said Arthur O'Leary, on or about the twenty-seventh day of November, 1886, in the county of Yolo, state of California, then and there being, did wilfully and unlawfully practice medicine; that prior to said time said defendant had not procured a certificate to so practice from one of the boards of medical examiners appointed by the Medical Society of the State of California, the Eclectic Medical Society of the State of California, or the California State Homeopathic Medical Society, and prior to said time said defendant had not procured a certificate to practice medicine granted by the board of examiners appointed by the California State Medical Society of Homeopathic Practitioners; and said defendant was not at said time a lawfully commissioned surgeon of the United States army or navy practicing his profession within the limits of the state of California, contrary to the form, force, and

effect of the statute," etc. *People v. O'Leary*, 77 Cal. 30, 18 Pac. 856.

VI. Indictment, Illegal Practice of Medicine, Failure To Record Certificate.

"Did unlawfully practice medicine, without complying with the laws regulating the practice of medicine; without furnishing to the clerk of the District Court of Dallas County, State of Texas, a certificate of qualification, as required by law; and without having been regularly engaged in the practice of medicine, in any of its branches, in this State five consecutive years prior to the first day of January, in the year of our Lord one thousand eight hundred and seventy-five; and without then and there being a person authorized by law to practice medicine, and without then and there having and possessing the requisites required by law to practice medicine in the State of Texas, as required by law; contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the state.

"George N. Aldredge,
County attorney of Dallas County."
Logan v. State, 5 Tex. App. 306.

PIRACY.

Indictment for Piracy at Common Law.

Yorkshire, to-wit: The jurors for our lady the queen upon their oath present, that J. S., late of Hull, in the county of York, mariner, K. S., late of the same place, mariner, and L. T., late of the same place, mariner, on the third day of August, in the year of our Lord, one thousand eight hundred and forty-five, with force and arms, upon the high seas, to-wit, in and on board of a certain ship, called the Windsor Castle, in a certain place upon the high seas, distant about ten leagues from Cutchien in the East Indies, then being, in and upon certain mariners (to the jurors aforesaid unknown), in the peace of God and of our lady the queen then and there being, piratically and feloniously did make an assault, and then the said mariners in bodily fear and danger of their lives, on the high sea aforesaid, then and there piratically and feloniously did put, and the said ship, called the Windsor Castle, and the apparel and tackle of the said ship, of the value of twelve hundred pounds, and seventy chests of opium, of the

value of fourteen hundred pounds, in and on board the said ship then being, of the goods and chattels of certain subjects of our said lady the queen, to the jurors aforesaid unknown, and then and there in the custody and possession of the said mariners last aforesaid, with force and arms, from the care, custody, and possession, and against the will of the said mariners last aforesaid, then and there, to-wit, on the day and year last aforesaid, upon the high sea aforesaid, in the place aforesaid, and within the jurisdiction aforesaid, piratically, feloniously, and violently did steal, take, and carry away, against the peace of our lady the queen, her crown and dignity. Archb. Cr. Pl. *264.

PLEADING.

CROSS-REFERENCES:

PLEADING AT COMMON LAW:

See Declaration and Complaint; Demurrer; General Issue and General Denial; Pleas; Rejoinder; Replication and Reply, and the various titles cross-referred to in the above.

PLEADING IN ADMIRALTY:

See Admiralty.

PLEADING IN CRIMINAL CASES:

See Arraignment and Plea; Indictment and Information; Preliminary Examination, and the various other titles cross-referred to in the above.

PLEADING IN EQUITY:

See Bills and Answers; Cross-Bill; Demurrer; Equity Jurisdiction and Procedure; Plea in Equity, and the various titles cross-referred to in the above.

PLEADING IN GENERAL:

See Amendments and Jeofails; Certainty in Pleading; Duplicity; Frivolous and Sham Pleadings; Information and Belief; Multifariousness; Parties; Privity; Res Judicata; Surplusage and Scandal; Supplemental Pleading; Time To Plead; Verification, and the various titles cross-referred to in the above.

PLEADING UNDER THE CODE:

See Answers; Declaration and Complaint; Demurrer; Denials; General Issues and General Denial; Prayer for Relief; Replication and Reply; Set-off, Counterclaim and Recoup-

ment, and the various titles cross-referred to in the above.

NOTE.—Answers as used above refer to *code answers*. Answers in equity are found under the title **Bills and Answers**.

PLEA IN EQUITY.

- I. Title and Commencement, 972
- II. Conclusion, 972
- III. Plea to Part and Answer to Residue, 972
- IV. In Abatement, 973
 - A. *No Prochein Ami*, 973
 - B. *Alien Enemy*, 973
 - C. *Coverture*, 973
 - D. *Insanity*, 973
- V. Defendant Never Administrator, 973
- VI. Supposed Intestate Living, 973
- VII. To Bill of Revivor, 974
 - A. *Plaintiff Not Administrator*, 974
 - B. *Defendant Never Administrator*, 974
- VIII. To Bill for Rescission, Plaintiff Not Administrator, 974
- IX. Defendant No Interest, 974
- X. Decree of Record, 975
- XI. Former Suit Pending, 976
- XII. Stated Account, 976
- XIII. Of Release, 976
- XIV. Of Will, 977
- XV. Purchase Without Notice of Conveyance, 977
- XVI. Want of Proper Parties, 978
- XVII. To Supplemental Bill, Matters Well Known, 978
- XVIII. Plea That Discovery Sought Is Privileged, 978

CROSS-REFERENCES:

HEARING:

Order on Hearing, Demurrer or Plea (in *h*).

PARTIES:

Plea in Equity for Want of Proper Parties.

I. Plea in Equity, Title and Commencement of Plea.

The plea of ———, defendant (or of ———, defendants), to the bill of complaint of ——— complainants (or the joint and several plea of A. B. and C. D., defendants, etc.).

This defendant (or these defendants) by protestation, not confessing or ac-

knowledging the matters and things in and by said bill set forth and alleged to be true, in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of the said bill, or to so much and such part of the said bill as prays, etc., or seeks a discovery from this defendant (or these defendants), whether, etc., saith (or say) that, etc. 3 Dan. (Ch. Pl. & Pr. (Perkins' ed.) 2123.

II. Plea in Equity, Conclusion.

All which matters and things this defendant doth aver (or these defendants do aver) to be true, and he pleads (or they plea) the said (statute or release, etc., as the case may be [in bar]) to the said plaintiff's bill (or if the plea extend to part only, to so much of the said bill as hereinbefore particularly mentioned), and prays (or pray) the judgment of this honorable court, whether he (or they) should be compelled (or ought to be required) to make any other or further answer to the said bill (or to so much of the said bill as is hereinbefore pleaded to), and prays (or pray) to be hence dismissed with his (or their) costs and charges in that behalf, most wrongfully sustained.

(Counsel's signature.)

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2123.

III. Plea to Part and Answer to Residue.

The plea of ———, defendant (or one of the defendants), to part, and the answer of the same defendant to the residue, of the bill of complaint of ———, plaintiff (or the joint plea and answer, or the joint and several plea and answer, according to circumstances).

This defendant, to all the relief sought by the said bill, and also to all the discovery thereby sought, except the discovery sought by or in respect of (so much of the said bill as prays that this defendant may answer and set forth) whether, etc. (here the language of the interrogatories which it is necessary to answer must be introduced), this defendant does plead in bar, and for plea saith, etc. (here follows the plea).

All which matters and things this defendant does aver to be true, and does plea the same in bar to the whole of the said bill, except such part of

the discovery thereby sought as aforesaid; and this defendant humbly prays the judgment of this honorable court, whether he ought to be compelled to make any further or other answer to so much of the said bill as is hereby pleaded to, and he prays to be hence dismissed with his costs.

And for answer to such parts of the said bill as are excepted, this defendant says that, etc. (here the answer follows).

(Counsel's signature.)

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2123.

IV. In Abatement.

A. *Plea in Equity of Infancy of Plaintiff, No Prochein Ami.*

(Title and commencement as in I.)

That the said plaintiff, before and at the time of filing his said bill in which he appears as the sole plaintiff, was, and now is, an infant under the age of twenty-one years; that is to say, of the age of _____ or thereabouts. Therefore, etc. (conclude as in II.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2125.

B. *Plaintiff an Alien Enemy.*

(Title and commencement as in I.)

That the said plaintiff A. B. is an alien, born of foreign parents, and in foreign parts, that is to say, at Calais, in the kingdom of France, and out of the allegiance of our said lord the king, and under the allegiance of the said king of France, who is an enemy to our said lord the king, and to whom the parents of the said plaintiff adhere; and the said plaintiff also before and at the time of filing his said bill was, and now is, an enemy to our said lord the king, and entered into these dominions without the safe conduct of our said lord the king, and has not been made a subject of our said lord the king by naturalization, denization, or otherwise. Therefore, etc. (conclude as in II.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2125.

C. *Plea in Abatement, Coverture of the Plaintiff.*

(Title and commencement as in I.)

That the said plaintiff A. B., before and at the time of exhibiting her said bill, was, and now is, under coverture of one C. D., her husband, who is still living, and in every respect capable, if necessary, of instituting any suit at law or in equity in this _____ on her behalf. Therefore, etc. (conclude

as in II). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2125.

D. *Plea in Abatement, Plea of Lunacy.*

(Title and commencement as in I.)

That the said plaintiff, who by himself alone attempts to sustain an injunction in this suit, before and at the time of filing his said bill, was duly found and declared to be a lunatic, under and by virtue of a commission of lunacy, duly awarded and issued against him, as by the inquisition thereon (a true copy whereof is now in this defendant's possession, and ready to be produced to this honorable court), to which this defendant craves leave to refer, will more fully appear; and which said commission has not hitherto been superseded, and still remains in full force and effect; and the said A. B. therein named, and the said plaintiff is, as this defendant avers, one and the same person, and are not other and different persons. Therefore, etc. (conclude as in II). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2125.

V. Plea, Defendant Never Administrator.

(Title and commencement as in I.)

That he is not, nor ever has been, administrator of the goods or estate which were of the said E. F., deceased, in the said bill named, as the said plaintiff in his said bill has untruefully alleged. Therefore, etc. (conclude as in II). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2127.

VI. Plea to Bill by Administrator, Supposed Intestate Living.

(Title and commencement as in I.)

That the said A. S., in the said bill named (to whom the said plaintiff alleges that he has obtained letters of administration, and by virtue of which letters of administration, and also under the pretense of his being the heir-at-law of the said A. S., the said plaintiff has commenced and prosecuted this suit), was at the time the said plaintiff filed his said bill, and still is, alive at Paris, in the kingdom of France. Therefore this defendant demands the judgment of this honorable court, whether he shall be compelled to answer the plaintiff's bill; and humbly prays to be dismissed with his reasonable costs on this behalf sustained. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2126.

VII. To Bill of Revivor.*A. Plea to Bill of Revivor, Plaintiff Not Administrator.*

(Title and commencement as in I.)

That the said plaintiff is not, as stated in the said bill of revivor, the personal representative of A. B., deceased, the testator therein named, and as such entitled to revive the said suit in the said bill of revivor mentioned against this defendant; but the said plaintiff is the administrator only of C. D., late of, etc., deceased, who died intestate on the _____ day of _____ last, and was the sole executor

of the said A. B.; and that letters of administration of the goods and estate of the said A. B., unadministered by the said C. D. in his lifetime, have, since the death of the said C. D., been duly granted by the proper court to E. F., of, etc., who thereby became, and now is, the legal personal representative of the said A. B. Wherefore the said defendant demands the judgment of this honorable court, whether he shall be compelled to answer the said plaintiff's bill, and humbly prays to be dismissed with his reasonable costs in this behalf sustained. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2137.

B. Plea to Revivor, Defendant Never Administrator.

(Title and commencement as before.)

That the said W. D. M. H. (the original defendant), at the time of his decease, was a citizen of and resident in the state of C., and that his last will and testament was duly proved and allowed in the county of S. F., in the said state of C.; and that this defendant was named as one of the executors thereof, and duly appointed as such by the said court of probate, and that this defendant has not been appointed an executor of the said will, or an administrator upon the estate of the said W. D. M. H., by any court of probate or other court in the state of M.; that at the time when service of the plaintiff's bill was made upon him, he was, and has since continued to be, a citizen of the said state of C., that he was then casually within said state of M., and for a temporary purpose only, and at that time had no assets of the estate of the said W. D. M. H. in his possession or under his control. All which matters and things this defendant doth aver to be true, and pleads the same to the said bill of revivor, and demands

the judgment of this honorable court whether he ought to be compelled to make any answer thereto, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

H. F. T.

(Jurat.)

(Held a good plea in *Mellus v. Thompson*, 1 Cliff. 125, 16 Fed. Cas. No. 9,405; 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2128.

VIII. Plea to Bill for Rescission, Plaintiff Not Administrator.

(Title, etc., as in I.)

These defendants, by protestation, etc., to the matter in said bill contained, and to so much thereof as sets forth that said E. C. is the administrator of the estate of said S. R. A., and to so much thereof as relates to any contract of purchase between said S. R. A. and these defendants, and seeks to have such contract rescinded, and prays for relief in the premises, and that these defendants may be required to refund to said E. C. all the money paid by S. R. A. upon the said purchase, and that the notes given in payment therefor may be given up to be cancelled, and that the plaintiff may be repaid all damages and expenses which said S. R. A. may have suffered by reason of the premises, do thereunto plead, and for plea say that said E. C. is not administrator as in the bill mentioned, or the legal representative of said S. R. A., duly appointed and qualified to act as therein set forth. All which matters and things these defendants aver to be true, and plead the same to so much of said bill as aforesaid, and pray judgment of this honorable court, whether they ought to be required to make any other or further answer thereunto. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2126.

IX. Plea, Defendant No Interest.

(Title and commencement as in I.)

As to so much of and such parts of the plaintiff's bill as charges that this defendant is interested in the personal estate of A. B., the testator in the said bill named, and seeks an account of the said testator's personal estate; this defendant pleads thereto, and for plea saith that he is merely a subscribing witness to said testator's will, and in no wise interested therein; and this defendant avers that he has not, nor ever had, or pretended to have, nor

does he or did he ever claim any right, title or interest whatsoever in the personal estate of the said testator, or any part thereof, and that the said plaintiff has no right to institute this, or any other suit against him in respect thereof. All which said matters and things this defendant doth aver and plead in bar to so much of the said plaintiff's bill as hereinbefore particularly mentioned and pleaded to. And this defendant, not waiving his said plea, but relying thereon, and for better supporting the same, for answer to so much of the said bill as aforesaid, saith he denies that he now is, or ever was, interested in the personal estate of the said testator or any part thereof. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2127.

X. Plea of Decree of Record.

(Title and commencement as above.)

As to so much and such part of the said plaintiff's bill as seeks to compel this defendant either to admit assets of his late father I. M., deceased, came to his hands, sufficient to answer and satisfy the said plaintiff's demand in the said bill mentioned, or to set forth a full and perfect inventory and account of all the personal estate of his this defendant's said father, come to the hands of this defendant, or to the hands of any other person or persons or his use, with the nature, kind and value thereof, and of every part thereof, and of all sums of money come to the hands of this defendant, or any other person or persons for his use, for or on account of the real estates of this defendant's said father, or the rents or profits thereof (charged with the several legacies in the said testator's will, and in the said bill also mentioned to be given and bequeathed to and for the younger children of the said testator in the said will, and in the said bill also respectively named); and also to set forth the annual value of such real estates; or that this defendant may thereout pay to the said plaintiff the sum of \$———, in the said plaintiff's bill mentioned, with interest for the same from the time of the said testator's death; this defendant doth plead thereto, and for plea saith that at the term of ———, in the year ———, M. M., since deceased, together with P. M., deceased, and late the wife of the said plaintiff, and S. M. and H. M. respectively, infants, by the said M. M., their sister

and next friend (and which said M. M., P. M., the said plaintiff's late wife, S. M. and H. M. were the daughters and younger son of the testator I. M., all since deceased), exhibited their bill of complaint in this honorable court, against E. P., and R. T., esqs. (both since deceased), and this defendant, as eldest son and heir-at-law of the said testator I. M., thereby stating, etc., etc., and praying that the legacies given and bequeathed by the said testator in and by his said will, to the said plaintiff M. M., as one of the younger children, might be paid, and the legacies or shares of the rest of such younger children, all of whom were infants, might be properly secured for their benefit, and a suitable allowance made thereout for their maintenance and education during their respective minorities, to which said bill this defendant, who was then an infant, put in his answer by A. B., his guardian, and the said other defendants respectively also put in their answers thereto, and submitted to this honorable court what right and interest the said plaintiff M. M. was entitled to under her said father's will, and the said cause afterwards and on or about the ——— day of ——— came on to be heard, and a decree was then pronounced therein whereby it was referred to C. D., esq., then one of the masters of this honorable court, to take an account of certain stock, which the said testator by his said will had given and bequeathed among and to his children, and the usual accounts of personal estate, funeral and testamentary expenses and debts of the said testator, and an account of the rents and profits of the said testator's real estates were thereby directed, and which said decree was afterwards, and on or about ———, duly signed and enrolled; and the said master afterwards, in pursuance of the said decree, took the said accounts, and by his report, bearing date the ——— day of ———, which was afterwards confirmed, stated, etc. (all that was done by the master), and the said share so reported due to the said P. M., since deceased, was afterwards, in pursuance of an order of this honorable court, since her marriage with the said plaintiff in the present suit, on or about the ——— day of ———, duly assigned and transferred to, and accepted by him, in full satisfaction and discharge of

all the right and interest which he said wily, or the said plaintiff — this suit be for right, or either of them, but, or could have, in or to the personal estate of the said testator, or any part thereof; all of which matters and things this defendant doth aver and plead in bar to so much of the said plaintiff's bill as hereinbefore particularly mentioned; and prays judgment of this honorable court whether he should make any further answer to so much of the said bill as is hereinbefore pleaded to. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2128.

XI. Plea of Former Suit Depending, Witnesses Examined.

(Title and commencement as in I.)
That at a term of the ——— court ———, which was held in the year ———, the said present plaintiff exhibited his bill of complaint in this honorable court against this defendant and one L. Y., for an account of the moneys raised by the sale of the plantations and other estates in the said plaintiff's present bill mentioned, and claiming such shares and proportions thereof, and such rights and interests therein, as he now claims by his present bill; and praying relief against this defendant in the same manner and for the same matters, and to the same effect as the said plaintiff now prays by his said present bill; and this defendant and the said L. Y. appeared and put in their answers to the said former bill, and the said plaintiff replied thereto, and witnesses were examined on both sides, and their depositions duly published, and the said former bill and the several proceedings in the said former cause, as this defendant avers, now remain depending, and as of record in this honorable court, the said cause being yet undetermined and undismissed; all which several matters and things this defendant doth aver, and pleads the said former bill, answer and the several proceedings in the said former suit, in bar to the said plaintiff's present bill; and humbly demands the judgment of this honorable court, whether he shall be put to make any further or other answer thereto; and prays to be hence dismissed with his costs and charges in this behalf sustained. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2120.

XII. Plea of Stated Account.

(Title and commencement as in I.)

As to so much and such parts of the

said plaintiff's bill as seeks an account of and concerning the dealings and transactions therein alleged to have taken place between the said plaintiff and this defendant, at any time before the ——— day of ———, in the year ———, this defendant for plea thereto saith, that on the ——— day of ———, which was previously to the said bill of complaint being filed, the said plaintiff and this defendant did make up, state, and settle an account in writing, a counterpart whereof was then delivered to the said plaintiff, of all sums of money which this defendant had before that time, by the order and direction, and for the use of the said plaintiff received, and of all matters and things thereunto relating, or at any time before the said ——— day of ———, being or depending between the said plaintiff and this defendant (and in respect whereof the said plaintiff's bill of complaint has been since filed), and the said plaintiff, after a strict examination of the said account, and every item and particular thereof, which this defendant avers according to his best knowledge and belief to be true and just, did approve and allow the same, and actually received from this defendant the sum of \$——, the balance of the said account, which by the said account appeared to be justly due to him from this defendant; and the said plaintiff thereupon, and on the ——— day of ———, gave to this defendant a receipt, or acquittance for the same, under his hand, in full of all demands, and which said receipt or acquittance is in the words and figures following (that is to say), (here state the receipt verbatim) as by the said receipt or acquittance, now in the possession of this defendant, and ready to be produced to this honorable court, will appear. Therefore, etc. (Conclude as above.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2131.

XIII. Conclusion of Plea of Release.

Therefore this defendant pleads the said release in bar to so much of the said plaintiff's bill as is hereinbefore particularly mentioned, and humbly prays the judgment of this honorable court, whether he ought to be compelled to make any further answer to so much of the said bill as is before pleaded unto; and this defendant, not waiving the said plea, but insisting

thereon for answer to the residue of the said bill, and in support of his said plea saith, he denies that the said release was unduly obtained by this defendant from the said plaintiff, or that the said plaintiff was ignorant of the nature and effect of such release, or that the consideration paid by this defendant to induce the said plaintiff to execute the same, was at all inadequate to the just claims and demands of the said plaintiff against this defendant, in respect of the several dealings and transactions in the said bill mentioned, or any of them; and this defendant denies, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2131.

XIV. Plea of Will.

(Title and commencement as in I.)

As to so much and such part of the plaintiff's bill as seeks (that a receiver may be forthwith appointed to receive the rents and profits of the real estates, late of John Thompson, deceased, in the said bill named, and now in the possession of this defendant), and that this defendant may account with the said plaintiff for the rents and profits thereof, and that this defendant may be restrained by the order and injunction of this honorable court from felling, etc., timber, etc., growing thereon, or which seeks to set aside the will of the said John Thompson, or which seeks any relief relative thereto, this defendant doth plead thereto, and for this plea saith, that the said John Thompson being before, and at the time of making his will, seised to him and his heirs, of and in divers parcels of real estate, in the several counties of ———, of the yearly value of \$——, or thereabouts, and being of sound mind, memory, and understanding, duly made and published his last will and testament in writing, bearing date the ——— day of ———, which was duly executed and attested, and thereby gave, etc. (setting forth the will, under which the defendant had an estate for life in the testator's real estate, with remainder, etc., and that the testator appointed the defendant executor of his said will), and the said John Thompson being so seised or entitled as aforesaid, died on the ——— day of ———, without having altered or revoked his said will; and this defendant, soon after the death of the said testator entered on the said real estates

devised to him in manner aforesaid, and has ever since been in the enjoyment or receipt of the rents and profits thereof, etc. (Conclude as above.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2132.

XV. Plea of Purchase Without Notice of Fraudulent Conveyance.

This defendant by protestation, etc. (title and commencement as above), as to so much of the said bill as seeks an account of what is due and owing to the said plaintiff, in respect of the annuity of \$—— therein mentioned, and stated to be charged upon, and issuing out of the premises therein and hereinafter mentioned, this defendant doth plead thereto, and for plea saith, that A. B., previously to and on the ——— day of ———, 18——, was, or pretended to be, seised in fee-simple, and was in, or pretended to be in, the actual possession of all those parcels of real estate, in the said bill mentioned and described, free from all incumbrances whatsoever; and this defendant, believing that the said A. B. was so seised and entitled, and that the said premises were in fact free from all incumbrances, on the ——— day of ———, agreed with the said A. B. for the absolute purchase of the fee-simple and inheritance thereof; whereupon certain indentures of lease and release, bearing date respectively on, etc., between the said A. B. of the one part, and this defendant of the other part, were duly made and executed; and by the said indenture of release the said A. B., in consideration of the sum of \$—— paid to him by this defendant, bargained, sold, released, and confirmed unto this defendant, all, etc. (set out the parcels verbatim from the deed), to hold unto, and to the use of this defendant, his heirs and assigns, forever; and in the said indenture of release is contained a covenant from the said A. B. with this defendant, that he, the said A. B., was absolutely seised of the said premises, and that the same and each of them and every part thereof were and was free from all incumbrances; as by the said indentures of lease and release respectively, reference being there to had, will more fully appear; and this defendant doth aver, that the said sum of \$——, the consideration money in said indenture of release mentioned, was actually paid by this defendant to the said A. B. at the time

the said indenture of release bears date; and this defendant doth also aver, that at or before the respective times of the execution of the said indentures of lease and release, by the said A. B. and this defendant, and of the payment of the said purchase-money, he, this defendant, had no notice whatsoever of the said annuity of \$——, now claimed by the said plaintiff, or of any other incumbrance whatsoever, that in any wise affected the said premises, so purchased by this defendant as aforesaid, or any of them, or any part thereof; and this defendant insists that he is a bona fide purchaser of the said premises for a good and valuable consideration, and without notice of the said annuity claimed by the plaintiff; all which matters, and things this defendant doth aver and plead in bar to so much of the said plaintiff's bill as is hereinbefore particularly mentioned; and prays the judgment of this honorable court, whether he should make any further answer to so much of the said bill as is hereinbefore pleaded to; and this defendant not waiving his said plea, but relying thereon, and for better supporting the same, for answer saith, that he had not at any time before, or at the time of purchasing the said premises, or since, until the said plaintiff's bill was filed, any notice whatsoever, either expressed or implied, of the said annuity of \$——, claimed by the said plaintiff, or that the same or any other incumbrance whatsoever was charged upon or in any wise affected the said premises so purchased as aforesaid, or any of them, or any part thereof; and this defendant denies, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2133.

XVI. Plea of Want of Proper Parties.

(Title and commencement as in I.)
As to so much of the said plaintiff's bill as seeks an account from this defendant, as executor and heir-at-law of H. E., esq., deceased, in the said bill named, this defendant's late brother, for what remains due and owing upon the bond in the said bill mentioned, bearing date the —— day of ——, in the year ——, and payment by this defendant as such executor and heir-at-law of the said H. E., deceased, as aforesaid, of what shall be found due on taking such account; this defendant doth plead there-

to, and for plea saith, that no part of the sum of \$—— for securing the repayment whereof the said bond was executed, was paid to or received by the said H. E., but that the whole was paid unto A. W., in the said bond and in the said bill also named, and received by him for his sole use, and that the said H. E. was only surety for the said A. W., and that the said plaintiff afterwards accepted a composition for what he alleged to be due on said bond from the said A. W. without the privity of the said H. E. in his lifetime, or this defendant since the death of the said H. E., which took place on or about the —— day of ——, as in the said bill mentioned, since which no demand has been made on this defendant for any money alleged to be due on the said bond; and that the said A. W. died several years ago, seised of considerable real estates, and also possessed of a large personal estate; and that his heir-at-law, or the devisee of his real estate, and also the representative of his personal estate, ought to be, but are not, made parties to the said bill. Therefore, etc. (Conclude as in II.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2135.

XVII. Plea to Supplemental Bill, Matters Well Known at Filing of Original Bill.

(Title and commencement as in I.)
That the said matters and things in the said plaintiff's present bill, stated and set forth by way of supplement, arose, and were well known to the said plaintiff, before and at the time the said plaintiff filed his original bill in this cause, and that such said several matters and things can now be introduced, and ought so to be, if necessary, by amending said original bill. Wherefore, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2137.

XVIII. Plea That Discovery Sought Is Privileged.

(Title and commencement as in I.)
As to so much and such part of the said bill as seeks a discovery from this defendant of the title of W. W. esq., another defendant in the said bill named, to all or any of the messuages, lands, etc., late of C. W., esq., his late grandfather, deceased, in the said bill also named, this defendant doth plead thereto, and for plea saith, that he, this defendant, is duly admitted and

sworn an attorney of ———, and also a solicitor of this honorable court, and has for several years past practised and now practises as such; and this defendant was employed by C. W., esq., deceased, the late father of the said other defendant W. W., in the lifetime of the said C. W., and since his decease has also been employed in that capacity by the said other defendant J. W., the mother and guardian of the said W. W. during his minority, and by the said W. W. since he attained his age of twenty-one years; and in that capacity only, or by means of such employment only, has had the inspection and perusal of any of the title deeds of and belonging to the said estate, or any part or parts thereof, for the use and service of his said clients, and therefore ought not, as this defendant is advised, to be compelled to discover the same. Wherefore this defendant doth plead the several matters aforesaid, in bar to such discovery as aforesaid is sought by the said bill, and humbly prays the judgment of this honorable court, whether he is bound to make any further or other answer thereto. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2136.

PLEAS.

I. Commencements, 982

- A. *Of First Plea When Special*, 982
- B. *Of Plea Where Defense Arose After Commencement*, 982
- C. *Of Second or Subsequent Plea*, 982
- D. *Of Plea to Particular Count*, 982

II. Conclusions, 982

- A. *To the Country*, 982
- B. *With Verification*, 982
- C. *With Verification by Record*, 983

III. Plea in Abatement as to Part, 983

IV. To New Assignment, 983

V. Common Traverse, 983

VI. Special Traverse, 984

VII. Relictas, 984

- A. *In Assumpsit*, 984
- B. *In Debt*, 984

VIII. Comperuit Ad Diem, 984

IX. Notice of Special Matter With General Issue, 985

CROSS-REFERENCES:

ABATEMENT, PLEAS OF:

- Plea in Abatement, Alien Enemy;
- Plea in Abatement, Coverture of Plaintiff;
- Plea in Abatement, Coverture of Defendant;
- Plea in Abatement, Death of Plaintiff;
- Plea in Abatement, Misnomer of Defendant;
- Plea of Nul Tiel Person Rerum Natura.

ACCORD AND SATISFACTION:

- Plea in Covenant;
- Plea of Accord and Satisfaction in Case.

ACCOUNT AND ACCOUNTING:

- Plea That Defendant Has Fully Accounted;
- Plea That Defendant Never Was Bailiff;
- Plea That Defendant Was Not Bailiff;
- Plea That Defendant Did Not Receive More Than His Share.

ANIMALS:

- Plea, Dog Killed Worrying Sheep.

ANOTHER ACTION PENDING:

- Plea of Autre Action Pendant.

ARBITRATION:

- Plea of Award.

ARRAIGNMENT AND PLEA:

- Plea of Jurisdiction (a, b);
- Plea in Abatement to Indictment; Misnomer;
- Plea in Abatement, No Preliminary Examination;
- Plea of Autrefois Acquit;
- Plea of Autrefois Convict;
- Plea of Former Jeopardy;
- Plea, Pardon;
- General Issue (to Indictment);
- Special Plea (to Indictment);
- Plea of Nolo Contendere;
- Entry of Plea of Nolo Contendere.

ASSAULT AND BATTERY:

- Special Plea of Son Assault Demesne;
- Special Plea, Molliter Manus Impositum To Keep the Peace.

CONFESSION AND AVOIDANCE:

- Plea in Confession and Avoidance, Justification;
- Plea in Confession and Avoidance, Release.

ASSUMPSIT:

- Plea of Non-assumpsit.

BONDS:

- Plea of Non Est Factum.

CORPORATIONS:

Plea of Mandamus of Incorporation;
Plea, Nul Tiel Corporation.

COVENANTS, ACTION OF:

Plea That Premises Are Not Out of
Repair;
Plea of Release.

DEOWER, PROCEEDINGS TO RECOVER:

Plea by Defendant by Guardian,
That He Was Always Ready To
Render Dower;
Plea Ne Unques Se, Sic, Que.;
Plea Ne Unques Accouple.

DURESS:

Plea of Duress of Imprisonment;
Replication by Way of Traverse to
Plea of Duress.

EASEMENTS:

Plea, Private Way by Prescription
by Freeholder;
Plea, Prescriptive Right of Way
Where Defendant Has Closes at
Both Ends;
Plea, Right of Way by Non-existing
Grant.

EJECTMENT:

Plea in Ejectment, General Issue;
Plea to Suggestion for Mesne Profits.

EMINENT DOMAIN:

Plea by Owner in Condemnation Pro-
ceedings, Jurisdiction;
Plea Setting Up Condemnation Pro-
ceedings.

EQUITY:

See Pleas in Equity.

ERRORS, ASSIGNMENT OF:

Special Plea to Assignment of Er-
ror, Release;
Plea to Assignment of Error, Death
as an Error of Fact;
Plea to Assignment of Error, Cover-
ture as an Error of Fact.

ESTOPPEL:

Plea in Estoppel;
Plea in Estoppel in Pais, Inconsist-
ent Affidavit;
Plea, Estoppel in Pais, Silence.

EXECUTORS AND ADMINISTRATORS:

Plea of Ne Unques Executor.

FALSE IMPRISONMENT:

Justification of Imprisonment on Sus-
picion of Felony;
Plea of Justification by Officer;
Plea, Justification by Justice of the
Peace.

FRAUD AND DECEIT:

Plea, False Representation as to Ex-
istence of Patent.

FRAUD, STATUTE OF:

Plea of Statute of Frauds on Guar-
anty (a, b);

Plea of Statute of Frauds to Bill for
Specific Performance.

GRAND JURY:

Plea in Abatement, Full Jury Not
Present;
Special Plea, Jurors Not Properly
Selected;
Plea in Abatement, Grand Juror Dis-
qualified (a, b).

GUARANTY:

Plea of Statute of Frauds to Declara-
tion on Guaranty.

INFANTS:

Plea in Abatement of Infancy of De-
fendant;
Plea in Abatement of Infancy of
Plaintiff;
Plea of Infancy as Bar;
Plea to Assignment of Error of In-
fancy as an Error of Fact.

INHERITANCE:

Plea of Rien Per Descent by Heir.

INNS AND INNKEEPERS:

Plea by Innkeeper Justifying Turn-
ing Plaintiff Out of Inn.

JEOPARDY:

Plea, Discharge of Jury Without
Verdict.

JUDGMENT RECORDS:

Retraxit, Entry of.

**JUDGMENTS AND DECREES, ENFORCEMENT
OF:**

Plea of Nul Tiel Record in Action on
Judgment;
Plea of Payment of Judgment;
Plea, No Appearance in Foreign
Court (a, b).

JURIES AND JURORS:

Plea to Challenge of Jury.

JURISDICTION:

Plea to the Jurisdiction (a, b).

LANDLORD AND TENANT:

Plea, No Rent in Arrear;
Plea of Assignment by Assignee Be-
fore Rent Became Due;
Plea of Assignment and Acceptance
of Assignee;
Plea, Traverse of Assignment;
Plea of Eviction;
Plea That Lessor Was Seized for
Life Only;
Plea That Defendant Did Repair;
Plea, Premises Not Out of Repair;
Plea, Defendant Unable To Obtain
Possession;
Plea by Assignee of Tenant, Assign-
ment.

LIBEL AND SLANDER:

Plea, Justification of Words of
Theft;

See "How To Use This Volume," Introduction, page v.

- Plea, Justification of Words of Perjury;
 Plea to Slander of Plaintiff's Ship.
- LIBERUM TENEMENTUM:**
 Plea in Trespass Quare Clausum Fregit.
- LIMITATION OF ACTIONS:**
 Plea of Actio Non Accrevit Infra Sex Annos;
 Plea of Non-assumpsit Infra Sex Annos.
- NOTICE OF DEFENSE:**
 Notice, With Plea of General Issue.
- NUISANCE:**
 Plea in Nuisance, Not Guilty;
 Plea Justifying Removal.
- PARENT AND CHILD:**
 Affidavit of Defense by Parent Alleging Support of Child Gratuitous.
- PARTIES:**
 Plea of Non-joinder of Plaintiff;
 Plea of Non-joinder of Defendant;
 Plea in Equity for Want of Proper Parties.
- PARTITION:**
 Plea Non Tenent Insimul;
 Plea That Petitioner Was Not in Possession;
 Plea by Confession in Partition.
- PAYMENT:**
 Plea in Assumpsit of Payment;
 Plea of Payment in Debt;
 Plea of Solvi Post;
 Plea of Payment in Covenant.
- PERFORMANCE:**
 Plea of Performance in Covenant;
 Plea in Excuse for Non-performance in Covenant, Apprentice Left Service;
 Plea of Performance in Debt on Bond;
 Plea in Excuse of Performance in Debt on Bond, Non-performance of Condition Precedent;
 Plea in Excuse of Non-performance, Non-payment of Purchase Price.
- PLEA IN EQUITY:**
 Plea in Equity, Title and Commencement of Plea;
 Plea in Equity, Conclusion;
 Plea to Part and Answer to Residue;
 Plea in Equity of Infancy of Plaintiff, No Prochein Ami;
 Plaintiff an Alien Enemy;
 Plea in Abatement, Coverture of the Plaintiff;
 Plea in Abatement, Plea of Lunacy;
 Plea, Defendant Never Administrator;
- Plea to Bill by Administrator, Supposed Intestate Living;
 Plea to Bill of Revivor, Plaintiff Not Administrator;
 Plea to Revivor, Defendant Never Administrator;
 Plea to Bill for Rescission, Plaintiff Not Administrator;
 Plea, Defendant No Interest;
 Plea of Decree of Record;
 Plea of Former Suit Depending, Witnesses Examined;
 Plea of Stated Account;
 Conclusion of Plea of Release;
 Plea of Will;
 Plea of Purchase Without Notice of Fraudulent Conveyance;
 Plea of Want of Proper Parties;
 Plea to Supplemental Bill, Matters Well Known at Filing of Original Bill;
 Plea That Discovery Sought Is Privileged.
- PUIS DARREIN CONTINUANCE:**
 Plea PUIS Darrein Continuance (in Bank);
 Plea PUIS Darrein Continuance at the Circuit.
- QUO WARRANTO:**
 Plea to an Information Against a Corporation.
- RECAPTION:**
 Plea, Recaption in Justification of Trespass.
- RELEASE:**
 Plea in Assumpsit;
 Plea, Release of Party Jointly Liable.
- REPLEVIN:**
 Plea to Avowry, Damage Feasant;
 Avowry Where Part of Rent Is Paid;
 Cognizance for Rent;
 Plea in Bar, Property in Defendant or Stranger;
 Plea to Avowry, Damage Feasant, Denial of Title of Defendant;
 Plea to an Avowry of Damage Feasant, Escape of Cattle by Defective Fence;
 Plea in Bar to Avowry, Eviction;
 Plea to Avowry, Damage Feasant, Tender Before Impounding;
 Plea, Traverse to Avowry, No Rent in Arrear;
 Plea, Cepit in Alia Loco;
 Plea by Way of Traverse, Cognizance That Defendant Was Not Bailiff;
 Plea in Traverse to Cognizance, No Rent in Arrear in Part, Tender in Part.

RES JUDICATA:

Plea of Judgment Recovered in Assumpsit;

Plea of Judgment Recovered in Debt;

Plea of Retrahit in Former Action.

SUBRE FACIAS:

Plea to Subre Facias, Writ of Error Pending.

SERVICE OF PROCESS AND PAPERS:

Affidavit of Service of Demurrer, Plea, Replication or Other Pleading.

SET-OFF AND COUNTERCLAIM:

Plea of Set-Off in Assumpsit, General Form;

Plea of Set-off for Work and Labor;

Plea, Set-off on Judgment;

Plea, Set-off for Rent Due on Lease.

TENDER:

Plea of Tender Before Suit in Assumpsit;

Plea of Tender of Rent in Covenant.

TRESPASS:

Plea of License in Trespass;

Plea of Damage Feasant in Trespass for Removal of Goods;

Plea of Private Way in Trespass;

Plea of Public Way in Trespass.

TRESPASSING ANIMALS:

Plea of Escape of Cattle by Defect of Fences.

USURY:

Plea in Assumpsit of Usury.

WILLS:

Plea by Devisee, Rien Per Devise.

I. Commencements.**A. Commencement of a First Plea When Special.**

In the King's Bench (or C. P., or exchequer). ———— term. 1 Will. 4.

C. D. ats. A. B.

And the said defendant, by E. F., his attorney, comes and defends the wrong (or in trespass or ejectment, instead of the word "wrong," say "force") and injury, when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against the said defendant, because he says that, etc. (here state the subject-matter of the defense, after which conclude either to the country or with a verification, as the plea may require as in the following forms). 3 Chit. Pl. 906.

B. Commencement of Plea Where Matter of Defense Arose After Commencement of Action.

In the King's Bench (or C. P., or ex-

chequer). ———— next after, ———— in ———— term, 1 Will. 4. C. D. ats. A. B.

And the said defendant, by E. F., his attorney, comes and defends the wrong (or in trespass or ejectment, instead of the word "wrong," say "force") and injury, when, etc., and says that the said plaintiff ought not further to have or maintain his aforesaid action thereof against the said defendant, because he says that, etc. 3 Chit. Pl. 906.

C. Commencement of a Second or Subsequent Special Plea.

And for a further plea in this behalf, the said defendant, by leave (or if a third or subsequent plea, say "by like leave") of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that, etc. 3 Chit. Pl. 906.

D. Commencement of Plea To Particular Count or Particular Trespasses, Etc.

And for a further plea in this behalf, as to the said first count of the said declaration (or if in covenant, "as to the said supposed breach of covenant first above assigned," or if in trespass, "as to the breaking and entering, etc.," enumerating the particular trespasses mentioned in the declaration, and intended to be justified), the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that if the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that, etc. 3 Chit. Pl. 907.

II. Conclusions.**A. Conclusion of Plea to the Country.**

(After stating the subject-matter of the plea, if it be a denial of an allegation in the declaration, not being matter of record, the plea should conclude to the country, as follows): And of this the said defendant puts himself upon the country, etc. 3 Chit. Pl. 907.

B. Conclusion of Plea With a Verification.

(If the defense consists of an allegation of new matter, it should in general conclude with a verification, thus):

And this the said defendant is ready to verify, wherefore he prays judgment, if the said plaintiff ought (or if matter pending the suit be pleaded, say "ought further") to have or maintain his aforesaid action thereof against him, etc. 3 Chit. Pl. 907.

C. Conclusion of Plea With a Verification by the Record.

And this the said defendant is ready to verify by the said record, wherefore he prays judgment, if the said defendant ought to have or maintain his aforesaid action thereof against him, etc. 3 Chit. Pl. 907.

III. Plea in Abatement as to Part, and in Bar to the Rest.

And the said defendant in her own person comes and defends the wrong and injury, when, etc., and as to the said (first and second) counts of the said declaration, says that she did not undertake or promise in manner and form as the said plaintiff hath above complained against her, and of this she puts herself upon the country, etc.

And for a further plea as to the said (first and second) counts of the said declaration, the said defendant, by leave, etc. (as in I, C), because she says that she the said defendant, before and at the time of the making of the said several supposed promises and undertakings in the said (first and second) counts mentioned, and before and at the time the said supposed causes of action therein mentioned did accrue, was and still is the wife of T. J., who is still living, to-wit, at, etc. (venue); and this, etc. (conclude with a verification as in II, B).

And as to so much and such part of the said bill (or if in C. P., or by original, instead of the word "bill," say "writ and declaration") of the said plaintiff, as relates to the said several supposed promises and undertakings in the said third and subsequent counts mentioned; and as to those counts the said defendant prays judgment of that part of the said bill (or if in C. P., or by original, instead of the word "bill," say "writ and declaration") which relates to the said last mentioned supposed promises and undertakings, and of the said third and subsequent counts, and that they may be respectively quashed, because she says that at the time of the exhibiting the said bill (or if in C. P., or by original, say "at the time of the issu-

ing of the said writ") of the said plaintiff in this behalf, and the commencement of this suit, she was and still is married to the said T. J., who is still living, to-wit, at, etc. (venue), aforesaid; and this she is ready to verify, wherefore because the said T. J. is not named in the said bill (or if in C. P., or by original, instead of the word "Bill," say "writ and declaration") in this behalf she prays judgment of so much and such part of the said bill (or if in C. P., or by original, instead of the word "bill," say "writ and declaration") as relates to the said supposed promises and undertakings in the said third and subsequent counts mentioned. And also of the said third and subsequent counts, and that the same may in this behalf be quashed, etc. 3 Chit. Pl. 907; Archb. Pl. 301; Burr. App. 373, §675.

IV. Pleas To a New Assignment, General Issue and Special Plea.

And the said defendant, as to the said several supposed trespasses above newly assigned, says that he is not guilty thereof, or of any part thereof, in manner and form as the said plaintiff hath above thereof complained against him. And of this he puts himself upon the country, etc.

And for a further plea in this behalf, as to the said several supposed trespasses above newly assigned, the said defendant, by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that, etc. (here state the subject-matter of the plea, the conclusion with a verification is thus): And this he the said defendant is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, in respect of the said supposed trespasses above newly assigned, etc.

G. H., defts. atty.

Burr. App. 410, §765; Yates' Forms 738.

V. Common Traverse.

And the said C. D., defendant in this suit, by J. L., his attorney, comes and defends the wrong and injury, when, etc., and says that the said plaintiff ought not to have or maintain his

aforsaid action against him, the said defendant, because he says that the windows of the said messuage or tenement were set in any part thereof rotten, in decay, or out of repair, in manner and form as the said plaintiff hath above complained against him, the said defendant. And of this he puts himself upon the country.

J. L., defendant's attorney.

Burr. App. 313, §628; Steph. Pl. (ed. 1844) 71.

VI. Special Traverse (Absque Hoc).

And the said C. D., defendant in this suit, by R. F., his attorney, comes and defends the wrong and injury, when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action against him, because he says that the said J. K., deceased, at the time of the making of the said indenture, was seised in his demesne, as of freehold, for the term of his natural life, of and in the said demised premises, with the appurtenances, and continued so seised thereof until, and at the time of his death; and that, after the making of the said indenture, and before the expiration of the said term, to-wit, on the _____ day of _____, in the year of our Lord _____, at _____ aforesaid, the said J. K. died; whereupon the term created by the said indenture wholly ceased and determined: Without this, that, after the making of the said indenture, the reversion of the said demised premises belonged to the said J. K., and his heirs, in manner and form as the said plaintiff hath, in his said declaration alleged. And this the said defendant is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action against him, etc.

R. F., defendant's attorney.

Burr. App. 343, §629; Steph. Pl. (ed. 1844) 190.

VII. Relictas.

A. *Relicta in Assumpsit.*

And the said C. D., defendant in this suit, by G. H., his attorney, relinquishing his said plea by him above pleaded, says that he cannot deny the action aforesaid of the said plaintiff, nor but that the said defendant did undertake and promise, in manner and form as the said plaintiff hath above thereof complained against him; nor but that the said plaintiff hath sus-

tained damages, by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned, to _____ dollars and _____ cents; besides his costs to be taxed.

G. H., attorney for defendant.

Burr. App. 431, §832.

B. *Relicta in Debt.*

And the said C. D., defendant in this suit, by G. H., his attorney, relinquishing his said plea, by him above pleaded, says that he cannot deny the action of the said plaintiff; nor but that the said writing obligatory is the deed of him the said defendant; nor but that he owes to the said plaintiff the said sum of _____ dollars above demanded, in manner and form as the said plaintiff hath above thereof complained against him.

G. H., attorney for defendant.

Burr. App. 431, §833.

VIII. Plea, Comperuit ad Diem.

Supreme court. C. D., I. N., and I. S. ads. A. B., assignee of J. K., sheriff of the county of _____.

And the said C. D., I. N., and I. S., defendants in this suit, by R. B., their attorney, come and defend the wrong and injury when, etc., and say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said C. D. did appear in the action commenced by the said writ in the said condition of the said writing obligatory mentioned, according to the form and effect of the said condition, by putting in special bail within twenty days after the return day specified in the writ of *capias ad respondendum* in the said condition, and in the said declaration of the said plaintiff above set forth (if the bail have been excepted to, and justified and here: "and by perfecting such bail [the same having been excepted to], according to the rules and practice of the said court"), as by the record of the said appearance (and of the justification of the said special bail) remaining in the said court before the justices thereof, to-wit, at the city hall in the city of New York (place where the proceedings are filed), more fully appears. And this they are ready to verify by the said record. Wherefore they pray judgment if the said plaintiff ought

to have or maintain his aforesaid action thereof against them, etc.

R. B., attorney for defts.

Burr. App. 372, §672; see Yates' Forms 475.

IX. Notice of Special Matter With General Issue.

(At the foot of the general issue, immediately following the attorney's signature, subjoin the notice in the following form): Sir: Please to take notice that the said defendant, at the trial of the above cause, will insist upon and give in evidence, under the general issue above pleaded, that (here give the substance of the notice, according to the facts; thus, in case of a notice of set-off, proceed as follows): the said plaintiff at the time of the commencement of the action aforesaid against the said defendant was and still is indebted unto him in the sum of (one thousand) dollars, lawful money of the United States of America, for divers goods, wares and merchandises, before that time sold and delivered by the said defendant to the said plaintiff, and at the special instance and request of the said plaintiff. And in the further sum of (one thousand) dollars, of like lawful money, for the work and labor, care and diligence of the said defendant, by the said defendant, and his servants before that time done, performed and bestowed in and about the business of the said plaintiff, and for the said plaintiff, and at his like request. And in the further sum of (one thousand) dollars, of like lawful money, for money before that time lent and advanced by the said defendant to the said plaintiff, and at the like request of the said plaintiff; and for other money by the said defendant, before that time paid, laid out and expended for the said plaintiff, and at the like request of the said plaintiff. And for other money by the said plaintiff, before that time had and received to and for the use of the said defendant. And also that the said plaintiff, before the commencement of this action, accounted together with the said defendant, of and concerning the said demand of the said plaintiff against the said defendant, and also of and concerning divers other sums of money and accounts between the said plaintiff and the said defendant, and upon such accounting the said plaintiff was found to be in arrear and indebted to the

said defendant, in the further sum of (one thousand) dollars, of like lawful money, which the said plaintiff undertook, and then and there faithfully promised the said defendant, well and truly to pay unto the said defendant, when the said plaintiff should be thereunto afterwards requested. Which said several sums of money, or so much thereof as will be sufficient for that purpose, the said defendant will set-off against the demand of the said plaintiff, to be proved at the trial, and have the balance certified in his favor. Dated the _____ day of _____, 1846.

Yours, etc.,

G. H., attorney for defendant.

To E. F., esq., attorney for plaintiff.

Burr. App. 342, §625.

PLEDGES.

I. Bill for Redemption, 985

II. Decree for Redemption, 986

III. Complaints, 986

A. *For Loss of Pledge*, 986

B. *For Injury to Pledge*, 987

C. *To Recover Excess of Note*, 987

CROSS-REFERENCE:

TROVER AND CONVERSION:

Answer, That Defendant Has Lien on Goods by Pledge.

I. Bill for Redemption of Goods Pledged.

Humbly complaining, sheweth unto your honors your orator, A. S., of, etc., against P. S., of, etc., that your orator having occasion for a sum of money for the purposes of his business, made application to said P. S., the said defendant, to lend him the same, and thereupon the said P. S., on or about _____, advanced and lent to your orator the sum of \$_____, and in order to secure the repayment thereof with interest, your orator deposited with the said defendant a box of tanned boot legs and tops, which were of the value of \$_____ and upwards, and at the same time executed and delivered to the said defendant a bill of sale of the said goods so deposited with him; but it was not meant and intended thereby, either by your orator or the said defendant, that the said transaction should amount to an absolute sale of the said goods to the said defendant, but it was expressly agreed between your orator and the

said defendant, that your orator should nevertheless be at liberty to redeem the same. And your orator further sheweth, that being desirous to redeem the said goods, he has frequently applied to the said P. S., and has offered to repay him the said sum of \$———, with lawful interest thereon, on having the said goods redelivered to him, with which just and reasonable requests your orator well hoped that the said P. S. would have complied, as in justice and equity he ought to have done. But now so it is (see **Bills and Answers**), etc. To the end, etc. (see **Bills and Answers**). And that the said defendant may answer the premises, and that an account may be taken of what is due to the said defendant for principal and interest in respect of the said loan of \$———, and that upon payment thereof by your orator the said defendant may be decreed and deliver over to your orator the said goods so deposited with him as aforesaid (and for further relief, see **Bills and Answers**). May it please, etc. (See **Bills and Answers**). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1939.

II. Decree for Redemption of Goods Pledged; Inquiry as to Overpayment.

It is ordered and decreed, that it be referred to A. B., esquire, master, etc., to take an account of what remained due on the, etc., the date of the last note exhibited in this cause, for principal and interest of the money advanced and lent by the defendant W. to the said C., the bankrupt, on the pledge of the jewels, plate, and effects mentioned in the original note from the defendant to the said C., dated, etc., and to compute the interest on so much of the principal as then remained due. And it is further ordered, that the said master do likewise take an account of the said jewels, plate, and effects, specified in the last-mentioned note, and see which of them remain in specie in the custody or power of the defendant, and what part thereof hath been sold or disposed of, by the defendant. And as to such part thereof as hath been so sold or disposed of, it is further ordered, that the said master do take an account of the real value thereof; and that the value of such part thereof as hath been so sold or disposed of by the defendant be applied

in the first place towards paying the interest, and then towards sinking the principal, of what shall be so found to have been due to the defendant for the money lent or advanced by him as aforesaid. And if upon the balance of the said account, anything shall be found to remain due to the defendant for principal or interest, then on payment thereof by the plaintiff to the said defendant at such time and place as the said master shall appoint, it is further ordered that the defendant do deliver to the plaintiff such part of the said jewels, plate, and effects as shall be found to remain in specie. But in default of such payment by the plaintiff to the defendant as aforesaid, it is further ordered that the said plaintiff's bill do from thenceforth stand dismissed out of this court with costs to be taxed by the said master. And in case it shall appear on the said account that the defendant is overpaid his said principal and interest, then it is further ordered that the said defendant do pay to the plaintiff so much as shall remain due to the plaintiff on the said account, and also to deliver to the plaintiff such part of the said jewels, plate, and effects as shall remain in specie, to be applied as part of the personal estate of the bankrupt, for the benefit of the creditors seeking relief under, etc. And the court doth reserve the consideration of interest of any money that may be found due from the defendant to the plaintiff, in case there shall be any such, and also the consideration of costs, till after the said master shall have made his report. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2238.

III. Complaints.

A. Complaint Against Pledgee for Loss of Pledge.

I. That on the ——— day of ———, 18——, at ———, the plaintiff delivered to the defendant (briefly designate the thing), the property of this plaintiff, of the value of ——— dollars, by way of pledge to the defendant to secure the sum of ——— dollars theretofore loaned by the defendant to the plaintiff (and interest thereon; or other indebtedness), which (pledge) the defendant received for that purpose, and agreed with the plaintiff to take good care of until it should be redeemed by the plaintiff.

II. That the defendant has failed to fulfill said judgment on his part, and on the contrary took so little care of, and so negligently kept said (pledge), that while it was in his possession for the purposes aforesaid, it was through his negligence lost, to the damage of the plaintiff ——— dollars. 1 Abb. Forms 417.

B. Complaint Against Pledgee for Injury to Pledge.

I. That on the ——— day of ———, 18——, at ———, the plaintiff delivered to the defendant (briefly designate the thing), the property of this plaintiff, of the value of ——— dollars, by way of pledge to the defendant to secure the sum of ——— dollars theretofore loaned by the defendant to the plaintiff (and interest thereon; or other indebtedness), which (pledge) the defendant received for that purpose, and agreed with the plaintiff to take good care of it until it should be redeemed by the plaintiff.

II. That the defendant, not regarding his promise, so negligently conducted in respect to said (pledge), and so carelessly used the same, that it became, by reason of his negligence and carelessness, greatly damaged (state briefly the injury, in its nature and extent, as the case was), to the damage of the plaintiff ——— dollars. 1 Abb. Forms 418.

C. Complaint by Pledgor of Note To Recover Excess.

I. That on the ——— day of ———, 18——, the plaintiff being then indebted to the defendant in the sum of ——— dollars, he delivered (or, indorsed, if the note was transferred by indorsement) to said defendant, as a collateral security for the payment of the same, a promissory note made by one M. N. for ———, bearing date on the ——— day of ———, 18——, and payable at ——— months after its date.

II. That at its maturity the note was collected by the defendant, and by the application of the moneys so received by him, said indebtedness was wholly paid and extinguished.

III. That after payment of said indebtedness there remained in the hands of the defendant a balance of ——— dollars, belonging to this plaintiff; payment of which the plaintiff demanded of the defendant on the ——— day

of ———, 18——, but no part thereof of has been paid. 1 Abb. Forms 179.

POLYGAMY.—See BIGAMY.

POOR LAWS.—See PAUPERS.

POOR PERSONS.—See PAUPERS.

POSSESSION.—See TRESPASS.

POSSESSION, WRIT OF.—See EJECTMENT.

POST-OFFICE.

I. Indictment for Mailing Obscene Matter, 987

II. Indictment for Mailing Obscene Book, 988

III. Indictment for Sending Lottery Circular Through Mail, 988

IV. Indictment for Robbing Mail, 988

V. Indictment for Assisting in Robbing Mail, 989

VI. Indictment for Fraudulent Use of Mail, 989

I. Indictment for Mailing Obscene Matter.

“Did unlawfully, wilfully, and knowingly deposit and cause to be deposited in the postoffice of the city of New York, for mailing and delivery by the postoffice establishment of the United States, a certain obscene, lewd, and lascivious paper, which said paper then and there, on the first page thereof, was entitled ‘Tenderloin Number, Broadway,’ and on the same page were printed the words and figures following,—that is to say: ‘Volume 11, number 27; trade-mark, 1892; by Lew Rosen: New York, Saturday, April 15, 1893; ten cents a copy, \$4.00 a year, in advance;’ and thereupon, on the same page, is a picture of a cab, horse, driver, and the figure of a female, together (underneath the said picture) with the word ‘Tenderloineuse,’ and the said paper consists of twelve pages, minute description of which, with the pictures therein and thereon, would be offensive to the court and improper to spread upon the records of the court because of their obscene, lewd, and indecent matters; and the said paper on the said twenty-fourth day of April, in the year one thousand eight hundred and ninety-three, was enclosed in a wrapper and addressed as follows,—that is to say: ‘Mr. Geo. Edwards, P. O. box 510, Summit, N. J.’—against

the peace of the United States and their dignity, and contrary to the statute of the United States in such case made and provided." *Price v. United States*, 163 U. S. 311, 17 Sup. Ct. 366, 41 L. ed. 727.

II. Indictment for Mailing Obscene Book.

"On the twelfth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, at the Southern District of New York, and within the jurisdiction of this Court, did unlawfully and knowingly deposit, and cause to be deposited, in the mail of the United States, then and there, for mailing and delivery, a certain obscene, lewd, and lascivious book, called 'Cupid's Yokes, or The Binding Forces of Conjugal Life,' which said book is so lewd, obscene and lascivious, that the same would be offensive to the Court here, and improper to be placed upon the records thereof; wherefore, the jurors aforesaid do not set forth the same in this indictment; which said book was then and there inclosed in a paper wrapper, which said wrapper was then and there addressed and directed as follows: G. Brackett, Box 202, Granville, N. Y." the second count avers, that the defendant, "on the twelfth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully and knowingly did deposit, and cause to be deposited, in the mail of the United States, then and there, for mailing and delivery, a certain publication of an indecent character, called 'Cupid's Yokes, or The Binding Forces of Conjugal Life,' which said publication is so indecent that the same would be offensive to the Court here, and improper to be placed on the records thereof; wherefore, the jurors aforesaid do not set forth the same in this indictment; which said publication was then and there inclosed in a wrapper, which said wrapper was then and there addressed and directed as follows, to-wit: G. Brackett, Box 202, Granville, N. Y." *United States v. Bennett*, 16 Blatchf. 338, 24 Fed. Cas. No. 14,571.

III. Indictment for Sending Lottery Circular Through Mail.

"Did unlawfully and knowingly deposit in the mail of the United States, and send to be conveyed by the said

mail, a certain letter and circular concerning a lottery, which said letter and circular was then and there of the tenor and in the words and figures following, that is to say: (copy of circular).

All prizes payable in full on presentation of ticket.

Official copy of drawings mailed as soon as received, which said letter and circular was then and there enclosed in an envelope and addressed as follows, that is to say: (copy of address).

The second count charged that the defendant "did unlawfully and knowingly deposit in the mail of the United States, and send to be conveyed by the said mail, a certain circular concerning a lottery, which said circular was then and there enclosed in an envelope, which said envelope was addressed as follows: (copy of address), and which said circular purported to be an announcement of the one hundred and fourteenth grand monthly distribution of the Louisiana State Lottery, to take place at New Orleans, Tuesday, November 11, 1879, describing the list of prizes, the plan of the lottery, a list of capital prizes, and a statement of their authority for, and method of, doing business." *United States v. Noelke*, 17 Blatchf. (U. S.) 554.

IV. Indictment for Robbing Mail.

"Eastern District of Pennsylvania, to-wit:

"The grand inquest of the United States of America inquiring for the Eastern District of Pennsylvania, upon their oaths and affirmations, respectfully do present, that James Porter, otherwise called James May, late of the eastern district aforesaid, yeoman, and George Wilson, late of the eastern district aforesaid, yeoman, on the 6th day of December in the year of our Lord one thousand eight hundred and twenty-nine, at the eastern district aforesaid, and within the jurisdiction of this Court, with force and arms in and upon one Samuel M'Crea, in the peace of God and of the United States of America then and there being, and then and there being a carrier of the mail of the United States, and then and there intrusted therewith, and then and there proceeding with the said mail from the city of Philadelphia to the borough of Reading, feloniously did make an assault, and him the said Samuel M'Crea in bodily fear and

danger then and there feloniously did put, and the said mail of the United States from him the said Samuel M'Crea then and there, feloniously, violently and against his will, did steal, take and carry away, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

"And the inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said James Porter, otherwise called James May, and the said George Wilson, afterwards, to-wit, on the same day and year aforesaid, at the eastern district aforesaid and within the jurisdiction of this court, with force and arms in and upon the said Samuel M'Crea, then and there being a carrier of the mail of the United States, and then and there intrusted therewith, feloniously did make an assault, and him the said carrier of the said mail then and there feloniously, violently, and against his will, did rob, contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America." *United States v. Wilson*, 7 Pet. (U. S.) 150, 8 L. ed. 640.

V. Indictment for Assisting in Robbing Mail.

The first count charged that the defendant did, "at Fayetteville, on the 1st of June, 1832, procure, advise, and assist Joseph I. Straughan to secrete, embezzle and destroy a mail of letters, with which the said Joseph I. Straughan was entrusted, and which had come to his possession, and was intended to be conveyed by post from Pittsborough, in the district aforesaid, to Fayetteville, also in said district, containing bank notes; the said Joseph I. Straughan being, at the time of such procuring, advising and assisting, then and there a person employed in one of the departments of the post-office establishment, to-wit, a carrier of the mail of the United States from Pittsborough aforesaid to Fayetteville aforesaid, contrary to the form of the act of Congress," etc.

The second count was in the following words: That the defendant "did procure, advise, and assist Joseph I. Straughan to secrete, embezzle and destroy a letter addressed by Joseph

Small to Joseph Baker, with which the said Joseph I. Straughan was intrusted, and which came to his possession, and was intended to be conveyed by post from Pittsborough, in the district aforesaid, to Fayetteville, aforesaid, containing sundry bank notes, amounting, in the whole, to sixty dollars, of a discrimination to the jurors aforesaid unknown, and of the issue of a bank to the said jurors also unknown; the said Joseph I. Straughan being, at the time of such procuring, advising and assisting, then and there a person employed in one of the departments of the post-office establishment, to-wit, a carrier of the mail of the United States from Pittsborough aforesaid to Fayetteville aforesaid, contrary to the form of the act of Congress," etc. *United States v. Mills*, 7 Pet. (U. S.) 138, 8 L. ed. 636.

VI. Indictment for Fraudulent Use of Mail.

The first count charges "that Flemming and Loring, pretending to be commission merchants at Chicago, and to be managers of an association or fund by them pretended to exist under the designation of Flemming & Merriam's 'Fund W,' for speculating and trading in grain, provisions, and stock, had devised a scheme and artifice to induce the sending and intrusting of moneys to them by divers other persons, for the investment and employment thereof, for those persons respectively, in such pretended association or fund, and the same moneys fraudulently to convert to the own use of them, the said Flemming and Loring, and thereby to defraud the said persons who should so send and intrust the same to them, which scheme was to be effected by opening correspondence with such persons by means of the post-office establishment of the United States, and by inciting such persons to open communication with them, the said Loring and Flemming, under the firm name of Flemming & Merriam. And that for the purpose of executing such scheme, defendants did place in the post-office at Chicago, ten letters and ten packets directed to divers persons, to the jurors unknown." *United States v. Flemming*, 18 Fed. 907, 908, 909.

POSTPONEMENT.—See CONTINUANCES.

PRACTICE.**CROSS REFERENCE:****PRACTICE:**

See Admiralty; Appeals; Attachment; Bills of Exceptions; Bills of Particulars; Bonds; Decedents' Estates; Decrees; Default; Demurrer to Evidence; Equity Jurisdiction and Procedure; Findings and Conclusions; Hearing; Infants; Issues in Pleading and Practice; Judgment Records; Judgments; Judgments and Decrees, Enforcement of; Juries and Jurors; Mandamus; Motions; New Trial; Notice; Orders of Court; Petitions; Process; Quo Warranto; References; Returns; Service of Process and Papers; Stipulations; Trial; Verdict; Writ of Error, and the various other titles cross-referred to in the above.

PRAECIPE.**CROSS-REFERENCE:****DOWER, PROCEEDINGS TO RECOVER:**

Praecipe for Writ of Dower.

RIGHT, WRIT OF:

Praecipe for Writ at Suit of Husband and Wife;

Praecipe for Writ of Right.

PRAYER FOR RELIEF.**I. Prayer for Relief to Complaint, 991****II. Prayer for Relief to Bill, 991****CROSS-REFERENCES:****ACCOUNT AND ACCOUNTING:**

Complaint To Correct an Account Stated;

Prayer for an Account of Rents, Profits and Sums Received by Mortgagee.

ADMIRALTY:

(See Libels in general.)

BILLS AND ANSWERS:

Introductory Words;

Prayer for an Account of Rents and Profits of Testator's Real Estate;

Prayer for an Account of Money Had and Received;

Prayer for an Account of Personal Estate;

Prayer for Production of Deeds and Papers;

General Prayer for Relief (always concluding prayer);

(And see Bills in general.)

BILLS AND NOTES:

Complaint on Two Notes, One Partly Paid.

BONDS:

Complaint on Bond for Payment of Money Only;

Complaint on Bond for Payment of Money Only, Pleading Legal Effect.

CORPORATIONS:

Complaint by Attorney-General To Dissolve Corporation for Exercising a Franchise Not Conferred by Law.

DIVORCE:

Complaint for Divorce on Ground of Adultery;

Complaint for Limited Divorce on Ground of Cruel and Inhuman Treatment;

Complaint for Divorce on Ground of Non-age.

DOWER:

Complaint for Admeasurement of Dower.

EJECTMENT:

Complaint in Ejectment, General Form;

Complaint in Ejectment by Widow for Dower (a, b).

ELECTIONS:

Complaint for Usurping an Elective Office.

HUSBAND AND WIFE:

Complaint Against Husband and Wife for Goods Sold for Her Separate Estate.

INHERITANCE:

Complaint Against Heir by Creditor of Deceased;

Complaint Against Heir or Devisee Where He Has Conveyed Land.

INSANE PERSONS:

Complaint Against Committee of Lunatic, Etc.

MORTGAGES:

Complaint by Mortgagee Against Mortgagor and Junior Incumbrancers To Foreclose Upon Default in Interest, Insurance Paid by Mortgagee, Outstanding Judgment;

Complaint by Mortgagee in Possession Against Parties Entitled To Redeem, Seeking Accounting and Payment or Strict Foreclosure;

Complaint on Note and Mortgage (Short Form);

Complaint To Redeem by Mortgagor Against Mortgagee;

Complaint To Redeem by Lessee.

See "How To Use This Volume," Introduction, page v.

PETITIONS:

(See Petitions in general.)

QUIETING TITLE:Complaint To Remove a Mortgage
Which Is a Cloud Upon Title.**REFORMATION:**Complaint To Reform a Conveyance
by Correcting Mistake in Bound-
ary.**REPLEVIN:**Complaint for Goods Wrongfully
Taken From Plaintiff's Possession.**RESCISSION AND CANCELLATION:**Complaint for Rescission of a Con-
tract and Repayment of Advances
on Ground of Fraud.**SALES:**Complaint Against Fraudulent Buyer
Seeking Injunction Restraining
Sale Pending Suit.**SPECIAL ASSESSMENTS:**Complaint To Enjoin a Municipal
Corporation From Deeding Land
Sold for Illegal Special Assess-
ment.**SPECIFIC PERFORMANCE:**Complaint for Specific Performance,
Vendor Against Purchaser;Complaint for Specific Performance
on an Exchange, Parties Having
Taken Possession;Complaint by Creditor for Perform-
ance of Agreement To Give Chat-
tel Mortgage.**I. Prayer for Relief to Complaint.**

Wherefore the plaintiff (or plain-
tiffs) demands judgment against the de-
fendant (or defendants) for the sum
of _____ dollars and _____
cents, together with interest thereon
from the _____ day of _____,
18____ (or, when the action is for the
recovery of sums which became pay-
able at different times, say, with in-
terest on _____ dollars thereof, from
the _____ day of _____, 18____,
and with interest on _____ dollars
thereof, from the _____ day of _____), together with the costs of
this action. 1 Abb. Forms 111.

**II. Prayer of Bill To Carry Trusts
Into Execution and To Ascertain
Rights of Parties.**

And that the said will and codicil
of the said testator may be established,
and the trusts thereof performed and
carried into execution, and that the
rights and interests of your orator and of
all parties under the same, in the real

and personal estate of the said testa-
tor may be ascertained and declared
by the decree of this honorable court;
and that an account may be taken by
and under the direction of this honor-
able court, of all the personal estate
and effects of the said testator, and of
the rents and profits of his real es-
tates come to the hands of the said
defendants, or any of them, or by their
or either of their order, or for their,
or either of their use, and also of
the funeral expenses and debts of the
said testator; and that the clear resi-
due of the said testator's personal es-
tate and effects may be ascertained,
and that the same may be invested
and secured for the benefit of your
orator; and that an account may be
taken of the real estates to which your
orator is entitled under the said will,
and that the rents and profits thereof
may be secured for your orator's ben-
efit during his minority; and if the
said defendants M. W., W. C., W. R.
E., and A. his wife, or any of them
shall appear to have any right to, or
interest in any of the estates which the
said testator has disposed of, or as-
sumed to dispose of, by his said will in
favor of your orator, that it may be
declared that they are bound to elect
conformably to the will, or to renounce
in favor of your orator the benefits
given to them respectively by such
wills; and if they shall elect to con-
firm the will, that they may be de-
creed to do all such acts as may be
necessary for confirming your orator's
title to the estates so devised; and if
they shall claim against the said will,
that the benefits given to them respec-
tively by the said will, may be se-
cured for your orator, or otherwise
that he may be compensated thereout
for what he may lose by the election
of the said defendants to claim against
the said will; and that if necessary, a
proper person may be appointed re-
ceiver of the rents and profits of the
said testator's real estates, with all
usual directions. (And for further re-
lief.) Curtis' Eq. Prec. 77.

PRELIMINARY EXAMINATION.**I. Complaint for Preliminary Examina-
tion, 992****II. Warrant for Arrest, 992****III. Oath to Complaining Witness, 993**

- IV. Deposition of Witnesses, 993
 V. Commitment Temporary Pending Examination, 993
 VI. Finding of Probable Cause on Preliminary Examination, 994
 VII. Warrant of Commitment, 994

CROSS-REFERENCE:

RAPE.

Complaint for Preliminary Examination, Assault With Intent To Commit Rape;

Complaint for Preliminary Examination for Rape.

I. Complaint for Preliminary Examination (a).

— to-wit —.

The information and complaint of C. D. of — (yeoman) taken this — day of — in the year of our Lord 18—, before the undersigned (one) of her majesty's justices of the peace, in and for the said [county] of — who saith that (etc., stating the offense).

Sworn before (me) the day and year first before mentioned at —.

J. S.

1 Archb. Cr. Pl. 31.

Complaint for Preliminary Examination (b).

Georgia, Houston county:

Before me, Wm. S. Moore, a justice of the peace, personally came Jesse Cooper, of said county, who being duly sworn, saith on oath, that on the fifth day of February, 1853, at Perry in said county of Houston, George W. Ray, Jr., of said county, did make a violent assault upon the person of William F. Taylor, of said county, with a wooden board or piece of plank, which he, the said George W. in his hands then and there, had and held, feloniously, wilfully and maliciously, did strike and inflict divers heavy blows, upon the arm and head of him, the said William F. Taylor, giving to the said William F. then and there, with the board or piece of plank aforesaid, upon his head aforesaid, one or more mortal wounds, of which said striking and blows aforesaid, the said Wm. F. Taylor did soon after die.

Sworn to and subscribed before me, Feb. 8th, 1853.

Wm. S. Moore, J. P.

Jesse his X mark Cooper.

Ray v. State, 15 Ga. 223, 231.

Note.—Introduced in evidence, sufficiency not in question.

Complaint for Preliminary Examination (c).

"The information of, etc., of, etc., who saith that," etc.

(Signature.)

1 Chit. Cr. L. 31.

Ray v. State, 15 Ga. 223.

Complaint for Preliminary Examination (Affidavit) (c).

"State of Michigan, county of Saginaw, ss.

The complaint and examination on oath and in writing of Reuben W. Andrus, taken and made before me, James W. Clark, a justice of the peace of the city of Saginaw, in said county, upon the 14th day of September, A. D. 1876, who being duly sworn, says that heretofore, to-wit: On the 12th day of September, A. D. 1876, at the township of Chesaning, and in the county aforesaid, Mary Jane Smith, Norris Alexander, Freeman Cargen, and Julia Cargen, feloniously, wilfully, and of their malice aforethought did kill and murder Charles Smith, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan, wherefore the said Reuben W. Andrus prays that the said Mary Jane Smith, Norris Alexander, Freeman Cargen and Julia Cargen may be apprehended and held to answer this complaint and further dealt with in relation to the same as law and justice may require.

R. W. Andrus.

Taken, sworn and subscribed before me the day and year first above written.

James W. Clark, Justice of the Peace."
 Cargen v. People, 39 Mich. 549.

II. Warrant for Arrest for Preliminary Examination (a).

"Whereas A. B. (naming accuser with his residence and degree) hath this day made information and complaint upon oath before me, E. F., Esq., one of his majesty's justices of the peace, in and for the said county, that C. D. (naming the offender and his addition and degree) did, etc." (then concisely stating the offense).
 "These are therefore, etc." 1 Chit. Cr. L. 43.

"These are, therefore, by authority of the state of Connecticut, to command

See "How To Use This Volume," Introduction, page v.

you to apprehend the said ———, and him have forthwith before some proper authority that he may be examined relative to said complaint and be dealt with according to law." *Hinman v. Taylor*, 2 Conn: 357.

Hereof fail not at your peril. Given under my hand and seal this ——— day of ———, A. D. 18——. 1 Chit. Cr. L. 43.

Note.—In warrant for arrest on complaint "for having feloniously, etc.," or "for assaulting, etc." "Against the form of the statute in such cases made and provided." 1 Chit. Cr. L. 43.

Note.—Description of party, name unknown, "the body of a man whose name is unknown, but whose person is well known, and who is employed as the driver of cattle and wears a badge, No. 573." 1 Chit. Cr. L. 40.

Warrant for Arrest for Preliminary Examination (b).

Georgia, Houston County: To Wm. H. Talton, deputy sheriff of said county, and to all lawful officers to execute and return:

Whereas Jesse Cooper of said county, hath this day made oath before me, William S. Moore, one of the justices of the peace for said county, that on the fifth day of February, 1853, at Perry in said county of Houston, George W. Ray, Jr., of said county, did make a violent assault upon the person of William F. Taylor, of said county, and with a wooden board or piece of plank, which he the said George W. in his hands then and there had and held, feloniously, wilfully and maliciously, did strike and inflict divers heavy blows upon the arm and head of him, the said William F. Taylor, giving to the said William F. then there with the board or piece of plank aforesaid, upon his head aforesaid, one or more mortal wounds, of which said striking and blows aforesaid, the said William F. Taylor did soon thereafter die.

These are, therefore, to command you, and each of you, forthwith to apprehend him, the said George W. Ray, junior, and to bring him before me or some other justice of the peace of the county aforesaid, to answer to the charge of murder committed by him, upon the person of the said William F. Taylor, on the said fifth day of Feb-

ruary instant, and to be further dealt with as the law directs.

Hereof fail not, and have you then and there this warrant.

Given under my hand and seal, this Feb'y. 8th, 1853.

Wm. S. Moore, J. P. (L. S.)

I have executed the within warrant by taking the body of the within named George W. Ray, junior, and have him before William S. Moore and David M. Brown, justices of the peace for the county of Houston.

W. H. Talton, Depy. Shff.

February 8th, 1853.

Filed in office, February 8th, 1853.

W. H. Miller, Clk.

Ray v. State, 15 Ga. 223.

Note.—Introduced in evidence, sufficiency not in question.

III. Oath to Complaining Witness on Preliminary Examination.

"You shall true answer make to such questions, as shall be demanded of you. So help you God." 1 Chit. Cr. L. 31, 78.

IV. Deposition of Witnesses Taken at Preliminary Examination.

"The examination of A. B. of, etc., taken on oath, etc." 1 Chit. Cr. L. 80.

V. Commitment Temporary Pending Examination.

City and county of New York, ss: To the policemen and constables of the said city, and every of them; and to the keeper of the city prison of the said city.

These are, in the name of the people of the state of New York, to command you, the said policemen and constables, and every of you, to convey to the said prison, the body of Louisa Nash, and deliver her to the keeper thereof; and you, the said keeper, are hereby commanded to receive into your custody, in the said prison, the body of the said Louisa, who stands charged before me, on the oath of Mary Murphy, with the offense of committing larceny, as a pickpocket, from the person of said Mary Murphy. And that you safely keep the said Louisa Nash in your custody, in the said prison, until the above said charge be investigated and determined by me, according to the statutes, in the case of arrest and examination of offenders, made and provided.

Given under my hand and seal, in

the said city, this thirteenth day of February, 1863.

(L. S.)
Police Justice.

People v. Nash, 5 Park. Crim. (N. Y.) 473, 470.

VI. Finding of Probable Cause on Preliminary Examination (a).

"The court finds that there are reasonable grounds for believing that the defendant, J. I. Bailey, committed the offense charged; it is therefore ordered by the court that the said defendant, J. I. Bailey, be committed to the jail of Reno county until the next regular term of the district court, to answer said charge." State v. Bailey, 32 Kan. 83, 3 Pac. 769.

Finding of Probable Cause on Preliminary Examination (b).

"It appearing to me that the offense of murder has been committed, and that there is sufficient cause to believe the within named W. A. Sehorn, defendant, guilty thereof, I order that he be held to answer the same, and committed to the sheriff of the county of Glenn." (Signed) "George Jansen, Justice of the Peace."

People v. Sehorn, 116 Cal. 503, 48 Pac. 495.

VII. Warrant of Commitment After Preliminary Examination.

"State of Kansas, Reno county. Before Geo. D. Barclay, J. P., of Reno Township. To the sheriff or any constable of Reno county:

Whereas, one J. I. Bailey was, on the twenty-first day of May, 1883, arrested on a warrant issued by A. W. McKinney, coroner of Reno county, charging the said J. I. Bailey with the killing, feloniously, of one J. P. Bailey, in said Reno county, state of Kansas; and whereas (said J. I. Bailey), after a preliminary examination, held before the undersigned justice of the peace, it is found that said J. P. Bailey has been feloniously killed, and that said J. I. Bailey is probably the guilty party, you are therefore commanded forthwith to take the said J. I. Bailey, and commit him to the jail of Reno county, there to remain until the next term of district court, to be dealt with according to law.

"Witness my hand, at my office in

said township, this 24th day of May, 1883.

Geo. D. Barclay, J. P."

State v. Bailey, 32 Kan. 83, 3 Pac. 769.

PRESCRIPTION.—See **EASEMENTS.**

PRINCIPAL AND AGENT.

I. Declarations, 994

- A. *For Selling on Credit Contrary to Orders*, 994
- B. *By Agent for Commission*, 995

II. Complaints, 996

- A. *For Selling for Worthless Bill*, 996
- B. *For Breach of Instructions as to Sale*, 996
- C. *Against Auctioneer for Selling Below Limit*, 996
- D. *Against Auctioneer for Selling on Credit*, 997
- E. *For Not Using Diligence To Sell Goods*, 997
- F. *For Carelessly Selling to Insolvent*, 997
- G. *For Money Collected*, 997
- H. *For Not Accounting*, 997

III. Answers, 997

- A. *Denial of Negligence in Selling Goods*, 997
- B. *Denial of Negligence in Giving Credit*, 997

CROSS-REFERENCES:

BANKRUPTCY:

- Proof of Debt by Agent or Attorney;
- Proof of Secured Debt by Agent.

BILLS AND NOTES:

- Complaint on Note Signed by Agent.

FACTORS AND BROKERS:

- Complaint by Stockbrokers for Money Advanced on Account of Their Principal.

I. Declarations.

- A. *Declaration Against Shopman for Selling on Credit Contrary to Express Orders.*

For that whereas the said plaintiff, before the making of the promises and undertakings of the said defendant in this and the (two) next succeeding counts, was, and from thence hitherto hath been and still is a linen draper, and the trade and business of a linen draper during all that time exercised and carried on, to-wit, at, etc., and thereupon, heretofore, to-wit, on, etc., at, etc., aforesaid, in consideration that

the said plaintiff, so being such linen draper as aforesaid, at the special instance and request of the said defendant, had then and there retained and hired the said defendant, to serve him, the said plaintiff, as a servant and shopman, in his said trade and business, for certain wages and reward, to be therefor paid by the said plaintiff to the said defendant, and also in consideration that the said plaintiff, at the like request of the said defendant, had then and there agreed to find, and provide board and lodging for him, the said defendant, whilst he, the said defendant should continue to serve him, the said plaintiff as aforesaid; the said defendant then and there undertook, and promised the said plaintiff, that he, the said defendant, would not, whilst he should continue to be the shopman of the said plaintiff as aforesaid, sell or deliver any goods or merchandises of the said plaintiff on credit, or otherwise, than for ready money, to any person or persons, without the consent or approbation of the said plaintiff; and that in case he, the said defendant, should sell and deliver goods or merchandises on credit, or otherwise than for ready money, without the said plaintiff's consent and approbation, and the same should not be duly paid for by the purchasers thereof, he, the said defendant, would pay to him, the said plaintiff, the prices for which he should so sell such goods and merchandises on credit, or otherwise than for ready money; yet the said defendant, not regarding his said promise and undertaking, after the making of the said promise and undertaking, and whilst he continued to be the servant and shopman of the said plaintiff as aforesaid, to-wit, on, etc., at, etc., aforesaid, without the consent and approbation of the said plaintiff, sold and delivered certain goods and merchandises, to-wit, etc., the property of the said plaintiff of a large value, to-wit, of the value of ——— dollars, of lawful money of the United States of America, for a certain sum of money, to-wit, the sum of ——— dollars, to certain persons, to the said plaintiff unknown, on the credit of a certain draft on certain persons trading under the style and firm of Messrs. R. & Co., which said draft, the said Messrs. R. & Co., afterwards, to-wit, on, etc., last aforesaid, being the day when the said

draft purported to be due and payable, wholly refused to pay, and which said last mentioned sum of money, still remains wholly due and unpaid to the said plaintiff, and the said plaintiff is in great danger of losing the same; nor have the said persons who so purchased the said goods and merchandises, duly paid the said sum of ——— dollars, or any part thereof, for the same, to-wit, at, etc., aforesaid. And the said plaintiff further says, that the said defendant, further disregarding his said promise, etc., afterwards, and whilst he continued to be the servant and shopman of the said plaintiff, as aforesaid, to-wit, on, etc., at, etc., aforesaid, without the consent and approbation of the said plaintiff, and against his will, sold and delivered certain other goods and merchandises, to-wit, etc., the property of the said plaintiff, of a large value, to-wit, of the value of ——— dollars, of like lawful money on credit, otherwise than for ready money, to one J. K., for a certain other sum of money, to-wit, the sum of ——— dollars, of like lawful money, and which said last mentioned sum of money still remains wholly due and unpaid to the said plaintiff, and the said plaintiff is in great danger of losing the same, to-wit, at, etc., aforesaid. Burr. App. 266, §530; 2 Chit. Pl. 348.

B. Declaration by Agent Against Principal for Commission According to Agreement.

"And the plaintiff says the defendant is a manufacturer of machines for making artificial ice; that on or about November, 1892, it entered into a contract with the plaintiff, whereby it agreed to make the plaintiff its agent to procure purchasers for said machines in and about Boston, and to pay him for his services in procuring such purchasers in said territory, as a commission, a price varying according to the size and capacity of said machines; that the amount which the plaintiff was to receive as said commission was to be determined by fixing a price which the defendant was to receive for each of the sizes sold by it, and the plaintiff was to be allowed to fix a sum in advance as the selling price of said machines, varying according to the sizes and capacity; that the defendant should protect the plaintiff in the matter of prices, and should not sell any machines to the

plaintiff's customers at prices less than those named by the plaintiff to said customers, without his consent; that for a thirty-ton machine, said advance was not to exceed \$2,500; that the plaintiff, on or about November 12, 1894, procured the Dorchester Hygeia Ice Company, of said Boston, as a purchaser of a thirty-ton machine, and fixed the price to be paid by said purchaser at \$2,500, in advance of the price to be received by said defendant for a machine of said size; in accordance with said agreement; that the defendant thereupon, in violation of its said agreement, proceeded to complete said sale at a price less than the price given to said Dorchester Hygeia Ice Company by the plaintiff, and at a price which deprived the plaintiff of a large portion of his commission upon said sale under said agreement, without the consent or knowledge of the plaintiff; that by reason of said breach of said agreement, the defendant became liable to the plaintiff in damages for the loss of his commission upon said sale, which he would have received under said agreement, and for compensation for his services in procuring said purchaser, and for all damages sustained by the plaintiff caused by the breach of said agreement, which, the plaintiff avers, is said sum of \$2,500; and that the defendant owes the plaintiff said sum of \$2,500, with interest thereon from the time of said sale." *Buffum v. York Mfg. Co.*, 175 Mass. 471, 56 N. E. 599.

II. Complaints.

A. Complaint Against Agent for Selling for Worthless Bill.

I. As in II, E, inserting at the *, for cash, or an approved bill or note at sixty days or less, and not otherwise (or according to the fact).

II. That the defendant did not use due diligence in selling the same, but negligently sold the same for a bad and insufficient bill of exchange, having four months to run, and which is worthless and of no value to the plaintiff (and although the same became payable before this action, is unpaid), to the damage of the plaintiff _____ dollars. 1 Abb. Forms 397.

B. Complaint Against Agent for Breach of Instructions as to Sale.

I. That on the _____ day of _____, 18____, at _____, the plain-

tiff employed the defendant, for a compensation, to sell _____ hogsheads of sugar of the value of _____ dollars, for the plaintiff; and that he received the same from the plaintiff for that purpose.

II. That in consideration of the premises, the defendant then promised the plaintiff to use due diligence to sell, and in selling the same for the plaintiff, and in obeying the reasonable directions of the plaintiff in regard to the sale thereof.

III. That the plaintiff afterwards, on or about the _____ day of _____, 18____, directed the defendant to sell said sugar at the price of _____, and not less, in case the same could be obtained by using reasonable diligence in that behalf.

IV. That said direction was a reasonable one, and the defendant, by using reasonable diligence, might and ought to have obtained that price for the sugar.

V. That the defendant did not use due and reasonable diligence in obeying said direction, and neglected to sell the said sugar according thereto, and by reason thereof, the said sugar being afterwards sold by the defendant for the plaintiff, produced _____ dollars less than it would have produced had the defendant used such due diligence to sell, and in selling the same; and thereby, also, the said sugar became much wasted and deteriorated in value, and the plaintiff incurred _____ dollars expenses in warehousing the same to his damage _____ dollars. 1 Abb. Forms 398.

C. Complaint Against Auctioneer, for Selling Below Seller's Limit.

I. That the defendant being engaged at _____, in the business of an auctioneer, in consideration that the plaintiff would deliver to him (very briefly designate the goods), to be sold by him for the plaintiff for a compensation, undertook, on or about the _____ day of _____, 18____, to sell the same, * at and for no less money than the sum of _____ dollars, and not to sell them otherwise.

II. That the plaintiff accordingly delivered said goods to the defendant for that purpose.

III. That the defendant, without the consent of the plaintiff, sold them for less than the aforesaid sum, to-wit, for _____ dollars, to the damage of the

plaintiff _____ dollars. 1 Abb. Forms 399.

D. Complaint Against an Auctioneer, for Selling on Credit.

I. and II. As in preceding form, substituting at the * for cash, and not otherwise.

III. That the defendant afterwards sold said goods on credit without the plaintiff's consent, whereby the plaintiff has hitherto lost, and is likely wholly to lose their value, to his damage _____ dollars. 1 Abb. Forms 399.

E. Complaint Against Agent for Not Using Diligence To Sell Goods.

I. That on the _____ day of _____, 18____, at _____, the defendant undertook, with the plaintiff, as his agent, and for compensation to be paid by him, to sell for him, * goods of the plaintiff, to-wit (very briefly designate them), of the value of _____ dollars; and thereupon received the same from him for that purpose.

II. That the defendant did not use due diligence to sell or in selling the same, † but unreasonably delayed so to do, and by reason thereof, the same being afterwards sold by the defendant for the plaintiff, produced _____ dollars less than the same would have produced had the defendant used such due diligence to sell, and in selling the same; and thereby, also, the same became much wasted and deteriorated in value, and the plaintiff incurred _____ dollars expenses in warehousing the same, to his damage _____ dollars. 1 Abb. Forms 397.

F. Complaint Against Agent for Carelessly Selling to Insolvent.

As in preceding form to the †, continuing: but negligently sold the said _____ for the plaintiff to a person in embarrassed circumstances, without receiving the price therefor, or taking security for the payment thereof; whereby the plaintiff is likely to lose the price, to his damage _____ dollars. 1 Abb. Forms 397.

G. Complaint Against Agent for Money Collected.

I. That before the dates herein-after mentioned, the plaintiffs authorized the defendant, as their agent, to collect and receive (premiums on policies of insurance, policy fees), and other moneys for them, for the pur-

pose of remitting and paying over the same to them when collected.

II. That said defendant, as such agent, at or about the dates mentioned in the schedule hereto annexed, marked "A," received, collected, or was otherwise possessed of the several sums of money respectively set opposite said dates, which sums amounted in the aggregate, on the _____ day of _____, 18____, to the sum of _____ dollars.

III. That after deducting all credits due the defendant, there still remains due and owing to these plaintiffs from said defendant the sum of _____ dollars.

IV. That plaintiffs have, since the same became due and payable, demanded payment thereof from him, but the defendant refuses to pay over the same. 1 Abb. Forms 174.

H. Complaint Against Auctioneer or Agent for Not Accounting.

I. Allege agency as in II, D, or thus: that heretofore (and on or about the _____ day of _____, 18____), the plaintiff shipped from the port of _____, consigned to the defendant, then his agent, at _____, to sell for cash (very briefly designate the goods), of the value of _____ dollars, of which consignment said defendant had notice, and which agency, for a valuable consideration, he undertook and entered upon.

II. That he received said goods (and thereafter sold the same, or some part thereof) on account of the plaintiff.

III. That although sufficient time has elapsed therefor, he has neglected and refused, and still neglects and refuses, to render to the plaintiff a just and true account of such sale, and of the proceeds thereof, and has also neglected and refused to pay over the proceeds to the plaintiff, to his damage _____ dollars. 1 Abb. Forms 399.

III. Answers.

A. Denial of Negligence in Selling Goods.

That he was not negligent in or about the selling of the said goods, but sold the same as soon (or for as large a price) as with due diligence he could. 2 Abb. Forms 108.

B. Answer, Denial of Negligence in Giving Credit.

That he sold said goods to one M. N., who was a merchant at _____, in

good standing and credit, for the sum of _____ dollars; and for the payment of which sum he took the bill of the said M. N., drawn on and accepted by one O. P., payable in _____ months after date, which bill was at the time held and considered an approved bill. 2 Abb. Forms 108.

PRINCIPAL AND SURETY.

I. Complaints, 998

- A. *By Surety Against Principal*, 998
- B. *By Surety on Lease*, 998
- C. *By Surety on Undertaking*, 999

II. Answers, 999

- A. *By Bail, Death of Principal*, 999
- B. *By Bail, No Execution*, 999
- C. *That Note Was Extended Without Consent*, 999
- D. *That Signing of Note by Surety Was on Condition That Co-surety Sign*, 999

CROSS-REFERENCES:

BILLS AND NOTES:

- Answer by Accommodation Indorsers, Extension Given to Makers;
- Answer, Defendant Was Surety, and Plaintiff Holds Collateral Securities, Defendant Asks To Be Subrogated;
- Answer by a Surety Alleging an Extension of Time.

CONTRIBUTION:

- Bill for Contribution on General Average;
- Complaint for Contribution by Co-surety;
- Decree, Reference for Account of Payments by Plaintiff as Surety;
- Decree for Contribution Between Co-sureties and Principal;
- Decree Between Co-defendants in Suit by Creditor;
- Decree, One Co-surety Unable To Pay His Full Share.

INDEMNITY:

- Complaint, Surety Against Principal, on Promise To Indemnify.

QUIA TIMET:

- Bill by Surety on Bond To Compel Debtor To Pay Debt.

SPECIFIC PERFORMANCE:

- Prayer by Surety To Compel Specific Performance by Principal With Obligee, and for Writ of Ne Exeat.

I. Complaints.

A. *Complaint by Surety Against Principal, for Debt for Goods Sold and Costs of Judgment Thereon, Paid by Surety.*

I. That on the _____ day of _____, 18____, the plaintiff, at the request of the defendant, bought of one M. N., to be by him delivered to the defendant and to his use, certain goods, viz.: _____ of the value of _____ dollars, which were thereafter delivered to the defendant, but he failed to pay for them.

II. That on the _____ day of _____, 18____, in an action brought to recover from the plaintiff the price of said goods, said M. N. recovered judgment, which was duly given by the _____ court of _____ county against the plaintiff, then defendant, for the sum of _____ dollars, being the amount of said price, with interest and costs.

III. That the plaintiff was compelled to pay on the _____ day of _____, 18____, at _____, and did pay to said M. N. the sum of _____ dollars, being the amount of the said judgment and interest thereon; and that no part of the same has been repaid to him. 1 Abb. Forms 172.

B. *Complaint by Surety on Lease, Against Principal.*

I. That on or about the _____ day of _____, 18____, the defendant entered into an agreement in writing with one M. N., of which the following is a copy: (setting it forth. Or say, an agreement in writing, whereby he hired of M. N., the house, designating it, for the term of _____, and agreed to pay therefor, to the said M. N., the rent of _____ dollars in equal quarterly instalments).

II. That at the request of the defendant, the plaintiff made and delivered to the defendant his guaranty thereon, in writing, of which the following is a copy: (setting it forth. Or say, his guaranty thereon, in writing, whereby, in consideration of one dollar, the plaintiff guaranteed the faithful performance on the part of defendant of the said agreement).

III. That the defendant delivered said agreement and guaranty to M. N., and thereupon, and in consideration thereof, obtained and had possession of said premises, pursuant to said agreement, whereby the defendant became

liable to the said M. N. for the rent therein named.

IV. That a portion of it, to-wit, the instalment of _____ dollars, which became due on the _____ day of _____, 18____, the defendant failed to pay.

V. That the plaintiff was compelled to pay, and did pay on the _____ day of _____, 18____, at _____, to the said M. N., at his request, and to the use of the defendant, the sum of _____ dollars, being the afore-said sum, with interest, and that no part of the same has been repaid to the plaintiff. 1 Abb. Forms 170.

C. Complaint by Surety Against Principal for Money Paid on Undertaking on Appeal.

I. That on the _____ day of _____, 18____, one M. N. recovered in the court of _____ a judgment duly given against the defendant for _____ dollars (or, for the possession of specific property, etc.), from which the said defendant appealed to the court of appeals (or other court).

II. That on the _____ day of _____, 18____, at the request of the defendant, the plaintiff executed an undertaking, a copy of which is hereto annexed, or whereby he undertook (re-citing the obligation).

III. That on the _____ day of _____, by the said (appellate) court, the said judgment was affirmed, with _____ dollars costs and damages.

IV. That on the _____ day of _____, 18____, the plaintiff paid _____ dollars upon the said undertaking, to the said M. N. No part of the same has been repaid to him. 1 Abb. Forms 171.

II. Answers.

A. Answer by Bail, Death of Principal.

That, after the recovery of the said judgment, and before the return of any execution against the person (or, writ of capias ad satisfaciendum) thereupon against the said _____ (the principal) at the suit of the said plaintiff upon said judgment, he, the said _____, died. 2 Abb. Forms 100.

B. Answer by Bail, No Execution.

That, after the recovery of the said judgment, and before this action, no execution against the person (or, writ of capias ad satisfaciendum) was duly

issued or prosecuted out of the said court of _____, against the said _____ (the defendant in the judgment), upon the said judgment, and duly returned. 2 Abb. Forms 100; Nash Pl. & Pr. 307.

C. Answer, That Note Was Extended Without Consent of Surety.

"The defendants, Maple and Carney, for answer to plaintiff's complaint, say that they admit the execution of the note sued on, but say that plaintiff should not recover against them, for they say that they and each of them signed their names to said note as the sureties of their co-defendant Winterrowd, and that the plaintiff knew (and) had notice at the time he received said note. And that afterward, on the 12th day of March, 1867, the plaintiff agreed with the defendant Winterrowd, in consideration that he, Winterrowd, would pay the plaintiff a large sum of money as and for the interest then due upon said note, and the interest in advance for six months next after said date, at the rate of twelve per cent. per annum, that he, the plaintiff, would extend the time of payment of said note for six months from said twelfth day of March, 1867; and these defendants say that for that purpose, the defendant Winterrowd did pay the plaintiff one hundred and seventy-six dollars, and plaintiff agreed with defendant Winterrowd to extend the time for the payment of said note for the space of six months from and after the 12th day of March, 1867, without the knowledge or consent of these defendants, or either of them; wherefore," etc. *Hamilton v. Winterrowd*, 43 Ind. 393.

Note.—Held sufficient under code to state facts from which the law implies agreement without setting out implied agreement.

D. Answer, That Signing of Note by Surety Was on Condition That Co-surety Sign.

"The defendant, John A. Zaring, for separate answer to the plaintiff's complaint, says that he admits that he signed the note sued on, and mentioned in plaintiff's complaint, but he says that he signed the same solely as surety for his co-defendant, Andrew J. Pough, and under the express understanding and agreement with said Pough that said note was not to be delivered to the plaintiff, or any one

for the use of the plaintiff, until one Charles McClintock had also signed said note as co-surety with the defendant, and that said Peugh promised and agreed with this defendant that said note should not be delivered to plaintiff or to any one for plaintiff's use until said McClintock had signed said note as co-surety with the defendant; and that said Peugh thereafter took said note away with him for the purpose of procuring the signature of said McClintock, pursuant to said promise and agreement; but that said McClintock failed and refused to sign said note; and defendant further says that afterward the agent of plaintiff, representing and acting for plaintiff, with full power and authority from plaintiff, took said note from said Peugh, and that said agent took said note with full knowledge of the agreement and conditions under which the defendant had signed the same, and that at the time said agent so took said note, said Peugh informed him that it was not to be delivered to plaintiff, or to any one for plaintiff's use, until said McClintock had signed it as co-surety with this defendant; but, notwithstanding such information and other objection of said Peugh, said agent took said note into his possession, all in violation of the said promise and agreement by and between this defendant and the said Peugh, and with full knowledge of the same, as the defendant is informed and believes. Wherefore, defendant prays that plaintiff take nothing as to him, and judgment for costs, and all other proper relief." *Deering Harv. Co. v. Peugh*, 17 Ind. App. 400, 45 N. E. 808.

PRIVILEGE.

I. Affidavit To Obtain Order To Show Cause, 1000

II. Order To Show Cause Why Defendant Should Not Be Discharged, 1000

I. Affidavit To Obtain Order To Show Cause.

C. D., the defendant in this cause, being duly sworn says, that he is now in the custody of the sheriff of the county of _____ in this cause, on the writ of *capias ad respondendum* issued therein, and in which bail to the amount of _____ dollars has been required of him. And deponent fur-

ther says, that (here state the facts showing privilege). *Burr. App. 6, §11; Yates' Forms 11.*

II. Order To Show Cause Why Defendant Should Not Be Discharged on Ground of Privilege.

Let the plaintiff show cause before me, at my chambers, in the _____ in the city of _____, on the _____ day of _____ instant, at 10 o'clock in the forenoon, why the defendant should not be discharged from arrest on the *capias ad respondendum* issued in this cause. Dated, etc. *Burr. App. 222, §458.*

PRIVITY.

CROSS-REFERENCE:

GUARANTY:

Answer on Guaranty, Want of Privity.

PRIZE FIGHTING.

I. Indictment for Prize Fighting, 1000

II. Indictment for Aiding in Prize Fight, 1000

III. Indictment for Leaving State To Engage in Prize Fight, 1001

I. Indictment for Prize Fighting (a).

The indictment was upon \$1, and averred that Welsh, at Seehonk, on the 30th of June, 1855, "by and in pursuance of a previous appointment and arrangement made to meet and engage in a fight with another person, to-wit, with one Freeman Clarkson, did meet and engage in a fight with the said Freeman Clarkson, against the peace of said commonwealth, and contrary to the form of the statute in such case made and provided." *Com. v. Welsh*, 7 Gray (Mass.) 324.

Indictment for Prize Fighting (b).

"By and in pursuance of a previous appointment and arrangement made by and between them to meet and engage in a fight with each other, did meet and engage in a fight with each other, against the peace," etc. *Com. v. O'Baldwin*, 103 Mass. 210.

II. Indictment for Aiding at Prize Fight.

The indictment was upon \$2, and averred that Mitchell, at Seehonk, on the 30th of June, 1855, "was present as an aid and second, and did advise,

encourage and promote a fight, in which one John Welsh did then and there, by previous appointment and arrangement so to meet and engage, meet and engage with one Freeman Clarson, against the peace of said commonwealth, and contrary to the form of the statute in such case made and provided." *Com. v. Welsh*, 7 Gray (Mass.) 324.

III. Indictment, Leaving State To Engage in Prize Fight.

"Being inhabitants and residents of this state, to-wit, of the Commonwealth of Massachusetts," on July 11, 1870, "by a previous appointment and engagement, made within this state, to-wit, at said Lawrence, did leave this state, to-wit, the Commonwealth aforesaid, and on said eleventh day of said July feloniously and wilfully did engage in a fight, with each other, without the limits of said commonwealth, to-wit, at Salem in the county of Rockingham and state of New Hampshire, against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided." *Com. v. Barrett*, 108 Mass. 302.

PROBATE OF WILLS.

- I. Objection to Probate, Nuncupative Will, 1001
- II. Certificate of Probate of Foreign Will, 1001
- III. Order Admitting Foreign Will, 1001
- IV. Petition To Revoke Probate, 1002

CROSS-REFERENCE:

COMPROMISE AND SETTLEMENT:

Complaint Upon Compromise of Suit for Withdrawing Opposition to Probate of Will.

I. Objection to Probate, Nuncupative Will.

_____, executor of _____ v. _____, caveator.

And now at this term of the court, comes the defendant by his attorneys and caveats the application to probate the nuncupative will of _____, deceased, upon the following grounds, to-wit: (Set out grounds specifically and separately).

Attys. for caveators.

Sampson v. Browning, 22 Ga. 293.

II. Certificate of Probate of Foreign Will.

"State of Michigan, County of Marquette, ss.: Probate Court for said County.

"Be it remembered that the annexed and foregoing instrument, being a duly authenticated copy of the last will and testament of Edward C. Wilder, late of the County of New York, in the State of New York, deceased, which was duly allowed, filed, and recorded in said court in pursuance of the decree thereof, of which the foregoing is a true, full, and correct copy.

"In testimony whereof I have hereunto set my hand and affixed the seal of said court at the City of Marquette, in said county, this thirty-first day of October, in the year one thousand eight hundred and eighty-one. (Seal.)

"Edward S. Hardy,
"Judge of Probate."

Culbertson v. Witbeck, 127 U. S. 326, 8 Sup. Ct. 1136, 32 L. ed. 134.

III. Order Admitting Foreign Will.

"State of Michigan, county of Marquette, ss: At a session of the probate court for the county of Marquette, holden at the probate office in the city of Marquette, on Monday, the thirty-first day of October, in the year one thousand eight hundred and eighty-one. Present: Edward S. Hardy, judge of probate. In the matter of the estate of Edward C. Wilder, deceased.

"This day having been appointed by the court for hearing the petition of James E. Dalliba, praying, amongst other things, for reasons therein set forth, that a certain instrument, purporting to be a copy of the last will and testament of said deceased, and the probate thereof, duly authenticated and heretofore presented to this court with said petition, be allowed, filed and recorded. Now come into court the said petitioner and answers, and, it satisfactorily appearing, by due proof on file, that a copy of the order of this court touching the hearing of said petition, made on the seventh day of October last past, had been duly published as therein directed, whereby all parties interested in the premises were duly notified of said hearing.

"And it further satisfactorily appearing to the court after a full hearing upon said petition and on examination of the proofs and allegations

of the petitioner, that said deceased was, at the time of his death, a resident of the city of New York, in the state of New York, and died leaving his last will and testament, which was duly approved and allowed in the surrogate court for, in and of the county of New York, in the state of New York, according to the laws thereof, and that he was possessed of estate situate in said county of Marquette, on which said will operates.

"And the evidence touching the premises being materially considered, it satisfactorily appears that said copy of said will ought to be allowed in this state as the last will and testament of said deceased.

"It is therefore ordered, adjudged and declared by this court that said copy of said last will and testament of said deceased be allowed, filed, and recorded in this court; and that the same shall have full force and effect in this state as such will, agreeably to the statute in such case made and provided.

"And it is further ordered that the execution of said last will and testament be committed, and the administration of the estate of the said deceased be granted, to said Sophia Wilder, the executrix in said will named, who is ordered to give bond in the penal sum of one thousand dollars, with sufficient sureties, as required by the statute in such case made and provided; and that the same being duly approved and filed, the letters testamentary do issue in the premises.

"Edward S. Hardy, judge of probate."
Culbertson v. Witbeck Co., 127 U. S. 326, 8 Sup. Ct. 1136, 32 L. ed. 134.

IV. Petition To Revoke Probate.

That: On the 15th day of May, 1889, Uriah Reid died unmarried and without issue, and the said plaintiffs and the seven first named defendants are his only heirs at law.

"On the 23d day of May, 1889, a certain paper writing purporting to be the last will of the said Uriah Reid, bearing date of the 6th day of April, 1889, was presented to the probate court of said Fairfield county, and admitted to probate by the probate court of that county, on the 10th day of June, A. D. 1889, and is recorded in Vol. XI, page 224, of the Record of Wills, in said court, and letters testamentary thereon were issued by said

court to the defendant, Aaron Binckley, as sole executor thereof, who thereupon qualified. By the terms of said paper writing, all of the defendants except James R. Reid and the defendant, Binckley, are named as the several legatees and devisees of said Uriah Reid, and the plaintiff, Walter B. Wilson, is also named in said paper writing as a legatee of said Uriah Reid. Said paper writing is not the last will of said Uriah Reid, but that said Uriah Reid at the date of said paper writing was not of sound mind and memory, but by reason of extreme age and protracted pain and sickness, was mentally incapacitated from making a will or a proper distribution of his property, and was coerced into the signing of said paper by the undue influence of his brother, Joseph H. Reid, and the defendants, Melvina Reid and Thomas Reid, children of the said Joseph Reid, by continuously, for about two years, persuading, harassing and annoying the said Uriah Reid to make his will in favor of the children of the said Joseph H. Reid, and by other undue influences brought to bear on the said Uriah by the said Joseph H. Reid, Thomas Reid and Melvina Reid, the said Uriah Reid was induced to execute said pretended will.

"Plaintiffs, therefore, pray that an issue be made up as to whether said paper writing is the last will of the said Uriah Reid, and that the same may be set aside, and for such other relief as is proper."

No answer was filed, but after the service of process, and appearance of the parties, the court made and entered its order, "that a jury be empannelled to try the issues whether the paper writing produced, purporting to be the last will and testament of Uriah Reid, deceased, is or is not the valid last will and testament of the said deceased." Dew v. Reid, 52 Ohio St. 519, 40 N. E. 718.

PROCESS.

I. Summons, 1006

II. Subpoena Ad Respondendum, 1006

III. Notice To Set Aside Process, 1006

CROSS-REFERENCES:

ADMIRALTY:

Preliminary Summons for Seaman's Wages;

Monition In Personam;
 Warrant of Arrest In Personam;
 Warrant for Arrest and for Attachment Against Goods and Chattels, and Its Effects, and Summons to Garnishee;
 Attachment and Monition Against a Ship and Cargo In Rem;
 Attachment and Monition Against Ship, Freight and Master for Seaman's Wages;
 Venditioni Exponas on Interlocutory Order;
 Venditioni Exponas on Final Decree;
 Fieri Facias Against Goods, Chattels and Lands;
 Citation on Appeal.

ARREST IN CIVIL CASES:

Capias Ad Respondendum, General Form;
 Capias Ad Respondendum, Promise of Marriage;
 Capias Ad Respondendum, Penalty and Forfeiture;
 Capias Ad Respondendum, Money Collected by Public Officer;
 Capias Ad Respondendum, Debt on Recognizance;
 Capias Ad Respondendum, Trespass and Assault;
 Capias Ad Respondendum, Assault and Battery;
 Capias Ad Respondendum, Criminal Conversation;
 Capias Ad Respondendum, Debauching Daughter;
 Capias Ad Respondendum, Trespass to Lands;
 Capias Ad Respondendum, Trespass to Personal Property;
 Capias Ad Respondendum, Trespass De Bonis Asportatis;
 Capias Ad Respondendum, Trover;
 Capias Ad Respondendum, Libel;
 Capias Ad Respondendum, Slander;
 Capias Ad Respondendum, Malicious Prosecution;
 Capias Ad Respondendum, Alias;
 Capias Ad Respondendum Simul Cum;
 Capias Ad Respondendum at Suit of Infant;
 Capias Ad Respondendum, at Suit of Executor;
 Capias at Suit of Administrator;
 Capias Against an Executor;
 Capias Against an Administrator;
 Capias at Suit of Sheriff;
 Capias Against Sheriff, in Trespass;
 Capias Against Sheriff in Case;
 Order of Arrest (Warrant or Writ).

ASSISTANCE, WRITS OF:
 Writ of Assistance.

ATTACHMENT:
 Warrant of Attachment;
 Writ of Attachment.

AUDITA QUERELA:
 Writ of Audita Querela.

BANKRUPTCY PROCEEDINGS:
 Subpoena to Alleged Bankrupt;
 Special Warrant to Marshal.

BASTARDY PROCEEDINGS:
 Warrant for Arrest;
 Commitment in Bastardy.

BILLS AND ANSWERS:
 Prayer for Subpoena;
 Prayer in Suits Against United States or State;
 Prayer in Suit Against Corporation;
 Prayer for Injunction To Stay Waste;
 Prayer for Injunction To Restrain Defendant From Proceeding at Law;
 Prayer for Ne Exeat;
 Prayer for Certiorari.

CERTIORARI:
 Certiorari To Remove Cause From Inferior Court, Before Judgment;
 Certiorari To Review Criminal Proceedings;
 Certiorari to County Judges, on Appeal From Commissioners of Highways;
 Certiorari To Review Removal of Officer;
 Certiorari on Allegation of Diminution.

CONTEMPT:
 Writ of Attachment (a, b).

CORONERS' INQUEST:
 Warrant of Coroner for Arrest of Party Charged by the Inquisition With the Crime;
 Warrant of Commitment of Prisoner.

CORPORATIONS:
 Distringas (Writ) To Compel Appearance of Corporation;
 Summons to Corporation.

DEPOSITIONS:
 Subpoena Pursuant to Letters Rogatory.

DOWER, PROCEEDINGS TO RECOVER:
 Writ of Dower.

EJECTMENT:
 Writ of Possession in Ejectment;
 Writ of Possession in Ejectment With Fieri Facias for Costs;
 Writ of Possession in Ejectment With Capias Ad Satisfaciendum;
 Writ of Restitution in Ejectment.

EQUITY JURISDICTION AND PROCEDURE:
 Master's Summons.

EXTRADITION:

Warrant by Commissioner for Arrest of Fugitive;

Commitment by Commissioner;

Warrant by Secretary of State To Deliver Prisoner to Agent of Foreign Government;

Warrant for Arrest of Fugitive by Governor of State of Refuge.

HABEAS CORPUS:

Writ of Habeas Corpus (a. b.);

Commitment for Disobedience to Writ.

INJUNCTIONS:

Writ of Injunction.

INQUIRY. WRIT OF:

Writ of Inquiry in Ordinary Cases;

Writ of Inquiry on Debt on Bond;

Writ of Inquiry on Articles of Agreement;

Writ of Inquiry on Failure To Answer (Code).

INSANE PERSONS:

Citation to Insane Person.

INTERSTATE COMMERCE COMMISSION:

Notice To Answer;

Subpoena.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias for Plaintiff in Assumpsit;

Fieri Facias for Plaintiff in Debt;

Fieri Facias for Plaintiff in Debt, Qui Tam;

Fieri Facias for Plaintiff in Covenant;

Fieri Facias for Plaintiff in Trespass;

Fieri Facias for Plaintiff in Case;

Fieri Facias for Plaintiff in Trover;

Fieri Facias for Plaintiff in Replevin;

Fieri Facias for Plaintiff in Replevin Where Goods Were Not Replevied;

Fieri Facias for Defendant on Verdict;

Fieri Facias on Non Pros. for Not Declaring;

Fieri Facias on Non Pros. for Not Replying;

Fieri Facias on Default of Plaintiff for Not Joining in Demurrer;

Fieri Facias on a Judgment of Nonsuit;

Fieri Facias on Case as of Nonsuit;

Fieri Facias on Discontinuance;

Fieri Facias on Judgment of Nolle Prosequi;

Fieri Facias for Executor or Administrator on Judgment for Testator or Intestate;

Fieri Facias for Executor or Administrator;

Fieri Facias Against Executor or Administrator on Judgment Against Testator or Intestate;

Fieri Facias Against Executor or Administrator for Damages De Bonis Testatoris;

Fieri Facias Against Joint Debtors, Where All Have Not Been Served;

Fieri Facias for Residue in Debt;

Fieri Facias for Residue in Assumpsit;

Fieri Facias, Alias;

Fieri Facias, Pluries;

Fieri Facias, Testatum in Case;

Fieri Facias, Testatum in Debt;

Fieri Facias, Testatum for Residue;

Fieri Facias, Testatum Alias;

Fieri Facias, Testatum Pluries;

Fieri Facias on Seire Facias;

Fieri Facias Against Special Bail on Recognizance After Default;

Fieri Facias After Seire Facias by Default;

Execution Against Heirs and Tenants;

Fieri Facias After Non Pros. or Affirmation in Supreme Court;

Fieri Facias on Reversal for Costs;

Execution Against Property;

Execution Against Joint Property of All, and Separate Property of Some of Defendants;

Execution Against Property in Hands of Personal Representatives, Etc.;

Execution for Specific Real or Personal Property;

Capias Ad Satisfaciendum in Assumpsit;

Capias Ad Satisfaciendum in Debt;

Capias Ad Satisfaciendum for Plaintiff in Debt, Qui Tam;

Capias Ad Satisfaciendum in Replevin for Plaintiff;

Capias Ad Satisfaciendum in Trespass;

Capias Ad Satisfaciendum in Case;

Capias Ad Satisfaciendum in Trover;

Capias Ad Satisfaciendum on Non Pros. for Not Declaring;

Capias Ad Satisfaciendum on Non Pros. for Not Replying;

Capias Ad Satisfaciendum on Judgment as in Case of Nonsuit;

Capias Ad Satisfaciendum on Nonsuit;

Capias Ad Satisfaciendum on Verdict for Defendant;

Capias Ad Satisfaciendum, Alias;

Capias Ad Satisfaciendum, Pluries;

- Capias Ad Satisfaciendum, Testatum**
in Assumpsit;
Capias Ad Satisfaciendum, Testatum
in Debt;
Capias Ad Satisfaciendum on Seire
Facias on Judgment in Debt;
Execution Against the Person (Code).
- JURIES AND JURORS:**
Venire To Summons Jury Drawn Pursuant to Statute;
Venire for Foreign Jury (From Another County).
- MANDAMUS:**
Alternative Mandamus to Court Commanding Sealing of Bill of Exceptions;
Alternative Mandamus to Corporation To Admit Alderman Into Office;
Alternative Writ of Mandamus Directing Expenditure of School Moneys;
Peremptory Mandamus.
- MECHANICS' LIENS:**
Execution on Judgment on Mechanic's Lien. ✓
- NE EXEAT:**
Writ of Ne Exeat.
- NUISANCE.**
Writ of Inquiry as to Nuisance;
Execution in Nuisance.
- PARTITION:**
Writ De Partitione Facienda.
- PRELIMINARY EXAMINATION:**
Commitment Temporary Pending Examination;
Warrant for Arrest for Preliminary Examination (a, b);
Warrant of Commitment After Preliminary Examination.
- PROHIBITION:**
Writ of Prohibition, Alternative;
Writ of Prohibition, Absolute.
- QUO WARRANTO:**
Process in Quo Warranto.
- RECOGNIZANCES:**
Writ of Seire Facias, Revival Against Special Bail.
- REFERENCES:**
Referee's Summons.
- REPLEVIN:**
Writ of Replevin;
Alias Writ of Replevin;
Writ of Replevin, Pluries Writ;
Writ of Inquiry in Replevin on Default for Not Pleading;
Writ of Inquiry To Assess Damages on Judgment Retorno Habendo;
Retorno Habendo for Want of Plea in Bar to Avovery;
Retorno Habendo on Non Pros;
Retorno Habendo After Verdict.
- RETURNS:**
See Returns.
- RIGHT, WRIT OF:**
Writ of Right.
- SCIRE FACIAS:**
Seire Facias To Revive Judgment in Assumpsit;
Seire Facias To Revive Judgment in Debt;
Seire Facias, Revival Against Tenants;
Seire Facias To Revive Judgment in Covenant;
Seire Facias, Revival in Replevin;
Seire Facias in Trespass;
Seire Facias After Former Revival;
Seire Facias by Executor After Interlocutory Judgment, and Before Inquiry;
Seire Facias by Executor After Final Judgment;
Seire Facias by Administrator, After Final Judgment in Assumpsit;
Seire Facias To Revive Judgment in Case;
Seire Facias To Have Execution on Future Breaches.
- SEARCH WARRANTS:**
Search Warrant.
- SEQUESTRATION:**
Writ of Sequestration;
Writ of Sequestration To Compel Appearance of Corporation.
- SHERIFFS AND CONSTABLES:**
Attachment Against Sheriff.
- SUBPOENA:**
Subpoena;
Subpoena Ticket (Circuit);
Subpoena Duces Tecum;
Subpoena Ticket, Duces Tecum;
Subpoena on Writ of Inquiry (and Ticket);
Subpoena (and Ticket) on Reference.
- SUPPLEMENTARY PROCEEDINGS:**
Warrant for Arrest of Judgment Debtor;
Attachment Against Judgment Debtor or Third Person for Disobedience of Order;
Commitment for Contempt for Disobedience of an Order in Supplementary Proceedings.
- THREATS:**
Warrant of Commitment on Failure To Give Bond To Keep the Peace.
- WRIT OF ENTRY:**
Writ of Entry in the Post.
- WRIT OF ERROR:**
Writ of Error to Trial Court From Supreme Court;

Writ on Error in Fact in Trial Court;

Writ of Restitution After Judgment Reversed.

I. Summons.

William the Fourth, etc., to C. D., of, etc., in the county of _____, greeting.

We command you (or as before or often, we have commanded you) that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our court of _____, in an action of debt at the suit of A. B. And take notice that in default of your so doing, the said A. B. may cause an appearance to be entered for you, and proceed therein to judgment and execution. Witness _____, at _____, the _____ day of _____. Steph. Pl. 15.

II. Subpoena Ad Respondendum.

The people of the state of _____, to C. D., greeting:

We command you that you personally appear before our chancellor (or, our vice chancellor of the fourth circuit), in our court of chancery, on the twentieth day of August instant, where-soever the said court shall then be, to answer to a bill of complaint exhibited against you in our said court by A. B.; and to do further, and receive what our said court shall have considered in that behalf. And this you are not to omit under the penalty of two hundred and fifty dollars.

Witness, _____, chancellor of our said state, at the town of Saratoga Springs, the first day of August, in the year of our Lord one thousand eight hundred and _____. _____, register, (or, clerk.) _____, solicitor.

2 Barb. Ch. Pr. 363.

III. Notice of Motion To Set Aside Capias for Irregularity.

(Title.)

Sir—Please to take notice, that upon the affidavit (or affidavits) with a copy (or copies), whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol in the city of Albany, on the first Tuesday of (April) next, that

the capias ad respondendum issued in this cause, and all the proceedings on the part of the plaintiff thereon, be set aside for irregularity, with costs. Dated, March 16th, 1846.

Yours, etc.,

G. H., defendant's attorney.

To E. F., esq., plaintiff's attorney.

Burr. App. 205, §399.

PROFANITY.

I. Indictment, Profanity as a Common Law Nuisance, 1006

II. Affidavit (Complaint) for Profanity, 1006

I. Indictment, Profanity as Common Law Nuisance.

That the defendant, "in a public place, and in the presence and hearing of divers good citizens of the state, then and there being, unlawfully did utter, publish, speak and say, the following gross, scandalous, profane and blasphemous language. (The various oaths are then set forth.) To the great scandal and common nuisance of all good citizens so then and there being as aforesaid, to the manifest corruption of public morals, to the evil example of all like offenders, and against the peace and dignity of the state." *State v. Graham*, 3 Sneed (Tenn.) 134.

Note.—Upheld because of the act being in public.

II. Affidavit (Complaint) for Profanity.

"Before me, M. H. Daniels, a justice of the peace, in and for said county, came Sarah E. Kant, who, being duly sworn according to law, deposes and saith, that on or about the 16th day of October, in the year 1892, at the county of Marion, state of Indiana, Michael Taney, late of said county, did then and there unlawfully and profanely curse, swear, aver and imprecate by and in the name of God, Jesus Christ, and the Holy Ghost, by then and there unlawfully saying God damned, he, the said Michael Taney, being then and there a person over fourteen years of age, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Indiana." *Taney v. State*, 9 Ind. App. 46, 36 N. E. 295.

See "How To Use This Volume," Introduction, page v.

PROHIBITION.

I. Affidavit, 1007

II. Order To Show Cause Against Writ, 1007

III. Writs, 1007

- A. *Alternative*, 1007
- B. *Absolute*, 1008

IV. Returns, 1008

- A. *From Court Below*, 1008
- B. *Court Without Jurisdiction*, 1008

V. Judgments, 1008

- A. *Judgment Record on Prohibition*, 1008
- B. *Judgment of Consultation*, 1009

I. Affidavit To Obtain Writ of Prohibition.

_____ court of _____.
(Venue.)

A. B., of _____, in the county of _____, being duly sworn, says:

I. That on or about the _____ day of _____, 18—, he was summoned (a copy of which summons is hereto annexed) to appear in the _____ court of _____, on the _____ day of _____, before _____ (describing with precision the tribunal), to answer (here set forth the nature of the proceeding).

II. That, in pursuance of said summons, deponent did attend at the said court, and did then and there object to the jurisdiction of the said court to entertain said action (here set forth the ground of objection, and the facts, if any, which the applicant offered to prove in support of it).

III. Deponent further says: And the said judge, notwithstanding the said objection (and notwithstanding the said offer of the deponent to prove, etc.), did proceed to hear and determine the said cause, and did give judgment therein against this deponent. 2 Abb. Forms 742.

II. Order To Show Cause Why Writ Should Not Issue.

"Now on this the _____ day of July, 1893, comes the said Edwin G. Merriam and presents to the undersigned chief justice of the supreme court of Missouri, in vacation, his suggestion for a writ of prohibition (which said suggestion has heretofore been filed with the clerk of the said supreme court) to be directed to the said Alexander G. Ross, judge of the Cape Gir-

ardeau court of common pleas, and to Louis Houck, as president of the St. Louis, Cape Girardeau & Fort Smith Railway Company as well as receiver thereof, The St. Louis, Cape Girardeau & Southern Railway Company, Leo Doyle, The Mercantile Trust Company and Edward Hidden, prohibiting them and each of them from further pursuing and holding cognizance of pleas in a certain case in said court, wherein the said St. Louis, Cape Girardeau & Fort Smith Railway Company as plaintiff and the said Mercantile Trust Company, Leo Doyle, and Edwin Hidden are defendants, the same being a civil action for the purpose of appointing a receiver of all the assets of the said St. Louis, Cape Girardeau & Fort Smith Railway Company and the undersigned judge having seen and heard the suggestion and the record filed therewith on consideration thereof doth order that the said Alexander Ross, judge of the Cape Girardeau court of common pleas and the said Mercantile Trust Company, Edward Hidden and the said Louis Houck appear before the honorable supreme court of Missouri on the tenth day of October, 1893, and show cause, if any they have, why a writ of prohibition should not issue, as prayed in the suggestion of the said Merriam.

Witness my hand the 27th day of July, 1893.

"Frances M. Black,

"Chief Justice, Supreme Court,
"State of Missouri."

State v. Ross, 136 Mo. 259, 41 S. W. 1041.

III. Writs.

A. *Writ of Prohibition (Alternative)*. The (people of the) state of New York, to (the court or officer to be restrained), greeting:

Whereas A. B., of _____ (residence and addition), lately in our (supreme court of judicature), before the justices thereof, at the _____ in the city of _____, came and gave the same court to understand and he informed that (state at large the facts and proceedings complained of). Nevertheless, you the said (the court or officer to be restrained), well knowing the premises, yet contriving the said A. B. unjustly to aggrieve and oppress, have (state the grievance), in contempt of us, against the laws and customs of our said state, and to the manifest

damage, prejudice and grievance of him the said A. B. Wherefore the said A. B. humbly imploring our said court, hath prayed relief, and our writ of prohibition in that behalf: We therefore being willing that the laws and customs of our said state should be observed, and that our good and faithful citizens should in no wise be oppressed, do prohibit and firmly enjoin you that you do not hold plea touching or in any manner concerning the premises before you, nor attempt, nor presume to attempt, anything therein (or that you do absolutely desist and refrain from any further proceedings in the premises), until the next term of the said supreme court, and the further order of the said court thereon; and that you then show cause before our justices of our supreme court of judicature, to-wit, on the _____ day of _____ next, at the _____ in the city of _____, why you should not be absolutely restrained from any further proceedings in the aforesaid premises. And have you then there this writ. Witness, etc. (teste and signatures in usual form). Burr. App 574, §1124; Yates' Forms 609.

B. Prohibition Absolute.

(As in last form to the *, and then as follows): and if you have pronounced any sentence (or decree, or order, or judgment, etc., as the case may be), against him by reason of the premises, then we command you that without delay you revoke or cause it to be revoked; and him the said A. B. wholly absolve and release. And hereof fail not at your peril. Witness, etc. (teste and signature in the usual form). Burr. App. 574, §1124a.

IV. Returns.

A. Return of the Court to Writ of Prohibition.

_____ court, _____ county of _____ (The people) on the relation of _____, district attorney for said city and county, against the court of _____ for said city; and A. B.

The court of _____, held in and for, etc., to whom is directed the writ of prohibition hereto annexed, for answer to said writ do certify and return (here follows statement of what the court has done).

In witness whereof I have caused the seal of the said court to be hereunto

affixed, this _____ day of _____, 18—.

By the court.
(Signature of clerk.)

2 Abb. Forms 745.

B. Return, That Court Was Without Jurisdiction.

"The justice court of Leroy Brooker, in and for Wide Hollow precinct, Yakima county, Washington, to whom is directed the writ prohibition hereto annexed, for answer to said writ did certify and return: Said court had taken no steps in said case except notifying the said parties to appear; said court not being advised on the point of his jurisdiction was of opinion that he had no jurisdiction, and had a motion been made to dismiss said action, said court would have dismissed said action, unless good authority had been produced to change the views of said court. Said Hyman Harris, nor any person for said Harris, has never appeared in the court of Leroy Brooker." Harris v. Brooker, 8 Wash. 138, 35 Pac. 599.

Note.—Held objection to jurisdiction should have been raised in the court below.

V. Judgments.

A. Judgment Record on Prohibition.

Pleas before the justices, etc. (placita in the usual form). See **Judgment Records** in this volume.

State of New York, ss.: The (people of the) state of New York, sent to (the court, officer or person to whom the writ was directed) their writ of prohibition close in these words, to-wit:

The people of the state of New York, etc. (here insert the writ of prohibition, I, A).

At which day and place named in the return of the writ aforesaid, before the justices aforesaid, come as well the said (the plaintiff or relator), by E. F., his attorney, as the said (the defendant), by G. H., his attorney; and the said (defendant) now here makes return to the said writ, and shows cause as follows, to-wit (here insert the return verbatim).

And hereupon the said (plaintiff) says that he, by reason of anything in that return alleged and set forth, ought not to be barred or precluded from having a prohibition absolute restraining the said (court, officer or person) from (state what), because he says that, etc.

(here state the matters relied on). Wherefore he prays judgment that the said people's writ of prohibition absolute may issue, restraining, etc. (as above).

And the said (defendant) says that the said writ of prohibition absolute, prayed for by the said (plaintiff) ought not to issue because he says that (here state the facts relied on; and then proceed with the other pleadings, if any, to issue, after which the record proceeds as on a mandamus. If judgment be rendered for the plaintiff, the entry will be as follows):

Therefore it is considered that the people's writ of prohibition absolute do issue, restraining (state whom and what). And it is further considered, etc. (add a judgment for costs, as in ordinary cases).

(If judgment be rendered for the defendant, the entry will be thus):

Therefore it is considered that the said (the defendant) do go thereof without day, etc. And it is further considered that the people's writ of consultation do issue, commanding (state whom and what). And it is further considered (judgment for costs). Burr. App. 525, §1047a; Yates' Forms 756.

B. Consultation, Judgment of, on Prohibition.

The people of the state of New York, to (the court or officer to whom the writ of prohibition was directed), greeting:

Whereas A. B., of (residence and addition), hath lately prosecuted and caused to be directed to you our certain writ of prohibition, out of our supreme court of judicature, before the justices thereof, at, etc., that you should not (state what the writ of prohibition commanded), by pretense of which prohibition you have from thence hitherto delayed, and yet do delay further to proceed in (state what), as we have understood, to the great damage of C. D. (name the other party). Wherefore the said C. D. hath in our said court before the said justices thereof, at, etc., humbly besought us to grant him our aid and assistance in this behalf; and we favorably consenting to the prayer of the said C. D., and being unwilling that there should be any further delay in (state the proceeding to be hastened by this writ). Because in our said supreme court, before the said justices,

at, etc., it is in such manner proceeded that it is considered by the said court that the said C. D. may have our writ of consultation to the said (court or officer), our said writ of prohibition to the contrary thereof notwithstanding; whereof the said A. B. is convicted, as appears to us of record: We therefore being unwilling that the said C. D. should, in any wise, be injured in this behalf, signify to you our command that you may in that cause lawfully proceed, and further do what you shall know to belong to you as (naming the court or officer), our said writ of prohibition to you directed to the contrary thereof in any wise notwithstanding.

Witness, etc. (teste in the usual form).

_____, _____, clerks.

G. H., attorney.

Burr. App. 516, §1036; Yates' Forms 610.

PROSTITUTION.

I. Affidavit, 1009

II. Indictment, 1009

III. Indictment for Resorting to House of Ill-Fame, 1010

IV. Indictment for Placing Wife in House of Prostitution, 1010

I. Affidavit for Prostitution (Complaint).

"State of Indiana, Marion county, city of Indianapolis: Be it remembered, that on this day before the judge of the police court of the city of Indianapolis personally came John Shine, who being duly sworn, upon his oath says that Mary Stanton, a female person late of said city and county, on or about the 24th day of August, in the year 1900, at and in the city and county aforesaid, did then and there unlawfully frequent and live in a certain house of ill-fame in said city, situate at number _____ street, and did then and there unlawfully associate with certain women of bad character for chastity, to-wit, Emma Harris, Leo Taylor, and did then and there commit fornication for hire with one James King, contrary," etc. Stanton v. State, 27 Ind. App. 105, 60 N. E. 999.

II. Indictment for Prostitution (a).

The complaint charged that the defendant "was a common night walker,

and, from the said tenth day of July to the day of the filing of the complaint, during divers nights within the time aforesaid, did walk and ramble in the streets and common highways in the said city of Portsmouth, at unreasonable hours of said nights, without having any lawful business and without any necessity therefor, against good morals and good manners." *State v. Dowers*, 45 N. H. 543.

Indictment for Prostitution (b).

"The grand jury . . . further charge that . . . Nora Stokes was a common night-walker, and did walk and ramble in the streets and common highways in the city of Montgomery, in said county and state, at unreasonable hours of night, without having any lawful business, and without any necessity therefor, for the unlawful purpose of picking up men for lewd intercourse; against good morals and good manners, to the common nuisance of all good people of the county, against the peace," etc. *Stokes v. State*, 92 Ala. 73, 9 So. 400.

III. Indictment for Resorting to House of Ill-Fame.

The information charged that the defendant "did unlawfully and feloniously resort to, frequent, and become an inmate of a house of ill-fame resorted to for the purpose of prostitution and lewdness, then and there situate, against the peace and dignity of the state of Wisconsin." *State v. Richards*, 76 Wis. 354, 44 N. W. 1104.

IV. Indictment for Placing Wife in House of Prostitution (a).

"The said Anton Michael Ilomaki, on the 29th day of March, 1905, in the county of Chehalis, in the state aforesaid, then and there being the husband of one Sofia Ilomaki, did then and there unlawfully, wilfully and feloniously connive at, and consent to, the placing and leaving of his said wife, Sofia Ilomaki, in a house of prostitution, and then and there give his full consent, and knowing said house to be a house of prostitution, did wilfully and feloniously allow and permit his said wife, Sofia Ilomaki, to remain therein; said house of prostitution being known and designated as No. 411 East Hume St." *State v. Ilomaki*, 40 Wash. 629, 82 Pac. 873.

Indictment for Placing Wife in House of Prostitution (b).

The information charges that the defendant "did then and there wilfully, unlawfully, and feloniously connive at, consent to, and permit the placing and leaving of one Gertie Raymond Mead, then and there and at all times herein mention the wife of Fred Mead, in a house of prostitution, situate," etc. *People v. Mead*, 145 Cal. 500, 78 Pac. 1047.

PUBLIC DRUNKENNESS.

I. Complaint for Public Drunkenness, 1010

II. Affidavit, Drunk on Public Street, 1011

CROSS-REFERENCE:

DISORDERLY CONDUCT:

Indictment for Disorderly Conduct, Drunkenness.

I. Complaint for Drunkenness (a).

The complaint charged that the defendant "was a common drunkard, having been intoxicated in the city of Providence under such circumstances as to amount to a violation of decency three several times in the six weeks immediately previous to the date of the complaint," against, etc. *State v. Kelly*, 12 R. I. 535.

Complaint for Drunkenness (b).

The complaint alleged that the defendant "was and is a common drunkard, having been on divers days and times within six months now last past, at said Framingham, drunk and intoxicated by the voluntary and excessive use of spirituous and intoxicating liquors, against the peace of the Commonwealth, and the form of the statute in such cases made and provided." *Com. v. Boon*, 2 Gray (Mass.) 74.

Complaint for Drunkenness (c).

"James Tarwater to the city of Gallatin, debtor.

"To violation of City ordinance No. 14, sec. 1, in relation to punishing offenses against public morals and decency, twenty dollars, in this, to-wit: that the said James Tarwater on the twenty-eighth day of May, 1895, at the city of Gallatin, and within the limits thereof, did then and there unlawfully appear upon the streets and sidewalks and in the business houses, in a state of intoxication and drunkenness, contrary to the said ordinance

in such case made and provided, and against the peace and dignity of said city." *City of Gallatin v. Tarwater*, 143 Mo. 40, 44 S. W. 750.

II. Affidavit, Drunk on Public Street.
"State of Indiana, Huntington county, ss: Before John B. Hults, a justice of the peace in and for Salamonie township, in said county. State of Indiana, Jacob H. First. Affidavit for intoxication.

Jacob C. Wemmer, being duly sworn, on his oath says that one Jacob H. First, late of said county, on the 20th day of November, A. D. 1881, at said county and state aforesaid, did then and there unlawfully appear upon the public streets of the town of Warren, in said county, and was then and there found unlawfully in a state of intoxication, contrary, etc.

(Signed.) Jacob C. Wemmer.

Subscribed and sworn to this 24th day of November, 1881.

John B. Hults,
Justice of the Peace."

State v. First, 82 Ind. 81.

PUBLICATION.—See SERVICE OF PROCESS AND PAPERS.

PUBLIC OFFICERS.—See OFFICERS.

PUBLIC SERVICE CORPORATIONS.

CROSS-REFERENCES:

EMINENT DOMAIN:

Order on Condemnation of Land;
Statement of Object of Improvement,
Petition for Condemnation;
Petition for Condemnation of Land
for Railroad Bridge.

INJURIES TO PERSONS:

Declaration, Injury Caused by Defective Insulation of Electric Light Wires;
Answer, Alleging Failure To Use Proper Care.

PUIS DARREIN CONTINUANCE, PLEAS OF.

I. Plea in Bank, 1011

II. Plea at the Circuit, 1011

I. Pleading at Law, Pleas Puis Darrein Continuance (in Bank).

And now at this day, that is to say, on the _____ day of _____, in this same term, until which day the plea aforesaid was last continued, comes as well the said plaintiff as the

said defendant, by their respective attorneys: And the said defendant saith that the said plaintiff ought not further to have or maintain his aforesaid action thereof against him the said defendant, because he saith that after the last continuance of this cause (that is to say, after the _____ day of _____, in this same term, from which day this cause was last continued, and before this day, to-wit, on, etc., at, etc. (the venue), (here state the matter of the defense, as in ordinary cases), and this he the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought further to have or maintain his aforesaid action thereof against him, etc.

G. H., attorney for defendant.

Burr. App. 337, §611; 3 Chit. Pl. 1238; Archb. Forms 118; Till. Forms 565.

II. Plea Puis Darrein Continuance at the Circuit.

And now at this day, to-wit, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, before _____, esquire, chief justice (or before _____, esquire, one of the justices), of the _____ court of _____ (of the people of) the state of New York (or before _____, esquire, one of the said _____ judges), at the _____ court held at the (courthouse) in the (town) of _____, in and for the county of _____ aforesaid, comes the said defendant by G. H., esquire, his counsel, and says that the said plaintiff ought not further to maintain his aforesaid action thereof against him the said defendant, because he says that, after the making of the said several supposed promises and undertakings in the said declaration mentioned, and after the last continuance of the plea aforesaid (that is to say, after the _____ day of _____ [the last day of the preceding term] last past, from which day until now, the action aforesaid is continued), and before this day, to-wit, on, etc., at, etc. (here state the matter of the defense), and this he the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought further to have or maintain his aforesaid action thereof against him, etc. (Annex affidavit of verification.) Burr. App. 337, §612; Archb. Forms 118; Till. Forms 565.

PURE FOOD LAWS.

I. Indictment Under Common Law for Selling Unwholesome Beef, 1012

II. Indictment for Exposing for Sale and Selling Unwholesome Beef, 1012

III. Indictment for Killing Young Calf With Intent To Sell, 1012

I. Indictment Under Common Law. for Selling Unwholesome Beef.

The grand jurors for the state upon their oath present, that Samuel Smith, senior, late of the county of Rockingham, farmer, on the eighth day of November, A. D. 1823, at Leaksville, in the county aforesaid, did then and there unlawfully, falsely, maliciously, mischievously and deceitfully sell and dispose of to one David Campbell and others, certain unwholesome and poisonous beef, and did then and there receive pay for the same, to the great injury of the said David Campbell and his family, to the great nuisance of the good citizens of the state, and against the peace and dignity of the state. State v. Smith, 10 N. C. 378.

II. Indictment for Exposing for Sale and Selling Unwholesome Beef.

The jurors of the people of the state of New York, in and for the body of the county of Tioga, upon their oath aforesaid, do present, that Charles B. Goodrich, late of the town of ———, on the twentieth day of December, in the year of our Lord one thousand eight hundred and fifty-six, at the town of Owego in said county, knowingly, wilfully, deceitfully and maliciously, did expose to sale and did sell to divers citizens of the state of New York, to the jurors aforesaid unknown, divers, to-wit: five hundred pounds of beef as good and wholesome beef and food, and then and there delivered said beef to the said divers citizens aforesaid: whereas in truth and in fact the said beef was not good and wholesome beef and food, but on the contrary thereof was unwholesome and diseased, and unfit for food, and not fit to be eaten by man, he, the said Charles B. Goodrich, then and there well knowing the said beef to be diseased and unwholesome and not fit to be eaten as aforesaid, against the peace of the people of the state of New York and their laws and their dignity, and

against the form of the statute in such case made and provided.

B. F. Tracy,
District Attorney.

Goodrich v. People, 3 Park. Cr. (N. Y.) 622.

Note.—There was a dissenting opinion in this case on the ground that the indictment failed to show that the meat was sold for food.

III. Indictment, Killing Young Calf With Intent To Sell.

"Knowingly, wilfully and maliciously did kill a certain calf, the said calf being then and there less than four weeks old, with intent then and there the meat of said calf to sell," the defendant "then and there well knowing that said calf he as aforesaid killed was then and there less than four weeks old." Com. v. Raymond, 97 Mass. 567.

QUANTUM MERUIT.—See ASSUMPSIT.

QUANTUM VALEBANT.—See ASSUMPSIT.

QUARE CLAUSEM FREGIT.—See TRESPASS.

QUIA TIMET.

CROSS-REFERENCE:

SPECIFIC PERFORMANCE:

Prayer in Bill by Surety To Compel Specific Performance by Principal and for Writ of Ne Exeat.

Bill by Surety on Bond To Compel Debtor To Pay Debt.

Your orator A. B., of, etc. That your orator, at the special instance and request of C. D., of, etc. (one of the defendants hereinafter named) joined with the said C. D. in a certain bond or writing obligatory, bearing date the ——— day of ———, whereby your orator and the said C. D. respectively acknowledge themselves to be jointly and severally held and bound to E. F., of, etc. (the other defendant hereinafter named) in the penal sum of \$———, subject to a condition thereunder written, that if the said C. D. should well and truly observe, perform, fulfil, and keep, all and every the covenants whatsoever, which, on the part of the said C. D. ought to be observed, fulfilled and performed, and which were contained in a certain indenture, bearing even date with the said writing obligatory, and made between the said C. D. of the one part,

and the said E. F. of the other part, according to the true intent and meaning of the said indenture, then the said bond or obligation should be void. And your orator further showeth unto your honor, that the said indenture in the said writing obligatory mentioned, and which bore even date therewith, was made between the said E. F. of the one part, and the said C. D. of the other part; and the said E. F. did thereby demise, lease, set, and to farm let, unto the said C. D., his executors, administrators, and assigns, all that messuages, etc. (Here state the subject of the demise). To hold the same, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from the _____ day of _____, then last past, to the full end and term of _____ years thence next ensuing, and fully to be complete and ended; yielding and paying therefor, yearly, and every year, unto the said E. F., his heirs and assigns the clear yearly rent or sum of \$_____, payable on the first day of January in each year. And the said C. D. did, in and by the said indenture, for himself, his executors, administrators, and assigns, covenant, promise, and agree to and with the said E. F. his heirs and assigns (amongst other things) in manner following; that is to say, that from and after the said message, etc., etc., should have been put in good and tenantable repair, by and at the expense of the said E. F., his heirs or assigns, he the said C. D., his executors, administrators, and assigns, should and would during the said continuance of the said demise, at his and their own costs and charges, support, uphold, and keep the said message, etc., etc., in good and tenantable repair, order, and condition, and so leave the same at the expiration, or other sooner determination of the said term, as by the said indenture, reference being thereunto had, will appear. And your orator further showeth unto your honors, that the said C. D., under and by virtue of the said indenture, entered into and upon the said demised premises, and became and was possessed thereof for the term so granted to him as aforesaid, and the said E. F. put the said message, etc., etc., into good and tenantable repair at his own expense; and your orator therefore hoped that the same would have been so kept by the said

C. D. during the continuance of the said demise, and left by him at the expiration thereof; and that he would have performed all the other covenants in the said indenture contained, and by and on the lessee's part and behalf to be kept, done and performed, and have freed and discharged your orator from all liability in respect of the said bond. But now so it is, may it please your honors, the said C. D., acting in concert with the said E. F., and combining, etc., has not, as is alleged by the said E. F., kept and left the said messuage, etc., etc., in good and sufficient tenantable repair, according to his said covenant, and the said E. F., therefore threatens and intends to proceed against your orator, on the said bond, for the amount of the damages which he alleges he has sustained by breach of such covenant by the said C. D. as aforesaid; and the said C. D., although often requested by your orator so to do, refuses to protect and indemnify your orator against any loss or liability which your orator may sustain or be put unto by joining in such bond as aforesaid.

And that the said C. D. may be decreed by this honorable court forthwith to pay and satisfy the said E. F. any demand which he may have against your orator as co-obligor with the said C. D. in such bond as aforesaid, on account of the breach for non-performance of the said covenant, or of the several other covenants contained in the said indenture of demise, on the part and behalf of the lessee to be kept, done, and performed, or any of them, or otherwise howsoever, under and by virtue of the said bond; and that your orator may be indemnified and discharged by the said C. D. from all loss and liability whatsoever in respect thereof. (And for general relief.) May it please your, etc. (end by praying subpoena against the said C. D. and E. F.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2071.

QUIETING TITLE.

- I. Complaint To Compel Determination of Claim to Real Property, 1014
- II. Complaint To Remove a Mortgage, Which Was a Cloud Upon Title, 1014
- III. Complaint, Action To Quiet Title, 1014

IV. Cross-complaint, Setting Up Title in Defendant, 1014

I. Complaint To Compel the Determination of Claims to Real Property.

I. That on the _____ day of _____, 18____, one M. N. was seized in fee simple (or otherwise) and possessed of the following described premises: (particular description of premises).

(Where plaintiff claims by descent or devise.) II. That on that day, being so seized and possessed, said M. N. died, leaving the plaintiff his sole heir (or leaving his last will duly made, which was on the _____ day of _____, 18____, duly proved and admitted to probate by the surrogate of _____ county, which will contained a devise to the plaintiff of said premises, or, of an estate for life, or otherwise, in said premises; of which the following is a copy: (copy of devise).

(Or, where he claims by grant.) II. That on that day, being so seized and possessed, said M. N., by his deed under his hand and seal, dated on that day, duly bargained, sold, and conveyed said premises to the plaintiff.

III. That as such heir (or devisee, or grantee), the plaintiff has an estate therein in fee (or for life, or for _____ years).

IV. That said premises now are, and at and for three years before the time of bringing this action, were in the actual possession of the plaintiff (or at the time of bringing this action, were in the actual possession of the plaintiff, and for three years next previous were in the actual possession of the plaintiff and the said M. N.)

V. That the defendant unjustly claims title to said premises, in fee (or to an estate for life in said premises, or to an estate for _____ years in said premises).

Wherefore the plaintiff demands judgment, that the defendant, and all persons claiming under him by title accruing subsequently to the commencement of this action, be forever barred from all claim to any estate of inheritance or freehold, or to any term of years not less than ten, in the said premises; and for costs of this action. 1 Abb. Forms 610.

II. Complaint To Remove a Mortgage Which Is a Cloud Upon Title.

I. That the plaintiff is the owner in fee simple of the following described premises, situated in _____ (description).

II. (Allege the making of the mortgage, or other apparent lien, stating facts which show that on its face it appears valid, and that in fact it is void. See other forms).

III. That said mortgage was, on the _____ day of _____, 18____, duly recorded in the office of the clerk (or register) of said county, in book _____ of mortgages, p. _____, and still remains unsatisfied of record, and a cloud upon the plaintiffs' title.

Wherefore, the plaintiff demands judgment that the defendant give up said mortgage to be canceled, and that the same be satisfied of record; and for the costs of this action. 1 Abb. Forms 587.

III. Complaint, Action To Quiet Title.

"1. That the plaintiffs are now and for a long time have been, and are entitled to be, in the possession of certain real property, situated, lying, and being in the county of Laramie and state of Wyoming, known and described as follows, to-wit: Lot numbered one in section numbered twenty-three, in township numbered fourteen, north of range numbered sixty-seven, west of the sixth principal meridian."

"2. That the said plaintiffs claim title in fee to the said premises, and that the defendant aforesaid claims an estate or interest therein adverse to the said plaintiffs."

"3. That the claim for said defendant is without any right whatever, and that the said defendant has not any estate, right, title, or interest whatsoever in said land or premises, or any part thereof." Durell v. Abbott, 6 Wyo. 265, 44 Pac. 647.

IV. Cross-complaint, Setting Up Title in Defendant.

"The said defendant, Relief Jackson, by way of cross-complaint against said plaintiff, avers and charges, that this defendant is the owner, and in the possession by himself, and his agents and lessees, of the following real estate in Tippecanoe county, Indiana, to-wit:" (description); "that said real estate, so owned by said defendant as aforesaid, is of great value, to-wit, of

the value of ten thousand dollars. Said defendant further avers, that said plaintiff, by virtue of the pretended deed set out in his second paragraph of complaint, or by some other paper writing, the character or nature of which is to this defendant unknown, claims to hold title to said real estate, which said claim of title is adverse to the right and title of this defendant to said real estate, and which said claim of title, so made by the said plaintiff to said real estate, is unfounded, and that the same operates as a cloud upon the title of this defendant. Wherefore the defendant prays judgment and decree of the court, that the title of this defendant in and to said real estate be quieted, and that the cloud upon his title made by the unfounded claim of said plaintiff be removed, and for general relief." *Cooper v. Jackson*, 71 Ind. 244.

QUO WARRANTO.

I. Informations, 1015

A. *Against Individual*, 1015

B. *Against Corporation*, 1015

II. Plea, 1016

III. Judgment Record, 1016

IV. Demurrer for Want of Attorney-General as Party to Quo Warranto, 1017

V. Process in Quo Warranto, 1017

VI. Order To Show Cause for Leave To File Information, 1017

I. Informations.

A. *Information in Nature of Quo Warranto Against an Individual.*

_____ county, ss.: J. V. B., attorney general of (the people of) the state of New York, who sues for the said (people) in this behalf, comes here into the _____ court of _____ of the said (people), before the justices thereof, at the _____ in the city of _____, on the _____ day of _____, in January term, in the year one thousand eight hundred _____, and for the said (people of the) state of _____, at the relation of A. B., of the (town) of _____, in the county aforesaid, according to the form of the statute in such case made and provided, gives the said court here to understand and be informed that C. D., of (the said town and county) for the space of (one month and upwards), now last past, hath held, used and exercised, and still

doth hold, use and exercise the office of sheriff of the said county (or constable of the said town) of _____, without any legal election, appointment, warrant or authority whatsoever therefor: and the said attorney general further gives the court here to understand and be informed that at an election for (state what officers), held, etc. (state the time and place of election), the said A. B. was duly elected and chosen sheriff of the said county of _____ (or one of the constables for the said town of _____) and that the said A. B. hath ever since been, and still is, rightfully entitled to hold, use and exercise the said office; which said office of the sheriff of the county (or constable of the town) aforesaid, the said C. D., during all the time aforesaid (or since the time of the said election), hath usurped, intruded into, and unlawfully held and exercised, and still doth usurp intrude into, and unlawfully hold and exercise, to-wit, at (the town and in the county) aforesaid, in contempt of the people of the state of New York, and to their great damage and prejudice.

Whereupon the said attorney general prays the advice of the court here in the premises, and for due process of law against the said C. D. in this behalf to be made, to answer to the said people, by what warrant he claims to hold, use, exercise and enjoy the aforesaid office of (sheriff), etc.

J. V. B., attorney general.

Burr. App. 522, §1045.

B. *Information in Nature of Quo Warranto Against Corporation.*

_____ county, ss.: J. V. B., attorney general (of the people) of the state of New York, who sues for the said (people) in this behalf, comes here before the justices of the _____ court of _____ of the same (people), on the _____ day of _____, one thousand eight hundred and _____, in this same term of _____, and for the said (people) gives the said court here to understand and be informed that (the directors and company of the B. & R. turnpike road), to-wit, at Albany, in the county of Albany, for the space of (five years) now last past and upwards, have used and still do use, without any warrant, grant or charter, the following liberties, privileges and franchises, to-wit, that of be-

ing a body politic and corporate in law, fact and name, by the name of (the directors and company of the B. & R. turnpike road), and by the same name to plead and be impleaded, to answer and to be answered unto; and also the following liberties, privileges and franchises, to-wit, that of constructing and maintaining a turnpike road, beginning at a certain point in the county of G., and terminating at a certain other point in the county of A., and of levying, collecting and receiving tolls from all persons using such road: all which said liberties, privileges and franchises the directors and company, etc., aforesaid, during all the time aforesaid, have usurped, and still do usurp, upon the said people, to their great damage and prejudice: Whereupon the said attorney general prays the advice of the said court in the premises, and due process of law against the directors and company of the B. & R. turnpike road aforesaid, in this behalf to be made, to answer to the said people, by what warrant they claim to have, use and enjoy the liberties, privileges and franchises aforesaid.

J. V. B., attorney general.

Burr. App. 522, §1046.

II. Plea to an Information Against a Corporation.

And the said the directors and company of the B. & R. turnpike road, by G. H., their attorney, having heard the said information read, complain that, under color of the premises in the said information contained, they are greatly vexed and disquieted, and this by no means justly; because, protesting that the said information and the matters therein contained are insufficient in law, and that they need not, nor are they obliged, by the law of the land to answer thereunto, yet for plea in this behalf, the said directors, etc., say that by a certain act of the legislature of the people of the state of New York, passed, etc. (date of passage of act), entitled "An act to incorporate, etc." (title of the act), they the said directors, etc., were ordained, constituted and declared to be a body corporate and politic in fact and in name, by the name of the directors and company of the B. & R. turnpike road, for the purposes of constructing a turnpike road, etc. (accord-

ing to the fact), and that by virtue of such act of the legislature, they are a body politic and corporate, in fact and in name, entitled to use the liberties, privileges and franchises granted to them; and for all the time mentioned in the said information have used the same, and particularly the liberty, privilege and franchise of constructing a turnpike road, etc. (describing it, and stating such other facts as are necessary to show by what warrant the corporation has acted; and concluding thus): Without this, that the said the directors, etc., during all or any part of the time mentioned in the said information, have usurped and still do usurp the said liberties, privileges and franchises, mentioned in the said information, or any of them, upon the said people of the state of New York, in manner and form as by the said information is above supposed; all which several matters and things they, the said the directors, etc., are ready to verify, etc. Whereupon they pray judgment, and that the aforesaid liberties, privileges and franchises, by them claimed in manner aforesaid, may be allowed and adjudged to them, the said directors and company of the B. & R. turnpike road; and that they may be dismissed and discharged by the court here, of and from the premises above charged upon them, etc. Burr. App. 568, §1107.

III. Judgment Record on Information in Nature of Quo Warranto.

Pleas before the justices, etc. (placita in the usual form, of the term of issue or judgment).

_____ county, ss.: Be it remembered that heretofore, to-wit, on the _____ day of _____ in _____ term, now last past (or in the same term, the term of filing the information), before the justices aforesaid, at the _____ in the city of _____, came (or comes) J. V. B., attorney general (of the people) of the state of _____, who sues for the said (people) in this behalf, and for the said people, at the relation of A. B., of the town of _____, in the said county of _____, according to the form of the statute in such case made and provided, brought (or brings) into the said court, before the aforesaid justices thereof, then there (or now here) a certain information in the na-

ture of a quo warranto against C. D., of the (said town and county aforesaid), which said information follows in these words, that is to say:

_____ county, ss.: J. V. B., attorney general of the people of the state of New York, who sues, etc. (copy the information to the end, and if an issue in fact have been taken, copy the plea and other pleadings to issue; then the order for trial in the usual form; then enter the postea showing the finding of the jury, and then conclude with award of judgment as follows):

Therefore it is considered that the said C. D. be ousted and altogether excluded from the office of sheriff (or clerk) of the county of _____ aforesaid; and also that the said A. B. (the relator, or that the said J. V. B., attorney general of the people aforesaid) do recover against the said C. D.

_____ dollars (judgment for costs). And it is further considered and adjudged that the said A. B. is rightfully entitled to the said office of sheriff, etc. (as above), and to take upon himself the execution thereof. (And it is further considered and adjudged that the said C. D. do pay to the people of this state a fine of (one thousand) dollars, etc. Burr. App. 525, §1048; 6 Wentworth's Pl. 234.

IV. Demurrer for Want of Attorney-General as Party to Quo Warranto.

"(1) That said plaintiffs have not legal capacity to sue in this action, it appearing from said petition that in said action the county attorney of said county or the attorney-general of the state of Kansas are the only persons authorized to sue; (2) that there is a defect of parties plaintiff in this: that said action should have been brought by the county attorney of said county or the attorney-general of the state of Kansas; (3) the petition of the said plaintiff does not state facts sufficient to constitute a cause of action." *Miller v. Palermo*, 12 Kan. 14.

V. Process in Quo Warranto.

"The territory of New Mexico to Singleton M. Ashenfelter, greeting:

Whereas, Wm. Broeden, attorney general for the territory of New Mexico, on the relation of Edward C. Wade, hath filed in the district court for the Third judicial district of the ter-

ritory of New Mexico, sitting within and for the county of Sierra, by leave of the court, an information in the nature of a quo warranto, alleging and charging that you, the said Singleton M. Ashenfelter, have unlawfully usurped, intruded into, and held the office of district attorney for the third judicial district of the territory of New Mexico, and unlawfully exercised the powers and functions thereof, and that you, the said Singleton M. Ashenfelter still unlawfully hold said office, and exercise the powers and functions thereof, without any authority of law, and to the exclusion of the said Edward C. Wade, who, it is alleged, is the legally appointed district attorney for said district, and lawfully entitled to the possession of said office, and to hold and to enjoy and to exercise the powers and functions thereof; therefore you, the said Singleton M. Ashenfelter, are hereby commanded that, laying all other matters and things aside, you do appear, at ten o'clock a. m. on Wednesday, November 18, 1885, before the said district court, now sitting in said county of Sierra, at the court house of said county, then and there to answer unto said information concerning the matters therein alleged and charged against you, and observe what the said court shall direct in this behalf. And this you do under penalty of the law, and on pain of such judgment and other process as said court shall award.

Witness the Hon. Wm. F. Henderson, associate justice of the supreme court of the territory of New Mexico, and judge of the Third judicial district court thereof, and the seal of said court, this seventeenth day of November, A. D. 1885.

(Seal.) George R. Bowman, clerk."

Territory v. Ashenfelter, 4 N. M. 93, 12 Pac. 879.

VI. Order To Show Cause for Leave To File Information.

"October term, A. D. 1899, to-wit, October 24, A. D. 1899, upon motion of Henry Ridgely, Jr., esquire, to the superior court of the state of Delaware in and for Kent county, a rule is granted on him" (naming the said defendants) "to appear and be before the judges of our said superior court of the state of Delaware, in and for Kent county, at Dover, on Friday, the 27th day of October, A. D. 1899, at ten

o'clock a. m., to show cause if any you have why leave should not be granted to Robert C. White, attorney-general of the state of Delaware, to file an information against you" (naming the defendants) "in the following words and figures, to wit:" *State v. Hancock*, 2 Penn. (Del.) 252.

Note. "You either file the information without leave or you ask for a rule to show cause why leave should not be granted."

RAILROADS.

- I. Complaint for Loss of Goods, 1018
- II. Complaint for Failure To Deliver in Reasonable Time, 1019
- III. Complaint To Recover Back Excess of Freight Exacted, 1019
- IV. Complaint, Destruction of Adjoining Property by Sparks, 1020
- V. Indictment for Placing Obstruction on Track, 1020
- VI. Indictment Against Railroad for Obstructing Highway With Cars, 1021
- VII. Indictment, Attempted Train Robbery, 1021
- VIII. Indictment, Disturbing Fixture Attached to Railroad Switch, 1021

CROSS-REFERENCES:

ASSAULT AND BATTERY:

Answer, Removing From Railroad Car for Non-payment of Fare.

BILLS AND ANSWERS:

Answer by Common Carrier That Goods Were Lost by Risk Excluded by Contract;

DEATH BY WRONGFUL ACT:

Complaint Against Railroad by Personal Representative for Negligence Causing Death;

Complaint, Death by Wrongful Act Setting Out Defect;

Notice of Injury to Railroad Company.

INJUNCTIONS:

Injunction Against Authorizing Laying of Railroad in City street.

INJURIES TO PERSONS:

Declaration, Being Run Over While on Track;

Complaint, Injury to Employe by Defective Appliance;

Complaint, Injuries Received at Grade Crossing;

Complaint, Injuries Caused by Train Falling Through Bridge;

Complaint, Injuries Sustained by Sudden Start of Train;

Answer, Failure To Observe the Approach of Train;

Answer, Setting Up "Act of God."

MALICIOUS MISCHIEF:

Indictment for Placing Obstruction on Railway Track.

MANDAMUS:

Petition by Attorney General for Writ Requiring Stopping of Trains at Particular Station.

MASTER AND SERVANT:

Complaint for Wrongful Discharge After Agreement To Employ in Consideration of Release for Personal Injuries.

Complaint By Servant of Railroad, Injured By Defective Machinery.

NEGLIGENCE:

Complaint Against Railroad, Crossing Accident;

Complaint Against Railroad for Killing Cattle.

PASSENGERS:

Complaint Against Railroad for Injuries to Person;

Complaint, Wrongfully Ejecting Passenger From Train.

I. Complaint Against Common Carrier for Loss of Goods (a).

I. That at the times hereinafter mentioned, the defendant was a common carrier (or, the defendants were common carriers, doing business as such as partners, under the firm of Y. Z. & Co., or, were common carriers, jointly interested as such), of * goods, for hire, between the places hereinafter mentioned.

II. That on the _____ day of _____, 18____, at _____, in consideration of the sum of _____ dollars then paid (or, agreed to be paid) to him by the plaintiff (or, of a reasonable compensation then agreed to be paid to him by the plaintiff, or, in consideration that the plaintiff delivered to the defendant certain goods hereinafter mentioned), the defendant agreed safely to carry to _____, and there deliver to _____, or order (or otherwise, as the case was), certain goods, the property of the plaintiff, of the value of _____ dollars, consisting of (here briefly describe the goods), which the plaintiff then and there delivered to the defendant, who received the same upon the agreement and for the purposes before mentioned.

III. That the defendant did not

safely carry and deliver the said goods pursuant to said agreement (although on the _____ day of _____, 18____, at _____, the plaintiff, or, said consignee, demanded the same of him); but, on the contrary, the defendant so negligently conducted and so misbehaved, in regard to the same in his calling, as carrier, that they were wholly lost to the plaintiff, to his damage _____ dollars. 1 Abb. Forms 405.

Complaint Against Common Carrier, for Loss of Goods (b).

I. (As in preceding form.)

II. That on the _____ day of _____, 18____, one M. N. delivered to the defendants, and they, as such carriers, received certain goods, the property of the plaintiff, to-wit (describe the goods), of the value of _____ dollars, to be by the defendants safely carried to _____, and there delivered to _____, for a reasonable reward to be paid by _____ therefor.

III. That the defendants did not safely carry and deliver said goods; but, on the contrary, so negligently conducted, and so misbehaved in regard to the same in their said calling as carriers, that the same were wholly lost to the plaintiff, to his damage _____ dollars. 1 Abb. Forms 406.

II. Complaint Against Common Carrier for Failure To Deliver in Reasonable Time, With Special Damage.

I. That the defendants are a corporation, created by and under the laws of this state, organized pursuant to an act of the Legislature, entitled "An Act to Authorize the Formation of Railroad Corporations, and to Regulate the Same," passed April 2, 1850, and the acts amending the same; and at the times hereinafter mentioned, being such corporation, were common carriers of * goods for hire, between the places hereinafter mentioned.

II. That on the _____ day of _____, 18____, at _____, at about 11 o'clock p. m., in consideration of the sum of _____ dollars then and there paid (or, for a reasonable compensation agreed to be paid) to them by the plaintiff, the defendants agreed to carry to _____, and there deliver to the plaintiff, within a reasonable time after the receipt thereof by them as aforesaid, one hundred cans of milk,

the property of the plaintiff, of the value of _____ dollars, which the plaintiff then and there delivered to the defendants, who received the same upon the agreement and for the purposes aforesaid.

III. That _____ hours was then the usual time occupied by the trains of the defendants in going from _____ to _____, and was a reasonable time for the transportation of said milk:

IV. That the defendants failed to deliver the same within that time, pursuant to their agreement; but, on the contrary, so negligently and carelessly conducted, and so misbehaved in respect to the same, in their calling as carriers, that they failed to deliver it until _____ hours (or, days) after it was delivered to them as aforesaid.

V. That by reason of said delay the milk became sour and unmarketable, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 411.

III. Complaint by Owner of Goods Against Common Carrier To Recover Back Excess of Freight Exactd.

I. That on the _____ day of _____, 18____, the defendants agreed with this plaintiff to transport from _____ to _____, and to deliver there to him certain goods of the plaintiff, for the sum of _____ dollars (or, for a reasonable sum).

(Or, where there was no special contract, I. That the defendants being common carriers for hire between _____ and _____, on the _____ day of _____, 18____, undertook to transport for the plaintiff from _____ to _____ certain goods of his, for a reasonable compensation).

II. That in pursuance thereof the defendants transported said goods (for which service _____ dollars is a reasonable sum); and upon their arrival at _____, the plaintiff demanded said goods of the defendants, and offered to pay them, for transporting the same, said sum of _____ dollars; but that the defendants refused to deliver said goods, unless the plaintiff would pay to the defendants the sum of _____ dollars for transporting the same.

III. That the plaintiff thereby was compelled to pay, and on the _____ day of _____, 18____, and to obtain the delivery of said goods, did pay to

the defendants the said sum of ——— dollars, which sum he paid under protest, and expressly denying the defendant's right to claim it. 1 Abb. Forms 182.

IV. Complaint, Destruction of Adjoining Property by Sparks From Locomotive.

"Plaintiff states that the defendant is a corporation duly incorporated under and by virtue of the laws of the state of Missouri, and was at the time of the grievance hereinafter mentioned, as such corporation, the owner and occupier of a certain railroad, together with depots, switches, sidetracks, and facilities for receiving and unloading freight, stock and goods, which said railroad runs through the counties of Warren and Montgomery, in the state of Missouri, and as said corporation was at said time operating, working, managing and running its said railroad by its agents, servants and employees, and using thereon its locomotives, engines, cars and trains.

"That on or about the 6th day of April, 1895, the plaintiff was the owner of a certain building, used as a warehouse, elevator or grain house, together with horse-power, belting and all appliances and machinery necessary and required to run, work and operate the same, which said building, with the said horse-power, belting, appliances and machinery therein, stood adjoining or near the depots, switches, sidetracks, at or near the defendant's station or depot at Wright City, in said Warren county, all of which was of the value of two thousand dollars.

"That on or about said date, the defendant so carelessly and negligently operated, worked, run and managed its said railroad, and carelessly and negligently used thereon defective and insufficient locomotives and engines, and so carelessly, negligently and unskilfully operated, worked and managed and run its locomotives, engines, cars and trains on its said switches, railroad and sidetracks, that fire escaped from its locomotives and engines and was communicated to plaintiff's said building, warehouse, elevator or grain house, and the same, together with said horse-power, belting and appliances, and machinery therein, as aforesaid, were damaged and destroyed to plain-

tiff's damage in the sum of two thousand dollars."

"Wherefore, by reason of the premises, the plaintiff says he is damaged in the sum of two thousand dollars, for which and costs of suit he asks judgment." *Ordelheide v. Wabash R. Co.*, 80 Mo. App. 357.

Note.—Judgment given against complainant on contract assuming risk.

V. Indictment for Placing Obstruction on Track (a).

"On the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventy-five, at Seabrook, in the county of Rockingham, aforesaid, with force and arms, feloniously, wilfully, and maliciously did place upon the track of the railroad of the Eastern Railroad in New Hampshire, in Seabrook aforesaid, two large pieces of wood called railroad sleepers, and one large piece of wood called a post—the same sleepers and post being then and there an obstruction on the track of said railroad to the passing of the railroad cars thereon—whereby the lives of sundry persons riding on the cars upon said railroad were greatly endangered, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state."

A second count charged that said Henry Beckman "with force and arms, feloniously, wilfully and maliciously did place upon the track of the railroad of the Eastern Railroad in New Hampshire, in Seabrook aforesaid, two large pieces of wood called railroad sleepers, and one large piece of wood called a post, being an obstruction to the passing of railroad cars and locomotive engines thereon, whereby the life of one Thomas Sweetser, riding on a locomotive engine upon said railroad, was greatly endangered, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state." *State v. Beckman*, 57 N. H. 174.

Indictment for Placing Obstructions on Track of Railroad (b).

"At Somersworth, on the 4th of March, 1857, with force and arms, feloniously, wilfully and maliciously did place upon the track of the railroad of the Boston and Maine railroad, in Somersworth aforesaid, in the county

aforesaid, two iron rails, two large stones and two large pieces of wood, being an obstruction to the passing of the railroad cars thereon, whereby the lives of sundry persons, to-wit, twenty persons, riding in said cars upon said railroad, were greatly endangered." State v. Wentworth, 37 N. H. 196.

VI. Indictment Against Railroad for Obstructing Highway With Cars.

"That the Grand Trunk Railway Company of Canada, a corporation established by law, and whose office and place of business is in Portland, in the county of Cumberland, on the first day of September, in the year of our Lord one thousand eight hundred and sixty-nine, at Falmouth, in said county of Cumberland, and on divers other days and times between that day and the day of finding this indictment, at said Falmouth, in a certain common highway leading from Falmouth post-office to the foreshore road, so-called, and then and there used by all the good people of the said state, with their horses, teams, and carriages, to go and return, pass and repass at their free will and pleasure freely, without obstruction or hindrance, unlawfully did put and place locomotive engines and a great number of empty cars, to-wit, five empty cars and railroad trains, and did then and there, and on said divers other days and times, unlawfully and injuriously permit and suffer the said locomotive engines, empty cars, and railroad trains, respectively to be and remain in, upon, and across the common highway aforesaid, for a long space of time, to-wit, for the space of one hour on each of said days and times, whereby the common highway, aforesaid, then and on said divers other days and times there, for and during all the times aforesaid on each of the said days, respectively, was unreasonably and negligently obstructed, straitened, and closed, so that the good people of the said state could not then, and on said divers other days and times there, go and return, pass and repass, drive with their horses, teams, and carriages in, through, and along said highway, as they ought and were accustomed so to do, to the great damage and common nuisance of all the citizens of said state, going, returning, passing, and repassing, in, through, along, and upon said highway, against the peace of said state, and contrary

to the form of the statute in such case made and provided." State v. Grand Trunk R. Co., 59 Me. 189.

Note. — Sustained under statute against unreasonably and negligently obstructing by engines, tenders or cars.

VII. Indictment, Attempted Train Robbery.

"In the circuit court of Pettis county, Missouri, April term, 1899. State of Missouri, county of Pettis, ss.:

"The grand jurors of the state of Missouri, duly impaneled, sworn and charged to inquire within and for the body of the county of Pettis and state aforesaid, upon their oath present and charge that heretofore, to-wit, on the twenty-ninth day of November, 1898, at the county of Pettis and state of Missouri, James L. West and Eli J. Stubblefield, unlawfully and feloniously did stop, detain and arrest the progress of a certain railway passenger and express train, the property of the Missouri Pacific Railway Company, a corporation duly organized and existing under the laws of the state of Missouri, by then and there giving to the engineer of said train a danger signal by swinging a lighted lantern across the track of said railway in front of said train, which said railway train was then and there upon and moving along the railroad track and railway of the said Missouri Pacific Railway Company within said county of Pettis and state of Missouri, with the felonious intent then and there to commit robbery thereon, contrary to the statutes in such cases made and provided, and against the peace and dignity of the state." State v. West, 157 Mo. 309, 57 S. W. 1071.

VIII. Indictment, Disturbing Fixture Attached to Switch on Railroad.

"The grand jury of Laurel county, in the name and by the authority of the commonwealth of Kentucky, accuse John Rooney of the crime of willfully and maliciously tearing up, displacing, breaking and disturbing a fixture attached to the track and switch of a railroad in operation, whereby the engine and cars on said railroad might be upset, arrested and thrown from the track and switch of said road, committed in manner and form as follows, viz: The said John Rooney did, on the 4th day of October, 1897, and before the finding of this indictment in the county aforesaid,

unlawfully, wilfully and maliciously rear up, displace, break and disturb a fixture attached to the tracks and switches of the Louisville & Nashville Railroad Company's railroad, a railroad then in operation, viz., a switch light, by striking and hitting said switch light with a coupling pin, bars and pieces of iron and other hard substances, whereby the engine and cars on said railroad and switch thereof might be upset and thrown from said track and switch, against the peace and dignity of the commonwealth of Kentucky.

(Signed) W. R. Ramsey,
"Commonwealth's attorney 27th Judicial District of Kentucky.

(Endorsed) "A true bill.

S. W. Brock, Foreman."

Rooney v. Com., 102 Ky. 373, 43 S. W. 689.

Note.—Held sufficient under statute.

RAPE.

I. Indictment for Rape, 1022

II. Indictment for Rape on Woman of Unsound Mind, 1022

III. Indictment for Rape of Child, 1022

IV. Complaint for Preliminary Examination for Rape, 1022

V. Complaint for Preliminary Examination, Assault With Intent To Commit Rape, 1023

I. Indictment for Rape (a).

That A. O., late of, etc., not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, etc., with force and arms, at, etc., in and upon one A. J., spinster, in the peace of God and our said lord the king then and there being, violently and feloniously did make an assault, and her the said A. J. against the will of her the said A. J. then and there feloniously did ravish and carnally know against the form of the statute in such case made and provided and against the peace of our said lord the king, his crown and dignity. 3 Chit. Cr. L. *815.

Indictment for Rape (b).

"That one George Barker, late of the county of Duval and state of Florida, on the 17th day of January, in the year of our Lord one thousand eight hundred and ninety-seven, in the

county and state aforesaid, with force and arms in and upon one Mabel Bettelini did make an assault, and her, the said Mabel Bettelini, then and there feloniously did ravish and carnally know, forcibly and against the will of her, the said Mabel Bettelini, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the state of Florida." Barker v. State, 40 Fla. 178, 24 So. 69.

II. Indictment, Rape on Woman of Unsound Mind.

That "W. E. Caruth, on the 15th day of July, 1893, in the county of Fannin and state of Texas, did then and there unlawfully, in and upon one Ella Ledford, a woman, make an assault, and did then and there ravish and have carnal knowledge of the said Ella Ledford, she being then and there other than his wife, and being then and there so mentally diseased at the time as to have no will to oppose the act of carnal knowledge, and he (the said Caruth) then and there knowing her (the said Ella Ledford) to be so mentally diseased, contrary," etc. Caruth v. State (Tex. Crim.), 25 S. W. 778.

Note.—Under statute.

III. Indictment for Rape of Child.

In and upon one C. D., a woman child under the age of ten years, to-wit, of the age of nine years and upwards, feloniously did make an assault, and her the said C. D. then and there wickedly, unlawfully, and feloniously did carnally know and abuse. 3 Chit. Cr. L. 815.

IV. Complaint for Preliminary Examination for Rape.

"State of Wisconsin, county of Iowa, ss. State of Wisconsin v. William T. Jackson.

"Mildreth Daniels, being duly sworn, on oath says that on the 7th day of July, 1894, at said county, William T. Jackson did with force and arms, in and upon this complainant, Mildreth Daniels, a female of the age of twelve years and more, to-wit, the age of fourteen years, violently and feloniously make an assault, and her, the said Mildreth Daniels, then and there with force and against her will violently and feloniously ravish and car-

nally know, against the peace and dignity of the state of Wisconsin.

Mildreth Daniels.

"Subscribed and sworn to before me this 6th day of August, 1894.

H. Pitts, J. P."

Jackson v. State, 91 Wis. 253, 64 N. W. 838.

V. Complaint for Preliminary Examination, Assault With Intent To Commit Rape.

"State of Michigan: County of Bay, ss:

The complaint of Michael Carney, taken and made before me, a justice of the peace of the city of Bay City, in said county, upon the seventeenth of May, A. D. 1873, who being duly sworn says that heretofore to-wit: On the second day of May, A. D. 1873, at the city of Bay City, and in the county aforesaid, one Timothy Lynch, late of Bay City, in the county of Bay, with force and arms, in and upon one Mary Carney, a female child of the age of ten years or more, to-wit, of fourteen years, in the peace of the people of the state of Michigan then and there being, feloniously did make an assault with intent her, the said Mary Carney, by force and against her will, then and there, feloniously to ravish and carnally know, and other wrongs to her, the said Mary Carney, then and there did, against the form of the statute in such case made and provided, and against the peace and dignity of the people of the state of Michigan. Whereof the said Michael Carney prays that the said Timothy Lynch may be apprehended and held to answer this complaint, and further dealt with in relation to the same as law and justice may require.

(Signed) "Michael Carney.

"Taken, subscribed and sworn before me the day and year above written.

(Signed) John Hargadon,

"Justice of the Peace."

People v. Lynch, 29 Mich. 274.

Note.—The language is as full and formal as is required in an indictment. Opinion of court.

RECAPTION.

Plea, Recaption in Justification of Trespass.

(First plea, not guilty; second plea, as follows):

As to the breaking and entering the

said close in which, etc. and treading down, and trampling upon the said grass, and taking and seizing, and leading away the said gelding, the said defendants say (actio non). Because they say, that the said C. D. long before the said time when, etc., to-wit, on, etc., was possessed of the said gelding, as of his own proper gelding, to-wit, at, etc., and the said C. D. being so possessed thereof, the said plaintiff did then and there, with force and arms, take the said gelding from the said C. D. and put him into the said close, and wrongfully detained him therein until the said time when, etc., wherefore the said C. D. in his own right, and the said E. F. as the servant of the said C. D. and by his own command, at the said time when, etc., broke and entered the said close in which, etc., in order to retake the said gelding, and did retake the said gelding and carry him away, as he lawfully might for the cause aforesaid. And this, etc. (Conclude with a verification.) 3 Chit. Pl. 1130.

RECEIVERS.

I. Appointment, 1024

A. Notice of Motion, 1024

B. Orders, 1024

1. Of Real and Personal Estate, 1024

2. Of Partnership Business, 1024

3. Of Testator's Business, 1025

4. Of Property in Foreign Country, 1025

5. Receiver Continued at Hearing, 1025

6. Temporary Receiver, 1025

II. Bonds, 1025

A. Receiver's Bond, 1025

B. Affidavit of Sufficiency, 1026

C. Indorsement of Approval, 1026

III. Review of Appointment, 1026

A. Notice of Motion, 1026

B. Order, 1026

IV. Transfers to Receiver, 1026

A. General Assignment, 1026

B. Transfer of Real Estate, 1027

C. Order That Receiver Give Sheriff Statement, 1027

V. Management of Property, 1027

A. Order To Repair, 1027

- B. *Notice of Motion To Instruct*, 1028
- C. *Receiver's Petition To Sell*, 1028
- D. *Authority To Compromise*, 1028
- E. *Complaints*, 1028
 - 1. *Alleging Appointment*, 1028
 - 2. *Alleging Appointment for Dissolved Corporation*, 1029
- VI. *Accounts of Receivers*, 1029
 - A. *Order To Bring in*, 1029
 - B. *Order for Separate Accounts*, 1029
 - C. *Affidavit To Account*, 1029
 - D. *Reference on Account*, 1029
 - E. *Acceptance and Approval*, 1030
- VII. *Order as to Compensation*, 1030
- VIII. *Distribution*, 1030
 - A. *Notice of Petition for Directions*, 1030
 - B. *Order To Pay Out Balance*, 1030
- IX. *Discharge*, 1031
 - A. *Notice of Motion*, 1031
 - B. *Order*, 1031
 - C. *Petition for Discharge*, 1031

CROSS-REFERENCES:

CREDITORS' SUITS:

- Order of Reference To Appoint Receiver in Creditor's Suit;
- Order Appointing Receiver in Creditor's Suit Against Foreign Corporation and Resident Agent;
- Decree Discharging One Defendant on Paying Amount Reported to Receiver.

MORTGAGES:

- Complaint, Allegation of Inadequacy of Security and Demand for Receiver of Rents and Profits.

OBSTRUCTING JUSTICE:

- Indictment, Resisting Receiver Appointed by Court.

PARTNERSHIP:

- Prayer in Bill for Accounting, Receiver and Injunction in Partnership.

REVIVOR:

- Petition by Receiver or Assignee of Plaintiff's Title To Revive Action in His Own Name.

SUPPLEMENTARY PROCEEDINGS:

- Order Appointing Receiver in Supplementary Proceedings;
- Receiver's Notice in Supplementary Proceedings;

I. Appointment.

- A. *Notice of Motion for the Appointment of a Receiver*.

Take notice, etc., etc., that some proper person may be appointed a receiver of the rents and profits of the

estates in the pleadings in this cause mentioned, with the usual directions. Dated, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2150.

B. Orders.

- 1. *Order for Appointment of Receiver of Real and Personal Estate*.

Let a proper person be appointed to receive (or let A., of, etc., upon his giving security, be appointed to receive) the rents and profits of the real (freehold and [or] leasehold) estates. (If so, and to collect and get in the outstanding personal estate) of B., the testator (or intestate), in the bill (or pleadings) named (or the rents and profits of the real, etc., estates comprised in the indenture, dated, etc., in the bill, etc., mentioned): And the tenants of the said real (freehold and [or] leasehold) estates are to attorn and pay their rents in arrear and growing rents to such receiver (and let the defendants C. and D., the executors of the will of the testator [or administrators of the effects of the intestate] deliver over to such receiver all securities in their hands for such outstanding personal estate, together with all books and papers relating thereto); and let such receiver from time to time pass his accounts, and pay the balances which shall be certified to be due from him into, etc., to the credit of this cause; and let such balances, when so paid in, be laid out, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2336; 2 Seton Dec. (Eng. ed., 1862) 1002.

- 2. *Order for Appointment of Receiver of Partnership Business*.

"Let a proper person or persons be appointed, either jointly or separately, to collect, get in and receive the debts now due and outstanding, and other assets, property or effects belonging to the said partnership business of, etc., at, etc., and out of the first moneys to be received to pay the debts due from the said business, and to manage the same, so far as relates to any contract subsisting on the _____ day of _____, and either of the parties is to be at liberty to propose himself as such receiver and manager to act without salary: And let the plaintiff and defendant deliver over to the person or persons so to be appointed all the stock in trade and effects of the said partnership, and also all securities

in their, or either of their, hands, for such outstanding partnership estate, together with all books and papers relating thereto." Directions that all the partnership property and effects, other than stock in trade, and the good-will of the partnership, be sold, either as a going concern, or otherwise as the court shall direct, and either of the parties, not having the conduct of such sale, to be at liberty to bid; liberty to apply in chambers as to the payment of any liabilities of the partnership prior to the appointment of such receiver and manager, or receivers and managers; usual directions to pass accounts and pay balances into, etc., to be laid out. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2339; Pilling v. Pilling, 2 Seton Dec. (Eng. ed., 1862) 1031.

3. Order That Receiver and Manager of Testator's Business Be Appointed.

"Let a proper person be appointed to collect, get in and receive the debts now due and outstanding, belonging to the trade or business in the pleadings mentioned, carried on by the testator, and since by the defendants M. & C., and by the defendant M., and out of the first moneys to be received to pay the debts due from the said trade or business, and to manage the same, until the sale thereof." "And let the plaintiffs and defendants deliver over to such person all the stock in trade, goods, effects, books and accounts belonging to the said business." Directions to pass accounts and pay in balances. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2339; 2 Seton Dec. (Eng. ed., 1862) 1024.

4. Order Appointing Receiver of Property in Foreign Country, With Leave to Appoint Agent to Litigate.

Let B. M., of, etc., be appointed to collect and get in the outstanding personal estate and effects of the testator, and to receive the rents and profits of his real estate in Italy, and any money that may arise from the sale of his real estate in Italy. "And let such receiver, with the approbation of, etc., if expedient, appoint a proper person as his agent, living at or near L., or elsewhere in Italy, to collect the said rents and profits, and to receive and get in the (personal) estate and effects of the testator, and to see the same properly secured and transmitted to,

etc., to be disposed of as this court shall direct, and, if necessary, to continue the suit now instituted, and to litigate and contest any other suit which may arise (concerning), or have relation to, the testator's estate in Italy; and let, if necessary, a proper instrument be executed by the defendant, to such person so to be appointed, for the purposes above mentioned, such instrument to be approved of by _____ judge" (or court). Plaintiff and defendant to deliver over to receiver all securities, books and papers; and he to pass accounts, and pay in balances. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2346; Hinton v. Galli, 2 Seton Dec. (Eng. ed., 1862) 1039.

5. Order, Receiver Continued at Hearing.

Let the receiver appointed in this cause pursuant to (or by) the order dated, etc., be continued; and let him (keep down the interest on the mortgages therein mentioned and) pass his accounts and pay his balances as thereby directed. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2337; 2 Seton Dec. (Eng. ed., 1862) 1003.

6. Order Appointing Temporary Receiver.

"It is ordered that said John L. Sereven be, and he is hereby appointed, temporary receiver of the Brunswick and Albany Railroad Company, and all of its property of every kind. And he is hereby ordered to collect immediately all said property together and hold the same subject to the further order of the court. Granted by me, at chambers, this 30th day of November, 1871. (Signed) William M. Sessions,

J. S. C., B. C."

Sereven v. Clark, 48 Ga. 42.

Note.—Held not to authorize suit by receiver without express authority—a general rule.

II. Bonds.

A. Receiver's Bond.

Know all men by these presents that we, R. C., of _____, and E. F., of _____, and G. H., of _____, are held and firmly bound unto the people of the state of New York, in the sum of _____ dollars, lawful money of the United States of America, to be paid to the said the people of the state of New York; for which payment well and truly to be made, we and each of us bind ourselves respectively, and our respective heirs, executors and admin-

istrators jointly and severally, firmly by these presents. Sealed with our seals, and dated the _____ day of _____, 18—.

Whereas, by an order of the _____ court of _____, bearing date the _____ day of _____, 18—, made before _____ (or at a special term thereof, held on said day at _____), in an action wherein A. B. is plaintiff, and Y. Z. and others are defendants (here briefly state object of the order, e. g., thus): the above bounden R. C. was appointed receiver of the partnership property and assets of said plaintiff and defendants (or thus: it was referred to R. F. to appoint a receiver of, etc., and to take due security from such receiver; and whereas said referee has appointed the above bounden R. C.):

Now, the condition of this obligation is such that if the above bounden R. C. shall, according to the rules and practice of the court, duly file his inventory, and annually, or oftener if thereunto required, duly account for what he shall receive or have in charge as receiver in the said cause, and pay and apply what he shall receive or have in charge as he may, from time to time, be directed by the court; and do and perform his office of receiver in all things according to the true intent and meaning of the aforesaid order, then this obligation to be void, otherwise to remain in full force.

(Signatures and seals.)

Sealed and delivered in the presence of (witness). 2 Abb. Forms 389.

B. Affidavit of Sufficiency To Be Made by Sureties.

E. F. and G. H., of _____, being severally duly sworn, say, each for himself, that he is a freeholder (or a householder) in _____, in the county of _____, and is worth _____ dollars (amount of the penalty) over and above all his debts and liabilities.

(Signatures.)

2 Abb. Forms 390.

C. Indorsement of Approval.

I approve the within bond as to its form and manner of execution, and as to the sufficiency of the sureties.

(Signature of officer.)

2 Abb. Forms 390.

III. Review of Appointment.

A. Notice of Motion to Review Appointment.

(Object of motion may be stated

thus): That the said appointment of R. C. as receiver may be revoked; and that it be referred back to said referee (or referred to another referee) to appoint a new receiver in this action, and take the requisite security. 2 Abb. Forms 400.

B. Order on Notice of Motion to Review Appointment.

(Direction may be thus):

Ordered that it be referred back to R. F. (the referee heretofore appointed) to review the appointment of R. C. as receiver in this cause; and that the same may be supported and opposed by further evidence; and that upon such review, and upon due hearing of the parties, the said referee proceed to appoint a receiver in this action, pursuant in all respects to said order.

(Or that the order of reference to R. F. to appoint a receiver in this action, dated the _____ day of _____, 18—, be revoked and set aside, and that it be referred, here proceed as in an original order). 2 Abb. Forms 400.

IV. Transfers to Receiver.

A. General Assignment to Receiver.

This indenture, made the _____ day of _____, 18—, between W. X. and Y. Z., heretofore partners in trade, doing business in the city of _____ under the style of _____, of the first part; and R. C., of, etc., receiver of the estate and effects hereinafter referred to, appointed by the _____ court of _____, of the second part.

Whereas, in and by an order of the said court, before, etc., in a certain action wherein the said W. X. was plaintiff and the said Y. Z. was defendant, it was ordered that it be referred, etc. (here recite the provision of the order); and whereas the said party of the second part has been duly appointed such receiver, and has given and filed the requisite security, pursuant to the rules and practice of the said court, and to the provisions of the said order:

Now, this indenture witnesseth, that the said parties of the first part, in obedience to the said order, and in consideration of the premises aforesaid, and of one dollar to each of them in hand paid, by the said party of the second part at or before the execution hereof, the receipt whereof is hereby acknowledged, have, and each of them

has, conveyed, assigned, transferred, and delivered over, and by these presents do, and each of them does, convey, assign, transfer and deliver over unto the said party of the second part, under the direction of the said referee, testified by his approval indorsed hereon, all and every the stock in trade, good-will, estate, real and personal, chattels real, moneys, outstanding debts, things in action, equitable interests, property and effects whatsoever and wheresoever, of or belonging or due to the said firm, or to the said parties of the first part as partners therein, or in which the said firm, or they or either of them, as such partners, had any estate, right, title or interest at the time of filing the complaint in said action, to-wit, on the _____ day of _____ last; and also all deeds, writings, leases, muniments of title, books of account, papers, vouchers, and other evidences whatsoever relating or appertaining thereto:

To have and to hold the same unto him the said party of the second part, as such receiver as aforesaid, and to his successors and assigns, subject to the order, direction and control of the said _____ court. And for the better and more effectually enabling the said party of the second part, his successors and assigns, to recover and receive all or any part of the stock, estate, book-debts, property, choses in action, and effects hereby conveyed, assigned and transferred, they the said W. X. and Y. Z. have made and appointed, and by these presents do make and appoint, the said R. C., party of the second part, his successors and assigns, the attorney and attorneys of them the said parties of the first part, in their names, or in his own name, to commence, continue, discontinue, and again bring, perfect and carry out actions and suits against any persons or corporations, for or on account of all or any part of the said estate, stock, property, book-debts, choses in action or effects. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signature and seal.)

Sealed and delivered in the presence of (witness). 2 Abb. Forms 394.

B. Transfer of Real Estate to Receiver.

This indenture, made the _____

day of _____, 18—, between Y. Z., of, etc., of the first part, and R. C., receiver appointed by the _____ court of _____, of the second part:

Whereas (insert recitals as in IV, A.)

Now, this indenture witnesseth, that the said party of the first part, in obedience to the said order, and in consideration of the premises aforesaid, and of one dollar to him in hand paid by the said party of the second part, before the execution hereof, the receipt whereof is hereby acknowledged, has bargained, sold, aliened, released and confirmed, and by these presents doth grant, bargain, sell, alien, release and confirm unto the said party of the second part, all and every the right, title, estate and interest of the said Y. Z., party of the first part, of and in all that certain lot (describing the premises), together with the appurtenances, rents, issues and profits thereof; and all deeds, evidences, leases and papers relating thereto.

To have and to hold all and every the same unto and to the use of the said R. C., party of the second part, as such receiver, his successors and assigns. In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signature and seal.)

Sealed and delivered in the presence of (witness). 2 Abb. Forms 396.

C. Order That Receiver Give Sheriff Statement of Property He Claims.

Let P., the receiver appointed in this cause, within (seven) days after notice hereof, deliver to the sheriff of S. a statement in writing, specifying what part of the goods and chattels now in the possession of the said sheriff the said receiver claims, as the property of K., the testator in, etc., named; and let the sheriff withdraw from the possession of such parts of said goods and chattels as the receiver shall so specify. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2337; 2 Seton Dec. (Eng. ed., 1862) 1002.

V. Management of Property.

A. Order, Receiver To Repair Buildings.

Let the works and repairs on the farm in the occupation of, etc., at, etc., mentioned in the affidavit of, etc., be done and executed by, etc., according to the specifications and estimated con-

tained in the exhibits K and L in the said affidavit referred to; and let the said works and repairs be done and executed under the direction and superintendence of the defendant T., the receiver of the rents and profits of the trust estates in question in these causes; and let, upon the said works and repairs being certified to have been properly executed, according to the said several specifications and estimates, the said receiver be at liberty to pay to the said, etc., the sum of \$——, and be allowed the same on passing his accounts; and let timber of the value of \$—— be taken off the said trust estates for the said repairs and works. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2337; *Thellusson v. Woodford*, 2 Seton Dec. (Eng. ed., 1862) 1014.

B. Notice of Motion To Instruct Receiver.

Please take notice that on (mention papers on which motion is founded, e. g., the affidavit of M. N., or the certificate of the referee, of which a copy is annexed), the undersigned will move the court at a special term to be held at ——, on the —— day of ——, 18—, at —— o'clock in the —— noon, or as soon thereafter as counsel can be heard, for an order directing the receiver heretofore appointed in this action (here specify what directions are sought, e. g., thus): to proceed in the further discharge of his trust in disposing of the copartnership property and effects; and that he be authorized and directed to sell the entire stock in trade of said copartnership, at private sale, to ——, at the sum agreed upon, to-wit, etc., etc. (stating terms), and take from him his indorsed notes for one-half of the purchase money, payable at, etc., and for such other or further order as may be just, with costs of motion, to be paid out of the assets in the hands of said receiver. 2 Abb. Forms 397.

C. Receiver's Petition for Leave To Sell.

To the —— court of ——:

The petition of R. C., receiver in this cause, shows:

I. That having been appointed by order of this court (or otherwise), on the —— day of ——, 18—, receiver of (briefly designate estate), your petitioner gave the requisite bond with sureties, which was duly approved

and filed, and he is now acting in the discharge of the said trust.

II. That it appears that the defendant is owner of certain real property known and described as follows (description of the premises, and state also what interest the defendant has in it, what incumbrances there are upon it, and its value).

III. (State reasons for asking a sale, e. g., thus): That your petitioner has found no goods, or chattels, or choses in action of the said Y. Z., out of which any money can be made by collection, suit or sale; and the said land is the only available property.

Wherefore your petitioner asks an order, allowing him as such receiver to sell by public auction, and convey all the right, title and interest of the said Y. Z., of and in the said land; and that the said Y. Z. join in such deed if the purchaser require it, and for such other or further order as may be just.

(Signature of) receiver.

(Jurat.)

2 Abb. Forms 398.

D. Order of Court on Request by Receiver for Authority To Compromise Notes and Accounts.

At chambers in B., June 17, 1862.

On the foregoing petition it is ordered that free authority be given to the receiver in the above entitled case to compromise and compound, and take part in payment, of all such notes, debts and demands, due to the parties, whose estate and property are now in his hands as receiver, on such terms and conditions as he may think expedient; the said receiver keeping an account of the notes, debts and demands, which may be compromised and compounded by him under this order, and making report thereof to this court.

It is also ordered that said receiver pay to the messenger, appointed under the insolvent proceedings, such sum as may be due to him for services and expenses; the same to be paid out of any funds in his hands belonging to said estate. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2342.

E. Complaints.

1. Complaint by Receiver, Alleging Appointment Pending Litigation.

II. That on the —— day of ——, 18—, at the city of New York, in an action then pending in

the court of common pleas for said city, wherein M. N. was plaintiff and O. P. was defendant, upon an application made by said M. N., and by an order or determination duly made by said court, this plaintiff was appointed receiver of the property hereinafter described.

III. That thereafter, and before the commencement of the present action, he gave his bond required by the said order, as such receiver, approved by the said justice, which bond, with such approval, are on file in the said _____ court, and were so there prior to the commencement of this action. 1 Abb. Forms 158.

2. *Complaint by Receiver Alleging Appointment for Dissolved Corporation.*

The plaintiff, complaining as receiver of the _____ company, alleges:

(Set forth cause of action accruing to the corporation.)

II. That on the _____ day of _____, 18—, at _____, upon an application made upon occasion of the insolvency of the said _____ company (or upon occasion of the voluntary dissolution of the said _____ company), and by an order or determination by the supreme court in and for the county of _____, the plaintiff was appointed receiver of the property, and effects, and things in action of the said _____ company, pursuant to statute.

III. (As in preceding form.) 1 Abb. Forms 158.

VI. *Accounts of Receivers.*

A. *Order for Receiver To Bring in Account.*

"Let C., the receiver appointed in these causes, on or before the _____ day of _____ (or within _____ days after service of this order), leave in the chambers of the judge his (5th) account as such receiver, pursuant to the order dated, etc., and on or before the _____ day of _____ have in said chambers his (6th) account as such receiver." Receiver to pay costs of application. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2338; *Cave v. Cave*, 2 Seton Dec. (Eng. ed., 1862) 1018.

B. *Order for Separate Accounts by Receiver of Rents and Personality; Investment.*

And let such receiver keep separate accounts of the said rents and profits, and of the said personal estate, and

from time to time pass his accounts, and pay the respective balances which shall be certified to be due from him into the, etc., to separate accounts to be entitled, etc.; and let such balances when, etc., be laid out, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2337; 2 Seton Dec. (Eng. ed., 1862) 1002.

C. *Affidavit of Receiver to His Account.*

R. C., of _____, the receiver of the rents and profits of the estate in question in this cause, being duly sworn, says:

I. That the foregoing account contains, according to the best of this deponent's knowledge and belief, a full and true account of all the rents and profits of the said estates for one year, ending on the _____ day of _____, 18—, being from the foot of his former account, and of the former rents returned by his said former account to be in arrear and unreceived at the time of the making up the same, which have been received by this deponent, or any other person by his order, or for his use (except such as may have been received since the time of making up the foregoing account, which are or will be brought into his subsequent account).

II. That the several sums of money mentioned in the said foregoing account to have been paid or allowed, were actually paid or allowed by this deponent for or on account of the said estates, and for the several purposes therein mentioned, according to the best of his knowledge and belief.

III. That he does not know of any error or omission in the said foregoing accounts to the prejudice of any of the parties in the said cause. 2 Abb. Forms 399.

D. *Reference To Pass Receiver's Account.*

(The object of motion, or of the order, may be stated thus): To take and state the accounts of R. C., the said receiver in this action, and to ascertain and report to the court what, if any, of the property and assets in question in this action remain undisposed of; and the balance of each remaining in his hands after making all just allowances to said receiver for the costs and expenses of said receivership and his commissions, as well as for other disbursements and payments

properly made by him, on account of said trust fund (where the receiver is in fault, and the motion is against him, add: with costs of this motion to be paid by said receiver personally). 2 Abb. Forms 400.

E. Acceptance and Approval of Receiver's Account.

On the account rendered in the above cause by A. H., esquire, the receiver appointed therein, it is ordered, adjudged, and decreed by the court that said account be, and the same is hereby accepted and approved, and that said A. H. be allowed for his services as such receiver the sum of \$——— out of the moneys in his hands as such receiver, and that all the goods, wares, merchandise, choses in action, property, estates, effects, moneys, deeds, documents, vouchers, writings, papers and books of account in his hands or possession, or under his control, as such receiver, after the retention by him out of said moneys of the sum so allowed him be delivered and passed over by him into the hands and possession of such person or persons as shall be appointed assignees in insolvency of the joint and separate estates of B. P. W., G. T. L., and W. R. W., copartners under the firm of W. & L., and said receiver is hereby ordered and directed to deliver and pass over the same accordingly, and make return thereof to this court within ninety days from the date hereof.

By the court,

Attest, A. H.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2342.

VII. Order of Reference as Compensation to Receiver, and Balance Remaining.

It is ordered that this cause be referred to G. S. H., esq., as master, to examine the report of E. M., esq., receiver, and to report what sum shall be allowed the receiver for his services in said case, and what balance remains in his hands, subject to the further order of this court in favor of the creditors of said Columbia Insurance Company. And the said master is ordered to give D. S., the plaintiff, as well as said receiver, notice of the time and place of the hearing before him. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2345.

VIII. Distribution.

A. Notice of Receiver's Petition for Directions as to Distribution.

(Address to the attorneys of each party in interest.)

Upon the petition, of which the within is a copy, and upon the statement of facts, and the schedules thereto annexed, therein referred to, I shall apply to one of the justices of this court, at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, for an order directing what course I am to take in reference to the uncollected notes, and accounts, and the furniture in my possession, and also for an order directing a reference to take my accounts as receiver, and discharging me from further liability, and also for an order determining your respective priorities, and my duties as to paying your various claims out of the surplus that may remain in my hands, or out of any other moneys that I may collect.

(Date.)

(Signature of)

Receiver, etc.

2 Abb. Forms 398.

B. Order on Receiver To Pay Taxable Costs and Balance Reported by Master to Plaintiff.

This cause having been referred to G. S. H., esq., as master, to examine the accounts of E. M., esq., the receiver, and to report what balance remains in his hands subject to the final decree of the court, and it now appearing from said report that there is in the hands of said receiver the sum of \$———, subject to the order of this court, and also that there are two outstanding claims in favor of said receiver and uncollected, one of which is against one T. H. H., and the other against one J. H. P., it is hereby ordered and decreed that the receiver pay from the funds in his hands the taxable costs of this case, taxed by the court at one hundred and thirty-three dollars and 46/100 (\$133.46), and that the balance remaining thereafter, namely, the sum of \$———, be paid by him to D. S., the plaintiff, on account of his claim against the said Columbia Insurance Company, on the said D. S. filing a receipt therefor with the record in this case; and that this shall stand as the final decree in this case, unless the said receiver shall hereafter receive anything on account of the claims aforesaid, in which case he

shall be at liberty to apply to the court for further directions. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2345.

IX. Discharge.

A. Notice of Motion To Discharge Receiver.

(The object of motion may be stated thus): That R. C., the receiver appointed in this action, be discharged; and that on an accounting by him, and a delivery of all property and other things held by him as such receiver, to be made as the court may direct, the bond entered into by him the said receiver, and his sureties, may be vacated (and that the plaintiff may pay him the said receiver the sum of _____ dollars, reported due to him by the report of _____, dated the _____ day of _____, 18—, pursuant to an order made in this cause the _____ day of _____, 18—); and for the costs of this motion. 2 Abb. Forms 401.

B. Order for Discharge of Receiver and Payment Etc.

Let A., the receiver of, etc., appointed by the order dated, etc., be discharged; and let him pass his final account, and pay the balance which shall be certified to be due from him into the, etc., to the credit of, etc. (or to [the plaintiff] B., or, etc.); and thereupon let the recognizance, dated, etc., entered into by the said A., together with C. & D., his sureties, be vacated. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2338.

C. Petition for Receiver's Discharge.

"To the honorable the judges of the said circuit court:

"Your petitioner John C. Brown, as receiver of the Texas and Pacific Railway and its property in the above entitled and numbered causes, represents that heretofore it has been made to appear to the court that the objects and purposes of all the bills in these causes have been accomplished by settlement and agreement of the parties, and evidence of that fact filed as part of the record; that on its being so made to appear the court ordered him to render his accounts as receiver up to the first of June, which has been done, and it has been examined and approved, and since that date petitioner has kept his account as with the company. By the same order he was directed to hold the property under the orders of the

court until the first of June, 1888, at which time if said order was not vacated the railway company might operate the road under such orders as the court might make from time to time and under the supervision and control of the receiver. No formal delivery of the road and property in his hands has been made to said railway company, and petitioner now asks that he be allowed formally to deliver all property and funds in his hands as such receiver to said railway company, and that he be allowed to account to said company according to his account filed up to the first of June and for all receipts and expenditures by him received and made since the first of June. He has carried over on the present books of the company the cash balance and all other balances of property and assets as found in his hands by his report to the first of June aforesaid, and he is now the president of said railroad company, and after his discharge will be in possession of all of said company's road, property, and funds as such for the said company. Wherefore he asks that he be discharged from his said receivership, and that his bond as receiver be vacated and annulled on payment of all costs legally taxable, but he prays the court to make such order as will charge the property so turned over in the hands of said railway company and its assigns with all liability for which he as receiver is or might be held personally liable. Your petitioner further says that the sum of his compensation as receiver has been agreed on by the parties in interest and is satisfactory to him and has been settled up to the 31st day of October, 1888, at which time he asks that his discharge take effect.

"(Signed) Jno. C. Brown."

Texas & Pac. R. Co. v. Johnson, 151 U. S. 81, 14 Sup. Ct. 259, 38 L. ed. 81.

RECEIVING STOLEN GOODS.

I. Indictments, 1031

A. For Receiving, 1031

B. Naming Principal Felon, 1032

I. Indictments.

A. Indictment for Receiving Stolen Goods.

Middlesex, to wit: The jurors for our lady the queen, upon their oath, present that J. S., late of the parish of B., in the county of M., laborer, the

on the third day of August, in the ninth year of the reign of our sovereign lady Victoria (or in the year of our Lord _____), at the parish aforesaid, in the county aforesaid, one silver tunkard (chattel, money, or valuable security, or other property whatsoever), of the value of two pounds, of the goods and chattels of one J. N., before then feloniously stolen, taken and carried away, feloniously did receive and have (he the said J. S. then and there well knowing the said goods and chattels to have been feloniously stolen, taken and carried away), against the form of the statute in such case made and provided, and against the peace of our lady the queen, her crown and dignity. (It is not necessary to state by whom the principal felony was committed. *R. v. Jervis*, 6 Car. & P. 166; and, if stated, it is not necessary to aver that the principal has not been convicted. *R. v. Baxter*, 5 T. R. 83.) Archb. Cr. Pl. 269.

B. Indictment for Receiving Stolen Goods, Naming Principal Felon.

City and county of New York, ss.:

The jurors of the people of the state of New York, in and for the body of the city and county of New York, upon their oath present:

That Joseph Cohen, late of the first ward of the city of New York, in the county of New York aforesaid, on the sixth day of May, in the year of our Lord one thousand eight hundred and sixty-one, with force and arms, at the ward, city and county aforesaid, twelve hundred spools of cotton thread, of the value of five cents each spool, of the goods, chattels and personal property of Grover & Baker's Sewing Machine Company, a corporation created by and existing under the laws of the state of Massachusetts, by Frank J. Thornton and certain other persons to the jurors aforesaid unknown, then lately before feloniously stolen of the said Grover & Baker's Sewing Machine Company, unlawfully, unjustly and for the sake of wicked gain, did feloniously receive and have (the said Joseph Cohen then and there well knowing the said goods, chattels and personal property to have been feloniously stolen), against the form of the statute in such case made and provided, and against the peace of the people of the state of New York and their dignity.

Nelson J. Waterbury, district attorney.
Cohen v. People, 5 Park. Cr. (N. Y.) 330.

RECOGNIZANCES.

- I. Recognizance Roll, 1032
- II. Writ of Scire Facias, Revival Against Special Bill, 1033
- III. Declaration on a Recognizance, 1034
- IV. Declaration on a Bail Bond, 1035
- V. Notice of Render in Discharge of Bail, 1037
- VI. Notice of Motion for Exoneretur of Bail, 1037
- VII. Order for Exoneretur of Bail, 1037
- VIII. Exoneretur on Bail Bond, 1037

CROSS-REFERENCES:

ARREST IN CIVIL CASES:

Bail Bond (Bail Below);
Undertaking of Bail.

CORONER'S INQUEST:

Recognizance by Witness;
Recognizance by Witness With Sureties.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias Against Special Bail on Recognizance After Default.

PLEAS:

Plea, Comperuit Ad Diem.

PRINCIPAL AND SURETY:

Answer by Bail, Death of Principal;
Answer by Bail, No Execution.

I. Recognizance Roll.

Pleas before the justices of the _____ court of _____ (of the people) of the state of _____, at the _____ in the city of _____, of the term of _____ (the term of which the declaration is entitled), in the year of our Lord one thousand _____.

Witness, _____, esquire (chief justice).

_____, _____, clerks.

City and county of _____, ss.: Be it remembered, that on the _____ (Monday) of _____, in this same term, before the (justices) of the _____ court of _____ (of the people) of the state of _____, at the _____ in the city of _____, comes A. B., by E. F., his attorney, and brings into the said court, before the

aforesaid justices thereof now here, his certain bill against C. D., being in custody, etc., of a plea of trespass on the case (or as the plea is); which said bill follows in these words, that is to say: (City and) county of _____, ss.: A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea, etc. (here copy the declaration to the end, omitting the signature, and then proceed on a new line as follows):

And the said defendant, by G. H., his attorney, comes and defends the wrong and injury when, etc., and thereupon I. N. of _____, merchant, and I. S., of _____, builder (describing the bail, as in the bail-piece), come into the said court, before the aforesaid justices thereof, now here, in their proper persons, and become pledges and bail, and each of them becomes pledge and bail for the above named defendant, at the suit of the said plaintiff, in the plea aforesaid, in manner and form following, that is to say; that if it shall happen that the said defendant shall be convicted in the plea aforesaid, then the said bail consent, and each of them consents, that (as well the debt aforesaid, as) all damages, costs and charges, which shall be adjudged to the said plaintiff in this behalf, shall be made of their and each of their goods and chattels and real estate, and levied to the use of the said plaintiff, if it shall happen that the said defendant shall not pay to the said plaintiff the said (debt and) damages, costs and charges, or render himself into the prison of the people of the state of New York, in execution of the said judgment. Burr. App. 430, §§30; Till. Forms 133.

II. Writ of Scire Facias, Revival Against Special Bail.

The (people of the) state of _____, to the sheriff of the county of _____, greeting:

Whereas I. N., of _____, and I. S., of _____, heretofore, to wit, in _____ term, in the year of our Lord one thousand eight hundred and _____, came into our _____ court of _____, before our (justices) thereof, at the _____ in the city of _____, in their proper persons, and became pledges and bail, and each of them became pledge and bail for

one C. D., that if the said C. D. should happen to be convicted at the suit of A. B., in a certain plea of trespass on the case upon promises, to the damage of the said A. B., of _____ dollars (or in debt, in a certain plea of debt for _____ dollars), then lately commenced and depending in the same court, by and at the suit of the said A. B., against the said C. D., then the said I. N. and I. S. consented, and each of them consented, that all such damages (or, in debt, that as well the said debt, as all such damages), as should be adjudged to the said A. B., in that behalf, should be made of their and each of their goods and chattels, lands and tenements, and levied to the use of the said A. B., if it should happen that the said C. D. should not pay and satisfy the said damages (or debt and damages), or render himself to some one of our prisons on that occasion, as by the record of the said recognizance still remaining in our said court, before our aforesaid justices thereof, more fully appears; and although the said A. B. afterwards, to-wit, in _____ term, in the year of our Lord one thousand eight hundred and _____, in our said court, before our said justices thereof, at _____ in the city of _____, by the judgment of the same court, recovered in the same plea, against the said C. D., _____ dollars, for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings, then lately made by the said C. D. to the said A. B. (or if in debt, the said debt, and also _____ dollars, for his damages which he had sustained, as well by reason of the detention of the said debt), as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as by the record and proceedings thereof, still remaining in our said court, before our said justices thereof, at the (academy in the city of Utica), more fully appears; yet the said C. D. hath not paid or satisfied the said damages (or debt and damages), or any part thereof, to the said A. B., or rendered himself to any of our prisons on that occasion, according to the form and effect of the said recognizance; and as well the said recognizance as the said judgment, still remain in full force and effect, in no

wise set aside, reversed or satisfied, as we have received information from the said A. B. in our said court, before our aforesaid justices thereof. Wherefore the said A. B. hath besought us to provide him a proper remedy in this behalf; and we, being willing that what is just in this behalf should be done, command you, that you make known to (or summon), the said I. N. and I. S., that they be before our justices of our said supreme court of judicature at the _____ in the city of _____, on the _____ Monday of _____ next, to show if they have or know, or if either of them has or knows, of anything to say for themselves, or himself, why the said A. B. ought not to have execution against the said I. N. and I. S., for the damages (or debt and damages), aforesaid, according to the force, form and effect of the said recognizance, if it shall seem expedient for him or them so to do; and further, to do and receive what our said court, before our aforesaid justices thereof, shall then and there consider of them in this behalf, and have you then there this writ. Witness, _____, esquire, our (chief justice), at the _____ in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, _____, clerks.

E. F., attorney.

Burr. App. 471, §959; Till. Forms 35.

III. Declaration on Recognizance of Bail.

A. B., plaintiff in this suit, by J. and K., his attorneys, comes into this court, according to the form of the statute authorizing the commencement of suits by declaration, and complains of I. N. and I. S., defendants in this suit, of a plea that the said defendants render unto the said plaintiff, the sum of _____ dollars (the amount of the judgment in the original action), lawful money of the United States of America, which to the said plaintiff the said defendants owe, and from him unjustly detain. For that whereas the said defendants heretofore, to-wit, in _____ term, in the year of our Lord one thousand eight hundred and _____, at (the city and) in the county of _____, aforesaid, came into the _____ court of _____ (of the people) of the state of _____

in their proper persons, and became pledges and bail for one C. D., at the suit of the said plaintiff, in a plea of (trespass on the case upon promises), then pending in the said court, in manner and form following; that is to say, that if it should happen that the said C. D. should be convicted at the suit of the said plaintiff in the plea aforesaid, then the said defendants consented and agreed, that the (damages) which should be adjudged to the said plaintiff in that behalf, should be made of their goods and chattels, lands and tenements, and levied to the use of the said plaintiff, if it should happen that the said C. D. should not pay to the said plaintiff the said (damages), or render himself on that occasion into the prison (of the people) of the state of _____, in execution of the said judgment; as by the record thereof, still remaining in the said court, more fully appears. And the said plaintiff says, that afterwards, to-wit, in _____ term, in the year one thousand eight hundred and _____ (the term of which the judgment in the original action was recovered, to-wit, at the court house in the city of _____, and in the court aforesaid, the said plaintiff, by the consideration and judgment of the said court, recovered in the said plea against the said C. D., the sum of _____ dollars (the amount of the judgment in the original action), which, by the said court, was then and there adjudged to the said plaintiff, for his damages which he had sustained, as well on occasion of the (non-performance of certain promises and undertakings, then lately made by the said C. D. to the said plaintiff), as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. was convicted as by the record and proceeding thereof still remaining in the said court in full force and effect, more fully appears. And the said plaintiff in fact says, that the said C. D. has not yet paid to the said plaintiff the said (damages) so adjudged to the said plaintiff as aforesaid, or any part thereof, nor rendered himself on that occasion into the prison of the said people in execution of the said judgment, according to the tenor and effect of the said recognizance; and the said plaintiff in fact says) that the said

plaintiff has not obtained any execution of the said judgment nor sued out any execution upon the aforesaid recognizance; which recognizance, with the said judgment, so by the said plaintiff recovered as aforesaid, is still in full force, strength and effect, wholly unsatisfied; whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant, the said sum of money above demanded, according to the tenor and effect of the said recognizance.

Nevertheless the said defendants (although often requested, etc.), have not yet paid to the said plaintiff the said sum of money, or any part thereof, but the same, or any part thereof, to pay to the said plaintiff, the said defendants have hitherto wholly refused, and still do refuse; to the damage of the said plaintiff of one hundred dollars, and thereof the said plaintiff brings suit, etc. Burr. App. 286, §554; 2 Chit. Pl. 472.

IV. Declaration on Bail Bond by Assignee of Sheriff.

A. B., plaintiff in this suit, assignee of W. J., esquire, sheriff of the (city and) county of _____, according to the form of the statute in such case made and provided, by E. F., his attorney, complains of C. D., I. N., and I. S., defendants in this suit, being in custody, etc., of a plea that they render to the said plaintiff, as assignee as aforesaid, the sum of _____ dollars (the penalty of the bond), of lawful money of the United States of America, which they owe to, and unjustly detained from him. For that whereas the said plaintiff heretofore, to-wit, on the _____ day of _____ in the year one thousand eight hundred and _____ (the teste of the capias), sued and prosecuted out of the _____ court of _____ (of the people) of the state of _____, before the (justices) thereof, against the said C. D., a certain writ (of the people) of the state of _____, called a capias ad respondendum, directed to the sheriff of the (city and) county of _____, by which said writ the said sheriff was commanded to take the said C. D., if he should be found in this county, and him safely keep, so that he might have his body before the said (justices) of the _____ court of _____ aforesaid, at the _____ in the city of _____,

_____ on the _____ (Monday) of _____ then next, to answer unto the said plaintiff of a plea of trespass; and also to a bill of the said plaintiff against the said C. D., for _____ dollars, upon promises, according to the custom of the said court, before the aforesaid justices thereof, to be exhibited (reciting the writ), and that the said sheriff should then have there that writ. (If the defendant were held to bail by virtue of a special order, it is usual to state the facts here, as follows: "On which said writ, before its delivery to the said sheriff as hereinafter mentioned, was duly endorsed and order made by [here name the officer] directing the said C. D., to be held to bail, or his arrest on such writ, in the sum of _____ dollars by virtue of an affidavit of the cause of action duly made and affiled according to the statute, etc.") Which said writ (so endorsed) afterwards, and before the said return thereof, to-wit, on the _____ day of _____, in the year aforesaid (the date of the bail bond, or according to the fact) to-wit, at (the city and) in the county of _____ aforesaid (the venue in the action), was delivered to the said W. J., who then and there thence until, and at, and after the time of the arrest, and the making of the writing obligatory hereinafter mentioned, was sheriff of the said (city and) county of _____ in due form of law to be executed. By virtue of which said writ, the said W. J., so being sheriff as aforesaid, afterwards, and before the said return of the said writ, to-wit, on the day and year last aforesaid, and within his bailiwick as such sheriff, to-wit, at the city of _____, in the county of _____ aforesaid, took and arrested the said C. D., by his body, and then and there had and detained him in his custody, as such sheriff, at the suit of the said plaintiff for the cause aforesaid. And the said C. D., being so arrested and in custody of the said W. J., so being sheriff as aforesaid, by virtue of the said writ of the suit of the said plaintiff as aforesaid, the said W. J., afterwards, and before the said return of the said writ, to-wit, on the day and year last aforesaid (date of the bail bond), and within his bailiwick as such sheriff, to-wit, at (the city) and in the county of _____

aforesaid, took bail for the appearance of the said C. D., at the return of the said writ, according to the form of the statute in such case made and provided; and on that occasion the said C. D., and the said I. N., and I. S., as bail and sureties for the said C. D., then and there, to-wit, on the day and year last aforesaid, at (the city) and in the county of _____ aforesaid, by their certain writing obligatory commonly called a bail bond, sealed with the seals of the said C. D., I. N., and I. S., respectively, and now shown to the said court here, the date whereof is the same day and year last aforesaid, acknowledged themselves to be held and firmly bound to the said W. J., so being then sheriff of the said (city and) county of _____, as aforesaid, as such sheriff, by the name, description and addition of W. J., esquire, sheriff of the (city and) county of _____, in the penal sum of _____ dollars, of good and lawful money of the United States of America, to be paid to the said sheriff, or his certain attorney, executors, administrators or assigns; with, and under a certain condition, thereunder written, that if the said C. D. should appear in the action commenced by the said writ, by putting in special bail within twenty days after the return day specified in the said writ, and by perfecting such bail, if required, according to the rules and practice of the said court, then the said obligation should be void, otherwise, to remain in full force and virtue; as by the said writing obligatory, and the condition thereof, reference being thereunto had, may more fully and at large appear. And the said plaintiff in fact saith,* that the said C. D., did not appear in the said action, at the place and time above specified, and in the condition of the said writing obligatory mentioned, according to the condition of the said bond, by putting in special bail as therein mentioned, but therein wholly failed and made default; * whereby the said writing obligatory became forfeited. And the said plaintiff further saith, that the said writing obligatory being so forfeited, and the money therein specified remaining unpaid and unsatisfied to the said sheriff, he, the said W. J., so being sheriff of the said (city and) county of _____, as aforesaid,

afterwards, to-wit, on the _____ day of _____, in the year one thousand eight hundred and _____ (the date of the assignment, being before the title of the declaration), to-wit, at (the city of _____ and in the county of _____ aforesaid (the venue), at the request and cost of the said plaintiff in the said suit, by an endorsement of the said writing obligatory duly assigned the said writing obligatory to the said plaintiff, according to the form of the statute in such case made and provided. By means whereof, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff, as assignee of the said W. J., so being sheriff of the said (city and) county of _____ as aforesaid, to demand and have of and from the said defendants, C. D., I. N., and I. S., the said sum of _____ dollars above demanded. Yet the said defendants, although often requested so to do have not, nor hath any of them as yet paid the said sum of _____ dollars above demanded, or any part thereof, to the said W. J., sheriff as aforesaid, before the said assignment, or to the said plaintiff, assignee as aforesaid, or either of them, since the said assignment; but hath hitherto wholly neglected and refused so to do, and still doth neglect and refuse to pay the same, or any part thereof to the said plaintiff, assignee as aforesaid. To the damage of the said plaintiff, assignee as aforesaid, of _____ dollars (nominal damages), and therefore he brings his suit, etc.

(If special bail were put in, but not perfected, the following clause should be inserted in the above form, between the two **), that although the said C. D. did appear in the action commenced by the said writ, by putting in special bail within twenty days after the said return day, specified in the said writ in the said condition mentioned, to-wit, on the _____ day of _____, in the year aforesaid, and at the place aforesaid, as appears by the record thereof, yet the said plaintiff, afterwards, to-wit, on the _____ day of _____, at the place aforesaid, by an endorsement of exception on the bail piece filed with the clerk of this court, at the city of (New York), in the said cause, and by notice thereof in writing, duly signed by the said

plaintiff's attorney, to the said C. D., duly given, then and there, to-wit, on, etc., at, etc., duly required the said C. D., to perfect his said bill, so by him put in as aforesaid in the said cause, according to the rules and practice of the said court; but the said C. D., although so required, to-wit, on the day and year aforesaid, and often afterwards, to-wit, at the place aforesaid, did not perfect his said bill, so by him put in as aforesaid, according to the rules and practice of the said court, but therein wholly failed and made default. Burr. App. 273, §543; 2 Chit. Pl. 445; Archb. Forms 40; Till. Forms 390; Yates' Forms 464.

V. Notice of Render in Discharge of Bail.

Please to take notice, that the above named defendant did this day render himself (or was this day rendered) in discharge of his bail, at the suit of the above named plaintiff; and was thereupon committed by his honor (name the judge), to the sheriff of the _____ county of _____, there to remain until, etc. Dated, etc. Burr. App. 204, §396; Till. Forms 264.

VI. Notice of Motion for Exoneretur of Bail.

Sir: Please to take notice, that, on the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol of the city of Albany, on the _____ Tuesday of _____ next, that an exoneretur be entered on the bail-piece filed in this cause. Dated, etc. Burr. App. 217, §439.

VII. Order for Exoneretur of Bail.

The plaintiff having appeared, and not having shown sufficient cause to the contrary (or the plaintiff not having appeared, and due proof being made of the service of notice, as appears by the affidavit hereunto annexed, or otherwise, as the case may be), let an exoneretur be endorsed on the bail-piece (or bail-bond) accordingly. Dated, etc.

_____ (circuit judge).

Burr. App. 225, §467; Till. Forms 272.

VIII. Exoneretur on Bail Bond.

The within defendant having, on the prayer, and for the indemnity of his manucaptors, been committed to the custody of the sheriff of the county of _____ at the suit of the plaintiff in

the within plea, the said manucaptors, of their recognizance within contained, are fully exonerated.

_____, clerk.

Burr. App. 96, §185; Till. Forms 273.

RECORDS.—See JUDGMENT RECORDS.

RECOUPMENT.—See SET-OFF, COUNTERCLAIM AND RECOUPMENT.

REDUNDANCY.—See STRIKING OUT.

REFERENCES.

I. At Law, 1039

A. Affidavits, 1039

1. *For Reference, Long Account*, 1039

2. *To Oppose Reference*, 1039

B. Notice of Motion, 1039

C. Orders for Reference, 1039

1. *On Consent*, 1039

2. *On Motion*, 1039

3. *At Trial*, 1039

D. Notice of Hearing, 1039

E. Notice To Proceed, 1040

F. Reports, 1040

1. *In Favor of Plaintiff*, 1040

2. *In Favor of Defendant*, 1040

3. *In Case of Nonsuit*, 1040

4. *Special or Supplementary*, 1040

5. *Order To Compel Report*, 1040

G. Setting Aside, 1040

1. *Notice of Motion*, 1040

2. *Order To Set Aside*, 1041

3. *Order Denying Motion*, 1041

H. Order for Judgment, 1041

II. At Law Under Code, 1041

A. Affidavits, 1041

1. *Long Account*, 1041

2. *To Oppose, by Denial Account*, 1041

3. *To Oppose, Fraud Set Up*, 1041

4. *To Oppose, Difficult Question of Law*, 1041

B. Notice of Motion, 1042

C. Stipulation or Nomination, 1042

D. Order on Motion, 1042

E. Order Without Motion, 1042

F. Consent To Refer, 1042

G. Order on Consent, 1042

H. Oath of Referee, 1042

I. Appointment of Hearing, 1042

J. Notice of Hearing, 1042

K. Reports, 1042

1. *General Form*, 1042

2. *In Partnership Case*, 1042

L. Judgment, 1042

III. In Special Cases, 1043

A. *Orders of Reference*, 1043

1. *In Default*, 1043
2. *In Service by Publication*, 1043
3. *In Decree*, 1043
4. *To Take Testimony*, 1044
5. *To Take Testimony in Specific Performance*, 1044
6. *To Take Account as to Damages*, 1044
7. *For Accounting in Partnership Cause*, 1044
8. *Preliminary to Judgment for Partition*, 1044

B. *Referee's Summons*, 1045C. *Order That Books and Papers Be Deposited With Referee*, 1045D. *Plaintiff's Schedule of Account*, 1046E. *Verification of Plaintiff's Schedule*, 1046F. *Referee's Reports*, 1046

1. *In Partnership Cause*, 1046
2. *Preliminary to Partition*, 1046

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Decree, Order of Reference to Master.

ADMIRALTY:

Decree for Libellant on Hearing With Reference To Compute.

Decree, Order of Condemnation by Default and Reference to Commissioner;

Decree, Order on Default With Reference on Amount of Damage;

Decree on the Merits With Reference to Commissioner;

Commissioner's Report;
Exceptions to Report of Commissioner;

Order of Confirmation of Report of Commissioner, and Final Decree, With Judgment Against the Bail.

ANOTHER ACTION PENDING:

Order of Reference on Plea in Equity.

BANKRUPTCY:

Order of Reference;

Order of Reference in Judge's Absence;

Referee's Oath of Office.

CREDITORS' SUITS:

Order of Reference To Determine Priority Among Creditors;

Referee's Report as to Priority of Creditors;

Order of Reference To Appoint Receiver in Creditor's Suit;
Referee's Order That Defendant Deliver and Convey to Receiver.

DECREES:

Order of Reference to a Master;

Order Where Account Is Directed;

Order for Particular Reference, Account and Inquiries;

Order That Master May Make Separate Report;

Usual Directions, Reference, Bill Taken Pro Confesso.

DIVORCE:

Order of Reference on Bill To Dissolve Marriage;

Master's Report on Bill To Dissolve Marriage.

EQUITY JURISDICTION AND PROCEDURE:

Master's Summons;

Certificate of Examination Not Brought in;

Examination of Party;

Exceptions to Examination of Party;
Master's Certificate on Exceptions to Examination of Party;

Exceptions to Report of Master.

HEARING:

Order of Reference Preparatory to a Hearing.

INJUNCTIONS:

Order of Reference as to Damages by Injunction;

Notice of Motion To Confirm Report of Referee on Damages by Injunction;

Order Confirming Report as to Damages by Injunction.

INTERPLEADER:

Interpleader, Order for Judgment and Reference.

JUDGMENT RECORDS:

Judgment Record on Report of Referee.

JUDGMENTS:

Judgment on Trial of Issues of Fact by the Court, Where Reference Has Been Had After Trial and Before Final Judgment;

Judgment on Report of Referee.

MORTGAGES:

Order of Reference To Take Proof in Foreclosure;

Order of Reference To Take Account in Redemption.

NUISANCE:

Interlocutory Decree, Ordering Reference for Experiments as to Extent of Nuisance.

PAUPERS:

Order for Reference of Petition for

Leave To Prosecute as a Poor Person.

RECEIVERS:

Order of Reference as Compensation to Receiver, and Balance Remaining;

Reference To Pass Receiver's Account.

SUBPOENA:

Subpoena on a Reference;

Subpoena Ticket for Appearance Before Referee.

I. At Law.

A. Affidavits.

1. Affidavit To Move for Reference, Long Account.

A. B., the plaintiff (or C. D., the defendant) in the above entitled cause, being duly sworn, says that the declaration in said cause contains (five) counts in assumpsit (or as the action is), to-wit (state what each count consists of), that the venue is laid in the county of ———, that the plea in said cause is (state what), and that the said cause is now at issue. And this deponent further says that the trial of this cause will require the examination of a long account on the part of this deponent (or on the part of the plaintiff, or on the part of both parties). And further says not.

Sworn, etc.

A. B. (or C. D.).

Burr. App. 27, §52; Yates' Forms 345.

2. Affidavit To Oppose Reference.

A. B., the plaintiff in this cause, being duly sworn, deposes and says, that he has fully and fairly stated the case in this cause to E. F., his counsel therein, who resides at ———, and that questions of law will arise on the trial of this cause, as deponent is advised by his said counsel and verily believes; that is to say, the declaration in this cause is founded on (state what); to which the defendant has pleaded (state what, and if there be a replication, etc., state the substance of it); and that the following will be insisted on, on behalf of the said plaintiff (state the point or points of law). And this deponent has understood and believes that the defendant's counsel will urge (state briefly what points are anticipated from the defendant). And this deponent is advised by his said counsel, and believes, that such points are material and difficult; and that referees are not a proper tribunal for the

trial of this cause. And further deponent says not.

A. B.

Sworn, etc. Burr. App. 27, §53; Yates' Forms 798.

B. Notice of Motion for Reference.

Sir: Please to take notice that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol in the city of Albany, on the first Tuesday of ——— next, that this cause be referred to K. L., of (the city of ———, counselor at law), and M. N. and O. P., of (the same place, merchants). (If there be but a single referee, vary the notice accordingly.) Dated March 14th, 1846. Burr. App. 210, §414.

C. Orders for Reference.

1. Order for Reference of Cause on Consent.

On reading and filing affidavits and consent in this cause, and on motion of Mr. J., of counsel for the plaintiff, no one appearing to oppose, ordered that this cause be, and the same hereby is, referred to K. L., of (the city of Albany, counselor at law); and that the said referee report thereon with all convenient speed. Burr. App. 458, §917.

2. Order for Reference of Cause on Motion.

On reading and filing an affidavit (or "admission") of the due service of notice of motion in this cause, and on motion of Mr. J., of counsel for the plaintiff (no one appearing to oppose), ordered that this cause be, and the same hereby is, referred to K. L., of (the city of Albany, counselor at law), and M. N. and O. P., of (the same place, merchants), and that they, or any two of them, report thereon with all convenient speed. Burr. App. 458, §918.

3. Order for Reference at Trial.

It appearing to this court that the trial of this cause will require the examination of long accounts, ordered that this cause be referred to J. K., of (the city of New York, counselor at law), (if more than one referee, name them all), and that said referee (or if several, that said referees, or any two of them) report thereon, with all convenient speed. Dated, etc. Burr. App. 250, §482.

D. Notice of Hearing Before Referee.

Sir: Please to take notice that this

cause will be brought to a hearing before the referees appointed therein, at (here name the place), on the _____ day of _____ next, at (four) o'clock in the afternoon. Burr. App. 199, §377.

E. Notice Requiring Plaintiff To Proceed With Reference.

Please to take notice that the plaintiff in this cause is hereby required to bring the said cause to a hearing, before the referees appointed therein, within forty days after service of this notice. Burr. App. 199, §378.

F. Reports.

1. Report of Referee in Favor of Plaintiff.

We, the subscribers, referees appointed by a rule of court, made in the above cause (or where the report is signed by two of the referees only: "We, the subscribers, two of the referees appointed by a rule of court made in the above cause, the other referee having met with us at the hearing of this cause, and at the giving of evidence therein), having heard and examined the matters in controversy in said cause, and having examined on oath the several witnesses produced to us therein, do find * that there is due to the above named plaintiff A. B., from the above named defendant C. D., the sum of (one thousand six hundred and eighteen) dollars and (fifty-two) cents, besides costs; all which we do hereby humbly report to this honorable court." Dated the _____ day of _____, 18—. Burr. App. 435, §835; Caines' Pr. 492; Yates' Forms 799.

2. Report of Referees in Favor of the Defendant.

(As in last form to the *, and then as follows): that there is nothing due from the above named defendant, to the above named plaintiff (or if a balance be found for the defendant, "that there is due to the above named defendant from the above named plaintiff, the sum of _____ dollars; all which, etc." (as in last form). Burr. App. 435, §836.

3. Report of Referee in Case of Voluntary Nonsuit.

We, the referees appointed in this cause, do certify and report that on the _____ day of _____, at _____ (the time and place of meeting), we met for the purpose of hearing the proofs and allegations of the parties in this cause; that the said par-

ties also then and there appeared before us; and after proceeding to a hearing in said cause, and the same not having been finally submitted to us for our decision, the said plaintiff voluntarily submitted to a nonsuit therein.

Dated the _____ day of _____, 18—. Burr. App. 435, §836a.

4. Report of Referee, Special or Supplementary.

This cause came on for a hearing before K. L., M. N. and O. P., esquires, referees duly appointed to hear and determine the matters in controversy between the aforesaid parties, upon the (declaration, pleas, notice of special matters and set-off) aforesaid, and thereupon the said plaintiff proved that, etc. (setting forth in detail the facts proved on the part of the plaintiff).

The defendant then proved that, etc. (here state the facts proved on the part of the defendant).

And thereupon, after hearing counsel for the respective parties, the said referees made, on the _____ day of _____, one thousand eight hundred and _____, their report in the words and figures following:

We, the subscribers, referees, etc. (inserting the ordinary form of report, I, F, 1, 2), including date and signatures). Burr. App. 436, §837.

5. Order To Compel Report of Referee.

On reading and filing affidavits in this cause, and on motion of Mr. F., of counsel for the (plaintiff), after hearing counsel in opposition, ordered that the referees appointed in this cause do report therein by the first day of the next non-enumerated term, or then and there show cause why an attachment should not issue against them. Burr. App. 459, §919.

G. Setting Aside.

1. Notice of Motion To Set Aside Report of Referee.

Sir: Please to take notice that upon the affidavit and case with copies whereof you are herewith served, this court will be moved at the next term, to be held at the _____ of the city of _____, on the _____ Monday of _____ next; at the opening of the court on that day, or as soon thereafter as counsel can be heard, that the report made by the referees in this cause, be set aside (with costs). Dated _____, 18—. Burr. App. 210, §415.

2. *Order To Set Aside Report of Referee on Merits.*

This cause having been brought to argument, and after hearing Mr. J., of counsel for the defendant, and Mr. S., of counsel for the plaintiff, ordered that the report made by the referees in this cause be, and the same hereby is, set aside, with costs (or without costs). Burr. App. 459, §920.

3. *Order Denying Motion To Set Aside Report of Referee.*

A motion having been made on the part of the defendant by Mr. T., of counsel, to set aside the report of the referees in this cause, and after hearing Mr. L., in opposition thereto, ordered that the said motion be denied, with costs. Burr. App. 459, §921.

H. *Order for Judgment on Report of Referee.*

On reading and filing the report of J. K., L. M. and N. O. (or of J. K. and L. M., two of) the referees appointed in this cause, by which it appears that they have assessed the plaintiff's damages at _____ dollars and _____ cents, besides costs (or otherwise, according to the report), on motion of E. F., attorney for the plaintiff (or G. H., attorney for the defendant), ordered that the said report be, and the same hereby is, confirmed; and on like motion, ordered, judgment final thereon. Burr. App. 450, §887.

II. *At Law Under Code.*

A. *Affidavits.*

1. *Affidavit To Move for Reference of an Action Involving Long Account.*

A. B., the plaintiff (or defendant) in the above-entitled action, being duly sworn, says:

I. That said action is brought to recover (here designate nature of cause of action: see forms in Attachments).

II. That issue was joined on (or as of) the _____ day of _____ last, by the service of defendant's answer, setting up (here designate the defences, *e. g.*, thus): payment as to part, and a counter-claim arising out of several items of services alleged to have been rendered by him to the plaintiff.

III. That the trial of the aforesaid issue will require the examination of a long account on the side of the plaintiff (or defendant, or both parties), consisting of at least _____ items of

charges and (credits) of the aforesaid (goods and services) of various dates. 2 Abb. Forms 469.

2. *Affidavit To Oppose Motion by Denying Account.*

(Commencement as in preceding form.)

I. That the issue joined herein will not require the examination of a long account within the meaning of the statute.

II. That this action is brought to recover for a bill of goods sold by plaintiff to defendant; and that all of said goods were sold at one time, and as one transaction, and the alleged credit is a payment made by defendant at said time, and then deducted from the amount to be due from defendant to the plaintiff; and there are no other items of charge or credit involved in the issues herein. 2 Abb. Forms 470.

3. *Affidavit To Oppose Motion, Where Fraud Is Set Up.*

(Commencement as in II, A, 1.)

I. That this action is brought upon an insurance policy alleged to have been made by defendants; and that the only items of account are the items of damage, which plaintiff claims he has sustained by a peril insured against.

II. That the defence (or, one of the defences) set up by the defendants is fraud on the part of the plaintiff, in (here briefly disclose it), as more fully appears by reference to their answer herein. 2 Abb. Forms 470.

4. *Affidavit To Oppose Motion, Where There Are Difficult Questions of Law.*

(Commencement as in II, A, 1.)

I. That he has fully and fairly stated the case in this cause to his counsel O. P., who resides at No. _____ street, in the city of _____; and that the investigation and trial of the issues of fact in this cause will as deponent is advised by said counsel, after such statement, and believes, require the decision of difficult questions of law.

II. That (here state, unless the moving affidavits correctly state it, the nature of the issue, as in II, A, 1, and that) the following will be insisted on on behalf of said plaintiff (here briefly state deponent's points of law). And deponent is informed and believes that the defendant's counsel will urge (here briefly state his anticipated points);

which points as deponent is advised by his said counsel are material to the cause, and are difficult, especially in their application to the facts of this case. 2 Abb. Forms 471.

B. Notice of Motion To Refer Cause.

Please take notice, that on (designate papers), the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, that this action be referred to one or more referees (or, to R. F., esq., of _____), and for such other relief as may be just. 2 Abb. Forms 471.

C. Stipulation Agreeing on Nomination.

It is hereby stipulated and agreed between the parties hereto, that in case the within motion be granted, the reference shall be to R. F., esq., of _____, counselor-at-law. 2 Abb. Forms 472.

D. Order Referring Cause on Motion.

On reading and filing (the pleadings and the affidavit of G. H.), and on motion of M. N., counsel for defendant, and after hearing O. P., counsel for plaintiff (or, and on proof of service of notice on motion, and no one appearing), in opposition:

Ordered, that it be referred to R. F., esq., of _____, counselor-at-law, to hear and determine the whole issues in this cause. 2 Abb. Forms 472.

E. Order Referring Cause, Without Motion.

This cause coming on to be tried, and it appearing to the satisfaction of the court that it will require the examination of a long account:

Ordered (as in preceding form). 2 Abb. Forms 473.

F. Consent To Refer.

It is hereby stipulated and agreed by the parties to this action (that the right of trial by jury be waived, and that) it be referred to R. F., esq., of _____, counselor-at-law, to hear and determine the issues in this cause; and that an order may be entered accordingly. 2 Abb. Forms 473.

G. Order on Consent for Reference.

On reading and filing the annexed consent, and on motion of M. N. for plaintiff (or defendant):

Ordered (as in II, D.). 2 Abb. Forms 473.

H. Oath of Referees.

I, R. F., referee (or, if there are several, we, naming them, the referees) appointed herein, hereby swear that I (or each for ourselves that we) will faithfully and fairly hear and examine this action, and make a just and true report therein, according to the best of my (or our) understanding. 2 Abb. Forms 474.

I. Appointment of Hearing on Reference.

The undersigned referee(s) herein, hereby appoint the _____ day of _____ next, at _____ o'clock in the _____ noon, at the office of _____, No. _____, _____ street, in the city of _____, for the trial of this action. 2 Abb. Forms 473.

J. Notice of Hearing or Trial.

Take notice, that this action will be brought to a hearing before R. F., referee herein, at his office, No. _____, _____ street, in the city of _____, on the _____ day of _____ next, at _____ o'clock in the _____ noon. 2 Abb. Forms 474.

K. Reports.

1. Report, General Form (a).

To the _____ court of _____. The undersigned, appointed by this court a referee to hear and determine this action and the issues therein, having duly considered the allegations and proofs of the parties, and having heard M. N., for the plaintiff, and O. P., for the defendants, reports to the court as follows:

I find, as matters of fact:

I. That, etc.

II. That, etc.

I find, as matters of law:

I. That, etc.

II. That there is due to plaintiff from defendant the sum of _____ dollars, with interest from the _____ day of _____, 18____, being _____ dollars, which amount to _____ dollars; for which said plaintiff is entitled to judgment in this action against the said defendant, besides costs.

(Or, where defendant prevails, II. That defendant is not indebted to plaintiff as alleged in this action, and the defendant is entitled to judgment against said plaintiff for his costs.) 2 Abb. Forms 474.

General Form (b).

The referee appointed in the above-entitled action respectfully reports, that

he has been attended by the attorneys and counsel of the respective parties plaintiff and defendant; and having heard their allegations and proof, he reports and decides that there is due to the plaintiff from the defendant in this action the sum of _____ dollars, and decides that judgment be entered for the plaintiffs against the defendants for that sum, with costs. 2 Abb. Forms 475.

2. *Report of Referee in Partnership Cause.*

(Commencement as in II, K, 1.)

I find, as conclusions of fact:

I. That from the _____ day of _____, 18____, to the _____ day of _____ (when this action was commenced), the parties hereto were partners in the business of _____ at _____ (under articles of agreement set forth in the complaint herein).

II. That the defendant in the month of _____ took exclusive possession of the partnership assets and books, and then, and ever since, prevented the plaintiff from having free access thereto, and obstructed his use and control thereof.

I find, as conclusions of law:

I. That the plaintiff is entitled to a judgment declaring said partnership dissolved as of the _____ day of _____, 18____.

II. That the plaintiff is entitled to an accounting with the defendant in respect to the partnership dealings, and the use made of the partnership property by the defendant.

III. That on such accounting the plaintiff is entitled to have allowed to him (here set forth the principles on which the accounting should be taken). 2 Abb. Forms 475.

L. *Judgment on Report of Referee for Plaintiff.*

This cause having been referred to R. F., esq., to hear and determine the same, and his report having been filed, whereby he finds * to be due from the defendants to the plaintiffs the sum of _____ dollars; now, on motion of M. N., plaintiffs' attorney,

It is adjudged that the plaintiffs do recover of the defendants the said sum, with _____ dollars costs and disbursements, amounting in the whole to the sum of _____ dollars (or state special relief). 2 Abb. Forms 545.

III. In Special Cases.

A. *Orders of Reference.*

1. *Order of Reference To Take an Account in Case of Default.*

(As in III, A, 2, substituting for the words between the **): to take an account of the partnership transactions referred to in the complaint; and the parties are hereby required to produce before said referee, upon oath, all the books, papers, deeds, and other writings in their custody or control relating to the same, and shall be examined upon interrogatories, or otherwise, as the said referee shall direct (add any other directions, if necessary). And said referee, etc. 2 Abb. Forms 513.

2. *Order of Reference To Take Proof of Cause of Action, and Payments, Where Summons Was Served by Publication.*

Upon the summons and complaint herein, and the affidavit of M. N., dated the _____ day of _____, setting forth the proceedings had (and on motion of M. N. for the plaintiff):

Ordered, that it be referred to R. F., esq., of _____, counselor-at-law, * to take proof of the demand alleged in the complaint (or specify particular inquiry), and to examine the plaintiff, or his agent, on oath, respecting any payments that have been made to him, said plaintiff, or to any one, for his use, and * to report to the court with all convenient speed. 2 Abb. Forms 518.

3. *Order of Reference Preliminary to Judgment in Divorce.*

On reading and filing due proof by the affidavit of M. N., that the summons (with a copy of the complaint) herein has been duly served on the defendant more than twenty days since, and that no demurrer, and no answer (denying any allegation of the complaint) has been put in; and, also, upon reading and filing the affidavit of the plaintiff, denying cohabitation (or collusion, or both), now, on motion of M. N., and on proof of due notice to the defendant, no one appearing in opposition (or after hearing O. P. for said defendant).

Ordered, that it be referred to R. F., esq., of _____, counselor-at-law, to take proof of all the material facts charged in the complaint.

(In an action for limited divorce for cruelty, may add: And on the hearing

said referee may take the examination of the plaintiff, on oath, as to any cruel or inhuman treatment, alleged in the complaint, which took place when no witnesses were present, who are competent to testify to the facts on such reference.)

(Or, where a former husband or wife is living, add: And to inquire whether the alleged subsequent marriage of the defendant was contracted in good faith, and with the full belief of the parties thereto, that the plaintiff was dead; and, also, to ascertain and report the issue of the said subsequent marriage. 2 Abb. Forms 535.

4. *Order of Reference To Take Testimony.*

(As in III, C, or III, A, 6, to the end of the first paragraph, continuing:)

Ordered, that it be referred to R. F., esq., of ———, to take the evidence produced by the respective parties herein, upon the question whether, etc. (or, to take the testimony of M. N. the witness therein named), and (conclude as in III, A, 5, from the *). 2 Abb. Forms 670.

5. *Order of Reference To Take Testimony; as to Value of Use and Occupation, in Action for Specific Performance.*

Ordered, after hearing counsel for the plaintiffs and defendants, that it be referred to R. F., esq., to take such testimony as may be produced before him by either party to this cause in relation to the value of the use and occupation, by ———, of the premises (briefly designating them), since the ——— day of ———, 18——, and the amounts received and collected by ———, or which, with reasonable diligence, might have been received and collected for the same since said day, the amounts expended by said ——— for taxes, assessments, repairs, or otherwise, in and upon said premises (and also in relation to all policies of insurance upon said premises, and as to any actions brought upon the same). * And it is further ordered, that the said referee report said testimony with all convenient speed, and that either party be at liberty, on the coming in of his report, to object to the relevancy or admissibility of all or any portion of said testimony. 2 Abb. Forms 671.

6. *Order of Reference To Take Account as to Damages.*

This cause coming on to be tried at a special term of this court, held on

(the ——— day of ———, 18——, before J. J., one of the justices thereof, and it appearing that the taking of an account is necessary for the information of the court before judgment; thereupon, on hearing counsel for the respective parties,

Ordered, that it be referred to R. F., esq., as sole referee, * to ascertain and report (the amount of wharfage which should be allowed to the plaintiffs for the breach of the covenant by the defendants, contained in the grant mentioned in the pleadings). And for such purpose he is to ascertain, etc., specifying the principles on which the account is to be taken). And he is to compute the interest on such amount, and state the same in his report.

And upon such report being confirmed according to the practice of the court, either party may bring on the cause for final judgment. 2 Abb. Forms 671.

7. *Order of Reference for Account in Partnership Cause.*

(As in III, A, 6, to the *, continuing): to take and state an account of all dealings and transactions between the plaintiff and defendant, as partners, under the style of A. B. & Co.; and for the better taking and stating of which account the parties are to produce before the said referee, under oath, all books, deeds, papers, and writings in their custody, or under their control, relating thereto; and are to be examined upon interrogatories or otherwise, as the said referee shall direct, who, in taking the said account, is to make all just allowances to the parties as between themselves; and what, on the balance of the said account, shall appear to be due from either party to the other, is to be paid as the said referee shall direct; and the referee is at liberty to state and report any special circumstances, as well as his reasons for allowing or disallowing any allowances which may be claimed.

And it is further ordered, that the question of costs, as well as all other questions, are reserved until the coming in of the report and hearing for further directions. 2 Abb. Forms 672.

8. *Order of Reference Preliminary to Judgment for Partition.*

On reading and filing due proof by the affidavit of M. N. that the summons (and complaint) herein has been duly personally served within this state on all the defendants (except the un-

known owners and the defendant U. V., a non-resident, on each of whom it has been duly served by publication), and that none of the defendants are infants (except the defendant W. X.), and that none of them have demurred, or put in any answer controverting any material allegation of the complaint, now, on motion of M. N. for the plaintiff, and on proof of due notice of this motion to the defendants who have appeared, and after hearing O. P. (or, no one appearing) in opposition:

Ordered, that it be referred to R. F., esq., of ———, counselor-at-law, to take proof of the plaintiff's title and interest in the premises mentioned in the complaint, and of the several matters set forth in said complaint, and to ascertain and report what share or part of the said premises belongs to each of the parties to this action, so far as the same can be ascertained, and the nature and extent of their respective rights and interests therein, and an abstract of the conveyances by which the same are held.

(And, if a sale is deemed necessary, add): And said referee is further directed to inquire and report whether the whole of said premises, or any lot or separate parcel thereof, are so circumstanced that an actual partition cannot be made; and if he arrives at the conclusion that a sale of the whole premises, or of any lot or separate parcel thereof, will be necessary, then to specify the same in his report, together with the reasons which render a sale necessary; and in such a case, that he also ascertain and report whether any creditor not a party to this action has a specific lien by mortgage, devise, or otherwise, upon the undivided share or interest of any of the parties in that portion of the premises which it is necessary to sell; and if he finds that there is no such specific lien in favor of any person not a party to the action, that he further inquire and report whether the undivided share or interest of any of the parties in the premises is subject to any general lien or incumbrance, by judgment or decree; and that he ascertain and report the amount due to any party to the action, who has either a general or specific lien on the premises to be sold, or any part thereof, and the amount due to any creditor, not a party, who has a general lien on any undivided share or interest

therein, by judgment or decree, and who shall appear and establish his claim on such reference. And said referee, if requested by the parties, or any one of them, who appear before him on such reference, shall also ascertain and report the amount due any creditor not a party to the action, which is either a specific or general lien or incumbrance upon all the shares or interests of the parties in the premises to be sold, and which would remain as an incumbrance thereon in the hands of the purchaser.

(Where two or more owners wish their shares set off in common, add): And said referee is further directed to inquire and ascertain whether the premises are so situated that the shares of A. B. and C. D. can be set off to them in common, without any partition or allotment as between them, and without injury to the interests of any of the parties, and that he report the facts, with his opinion thereon. 2 Abb. Forms 526.

B. Referee's Summons.

Pursuant to an order of reference in this action, dated the ——— day of ———, 18——, I, the undersigned referee therein appointed, summon you to appear before me, at my office, No ———, ——— street, in the city of ———, on the ——— day of ——— next, at ——— o'clock in the ——— noon, to attend a hearing before me of the matters so referred. And I direct that this summons be served at least ——— days previous to the return day thereof.

Underwriting on referee's summons (in a partnership cause):

And you are required to bring with you, and deposit and leave with me, all the partnership books of account of the firm of A. B. & Co.; also, all bills, bonds, notes, contracts, papers, and documents of every description, belonging to said co-partnership, and in your possession or under your control. 2 Abb. Forms 674.

C. Order That Books and Papers Be Deposited With Referee Before Accounting.

On reading and filing the affidavit of A. B., the plaintiff (or, on the petition of C. D., or, on the certificate of the referee) herein, dated the ——— day of ———, 18——, and on motion of M. N., for the plaintiff, and on hearing O. P., for the defendant (or, and

on proof of due service of notice of this motion and no one appearing), in this position. *

Ordered, that the defendant Y. Z., within (four) days after personal service hereof, on said defendant, or on his attorney, produce before the said referee, under oath, all (here specify the writings) in his custody or power, relating to the matters in question; or, in default thereof, that, on the referee's certificate of such default, an attachment issue to the sheriff of the county of _____, to take the said defendant into custody and bring him before this court to answer for the contempt. 2 Abb. Forms 674.

**D. Plaintiff's Schedule of Account,
To Be Presented on Reference.**

Schedule and statement of mutual accounts between the plaintiff and defendant as partners, under the name A. B. & Co. (since last balance and settlement had between them on the _____ day of _____, 18____).

(Here state items, *e. g.*, thus):

A. B. in account with Y. Z. in respect to said partnership transactions.
Dr.

1862.

Jan. 15.—To cash received at that date on partnership note of F. P. and not entered on firm books.... \$

May 5.—To one-half merchandise account charged to account of plaintiff as appears by the firm books deposited with referee \$
Contra. Cr.

1862.

Jan. 1.—By balance due said A. B. on settlement of partnership accounts and transactions up to date, as appears by partnership books of account deposited with referee.... \$

Interest thereon to date..... \$

Feb. 3.—By cash, etc. \$
2 Abb. Forms 675.

E. Verification of Plaintiff's Schedule of Account.

A. B., the above named plaintiff, being duly sworn, says that the foregoing account, and the said several accounts and entries embraced in the settlement of the _____ day of _____, 18____, upon the partnership books herewith deposited with the referee in this action, including both debits and

credits, are correct, according to the best of deponent's knowledge, information, and belief, and this deponent does not know of any error or omission in said account to the prejudice of his said copartner, the defendant. 2 Abb. Forms 675.

F. Referee's Reports.

**1. Referee's Report on Accounting
in Partnership Cause.**

To the _____ court of _____.

Pursuant to an order of this court, in this action, dated the _____ day of _____, 18____, I, the undersigned referee report: * That having been attended by the attorneys for the several parties who appeared in this action, I proceeded to a hearing of the matter so referred. I further report that on such hearing, the books, deeds, papers, and vouchers of the said partnership having been produced before me, the defendant rendered his (or, both parties rendered their respective) accounts, which are hereto annexed, and marked Schedule A.

II. That I examined said defendant, and also _____, concerning the transactions aforesaid, and adjusted a mutual account between the plaintiff and defendant, making therein all just allowances, and striking a balance which shows what appears to be due from either party to the other, which said account is hereto annexed, and marked Schedule B.

III. That said defendant owes to said partnership, at this date, the sum of _____ dollars, with interest from the _____ day of _____, 18____, at the rate of _____ per cent. per annum, amounting to _____ dollars, which sum I have allowed.

IV. That the balance shown by said Schedule B, after defendant has made good to said partnership said sum, belongs to plaintiff and defendant in equal shares (or, in the following proportions, stating them). 2 Abb. Forms 676.

**2. Report of Referee Preliminary
to Judgment for Partition.**

To the _____ court.

Pursuant to an order of this court, dated the _____ day of _____, 18____, whereby it was referred to me (here state the purport of the order of reference), I respectfully report:

I. That having been attended by the attorneys for the several parties who appeared in the action, I proceeded to

a hearing of the matters so referred (and if the order contemplated a sale, add: after having caused a notice to be published as required by law, for all general lien creditors, by judgment, decree, or otherwise, on the undivided share or interest of any of the parties in the premises, to produce to me proof of their respective liens and incumbrances, together with satisfactory evidence of the amount due thereon, and to specify the nature of such incumbrances, and the dates thereof respectively).

II. That on such hearing, I took proof as to the material allegations in the complaint, and find the same are true.

III. The following is an abstract of the conveyances by which the premises described in the complaint are held (here enumerate them as in full abstract of title).

IV. The respective rights and interests of the several parties in the premises at this date are as follows (designating them, *e. g.*, thus):

The plaintiff A. B. and the defendant W. X. are each entitled to one undivided fourth part thereof.

The defendants W. Z. and Y., his wife, are entitled to one undivided fourth part thereof in right of the said Y.

The defendant U. V., as widow of the said V., deceased, is entitled to a dower right in one undivided fourth thereof; and the said W. V. and Y. V. are each entitled to one undivided eighth part, subject, however, to the dower of U. V., their said mother.

The estate is in the parties, in fee, subject to the marital and dower interests as appear above.

V. That the premises described in the complaint are so circumstanced that, in my opinion, a partition thereof can be made without material injury to the rights or interests of the several owners thereof; and that a partition of such premises would be more advantageous to such owners than a sale thereof (or, where a sale is necessary, say, cannot be made without great injury and prejudice to the owners thereof. The premises consist of a city lot, which is twenty-five feet by one hundred, and cannot be divided without great loss).

(Where a sale is necessary, state specific liens, *e. g.*, thus): VI. That I have

caused the necessary searches to be made, and I find that two creditors, neither of them a party to this action, and no others, have any specific lien by mortgage, devise or otherwise, upon the undivided share or interest of any of the parties in the premises; and that those two creditors are Q. R., of _____, and S. T., of _____, whose liens are as follows (stating particulars as in a full abstract of title).

(Where a sale is necessary, state also general liens, or that there are none, *e. g.*, thus): VII. That there is no other general lien or incumbrance by judgment or decree upon the undivided share or interest of either of the parties in the premises. And no creditor, not a party to this action, having any general lien on any undivided share or interest in the premises, by judgment or decree, appeared before me on the said reference, to establish his claim in pursuance of the notice published by me, except as aforesaid. 2 Abb. Forms 528.

REFORMATION.

I. Bill for Reformation of Conveyance, 1047

II. Complaint for Reformation, 1048

CROSS REFERENCES:

BONDS:

Complaint on Bond for Stay of Proceedings, for Reformation and Judgment on Bond.

RESCISSION AND CANCELLATION:

Bill To Cancel or To Rectify and Reform Agreements, Bonds and Other Instruments.

I. Bill for Reformation of Conveyance. Correcting Boundary.

Humbly complaining, sheweth unto your honors, the plaintiff:

1. That on the _____ day of _____, 186—, the defendant executed and delivered to the plaintiff, under his hand and seal, a deed, of which the following is a copy (give a copy, containing, for example, the following description of the premises conveyed. All that certain lot, etc., beginning at a point, etc., running thence easterly along A. street _____ feet, thence southerly along B. street _____ feet, thence westerly and parallel to C. street _____ feet, thence southerly and parallel to D. street _____ feet, to the place of beginning).
2. That the description therein giv-

en of the premises intended to be conveyed was erroneous, and in fact does not describe any premises whatever; that the word "southerly," as last used in said description, was inserted by mistake of the parties to said deed (or otherwise, or if fraud is relied upon, the circumstances of it should be specifically stated), instead of the word "northerly," which should have been used instead thereof; and that in order to make said deed pass any premises whatever to the plaintiff, and to make it conform to the actual intention of the parties, it is necessary that the said description should be rectified and reformed by substituting the word "northerly" for the word "southerly," where the latter word is last used therein (or say, so as to read as follows, and insert description in full as corrected).

3. That the plaintiff has paid to the defendant for the said premises the consideration expressed in said deed. (Prayer that the deed may be reformed, etc.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1996.

II. Complaint To Reform a Conveyance by Correcting Mistake in Boundary.

I. That on the _____ day of _____, 18____, the defendant executed and delivered to the plaintiff, under his hand and seal, a deed, of which the following is a copy: (give copy of deed, containing, for example, the following description of premises conveyed: All that certain lot, etc., beginning at a point, etc., running thence easterly along A. street _____ feet, thence southerly along B. street _____ feet, thence westerly and parallel to C. street _____ feet, and thence southerly and parallel to D. street _____ feet to the place of beginning).

II. That the description therein given of the premises intended to be conveyed thereby was erroneous, and in fact does not describe any premises whatever; that the word "southerly," as last used in said description, was inserted by mistake of the parties to said deed (or otherwise; and if fraud is relied on, the circumstances of it should be specially stated) instead of the word "northerly," which should have been used instead thereof; and that in order to make said deed pass any premises whatever to this plaintiff,

and to make it conform to the actual intentions of the parties, it is necessary that the said description should be amended by substituting the word "northerly" for the word "southerly," where the latter word is last used therein (or say, amended so as to read as follows, and insert description in full as amended).

III. That the plaintiff has paid to the defendant for the said premises the consideration expressed in said deed.

Wherefore, this plaintiff demands judgment that said deed be reformed as aforesaid, and for the costs of this action. 1 Abb. Forms 586.

REJOINDER.

I. Rejoinders, 1048

A. *By Way of Traverse*, 1048

B. *Notice To Quit*, 1049

II. Surrejoinder, 1049

III. Rebutter, 1049

CROSS-REFERENCES:

ARRAIGNMENT AND PLEA:

Rejoinder, General Form.

DEMURRER:

Special Demurrer to Rejoinder;

Special Demurrer to a Surrejoinder.

FRAUD AND DECEIT:

Rejoinder, Denial of Fraud in Obtaining Judgment.

INFANTS:

Rejoinder, Traverse of Infancy in Replication to Plea of Statute of Limitations;

Rejoinder, Denial of Ratification of Contract;

Rejoinder, Denial That Goods Were Necessaries.

ISSUES IN PLEADING AND PRACTICE:

Rejoinder, Similiter.

LIBERUM TENEMENTUM:

Rejoinder to Replication, Notice To Quit.

LIMITATION OF ACTIONS:

Rejoinder to Replication to Plea of Statute of Limitations.

REPLEVIN:

Rejoinder by Plaintiff in Replevin.

TRESPASSING ANIMALS:

Rejoinder, That Cattle Escaped by Defect of Fences.

I. Rejoinders.

A. *Rejoinder by Way of Traverse, Denial of Obtaining Release Unfairly.*

And the said defendant, as to the said replication of the said plaintiff

to the said (second) plea of the said defendant, says that the said plaintiff ought not by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him the said defendant, because he says that the said deed of release in the said (second) plea mentioned was had and obtained fairly, and not by the fraud or covin of the said defendant, in manner and form as the said plaintiff hath above in his said replication in that behalf alleged. And of this he the said defendant puts himself upon the country, etc. Burr. App. 391, §720; 3 Chit. Pl. 1223.

B. Rejoinder to Replication of Demise to Plaintiff, Notice to Quit.

And the said defendant, as to the said replication of the said plaintiff to the said (second) plea of the said defendant, says that the said plaintiff ought not by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against him the said defendant, because he says that he the said defendant, after the making of the said demise, in the said plea in bar mentioned, and whilst the said plaintiff was possessed of the said place, in which, etc., under and by virtue of the said demise, as tenant thereof to the said defendant; and half a year before the ——— day of ———, in the year, etc., to-wit, on, etc., at, etc., gave due notice to, and then and there required the said plaintiff to quit and deliver up the possession of the said demised premises, with the appurtenances, unto him the said defendant, on the said ——— day of ———, then next following; and by means thereof afterwards, and before the said time when, etc., to-wit, on the day and year last aforesaid, the said tenancy and the estate and interest of the said plaintiff in the said demised premises, and the said place in which, etc., with the appurtenances, wholly ended and determined, to-wit, at, etc., aforesaid; and thereupon he the said defendant, after the said tenancy was so ended and determined as aforesaid, to-wit, at the said several times when, etc., entered into the said dwelling house in which, etc., and committed the said supposed trespasses in the introductory part of the said second plea mentioned, as he lawfully

might for the cause aforesaid, to-wit, at, etc., aforesaid. And this he the said defendant is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against the said defendant. Burr. App. 392, §723; 3 Chit. Pl. 1232; Yates' Forms 736.

II. Surrejoinder That Notice To Quit Was Waived.

And the said plaintiff, as to the said rejoinder of the said defendant to the said replication of the said plaintiff to the said (second) plea of the said defendant, saith that he, by reason of anything by the said defendant in that rejoinder above alleged, ought not to be barred from having or maintaining his aforesaid action thereof against the said defendant, because he says that after the giving of the said notice in the said rejoinder mentioned, and before the expiration of the said tenancy, to-wit, on, etc., at, etc., aforesaid, the said defendant waived, relinquished and abandoned the said notice, and then and there assented, and agreed with the said plaintiff to the continuance of the said tenancy in the said replication mentioned; and the said tenancy did continue from thenceforth, until, and at and after the said time when, etc., to-wit, at, etc., aforesaid. And this he the said plaintiff is ready to verify. Wherefore, as before, he prays judgment and his damages by him sustained, on occasion of the committing of the said trespasses, to be adjudged to him, etc. Burr. App. 393, §727; 3 Chit. Pl. 1235.

III. Rebutter by Way of Traverse Denying Notice To Quit.

And the said defendant, as to the said surrejoinder of the said plaintiff, to the said rejoinder of the said defendant to the said replication to the said (second) plea of the said defendant, saith that the said plaintiff ought not, by reason of anything by him in that surrejoinder alleged, to have or maintain his aforesaid action against him, in respect of the said supposed trespasses in the introductory part of the said (second) plea mentioned, because he saith that the said defendant did not waive, relinquish or abandon the said notice, or assent or agree with the said plaintiff to the continuance of

the said tenancy in the said replication mentioned, nor did the same continue in manner and form as the said plaintiff hath above, in his said surrejoinder, in that behalf alleged. And of this the said defendant puts himself upon the country, etc. Burr. App. 394, §728; 3 Chit. Pl. 1236.

RELEASE.

I. Pleas, 1050

A. *In Assumpsit*, 1050

B. *Plea, Release of Party Jointly Liable*, 1050

II. Answers, 1050

A. *Answer Setting Up Release*, 1050

B. *Supplemental Answer, Discharge Since Continuance*, 1051

III. Replications, 1051

A. *By Way of Traverse*, 1051

B. *Release Obtained by Fraud*, 1051

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Decree, Release To Stand as to Sums Received, and Account Stated.

COVENANT, ACTION OF:

Plea of Release.

PLEA IN EQUITY:

Plea of Release (conclusion of).

REJOINDER:

Rejoinder by Way of Traverse, Denial of Obtaining Release Unfairly.

I. Pleas.

A. *In Assumpsit*.

And the said C. D., defendant in this suit, by A. & R., his attorneys, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that after the making of the said several promises and undertakings in the said declaration mentioned, and before the commencement of this suit, to-wit, on the _____ day of _____, in the year _____ (the date of the release), at, etc. (the venue), aforesaid, the said plaintiff, by his certain writing of release, sealed with his seal, and now shown to the said court here, the date whereof is the day and year last aforesaid, did remise, release, and forever quit claim unto the said defendant, his heirs, executors and administrators, the said several promises and undertakings in the said declaration mentioned, and each and every of them, and all sum

and sums of money, then due and owing, or thereafter to become due, together with all and all manner of action and actions, cause and causes of action, suits, bills, bonds, writings obligatory, debts, dues, duties, reckonings, accounts, sum and sums of money, judgments, executions, damages and demands whatsoever, both at law and in equity, or otherwise howsoever, which he, the said plaintiff, then had, or which he should or might at any time thereafter have, claim, allege or demand against the said defendant, for or by reason or means, etc. (giving the language of the release), as by the said deed or writing of release, reference being thereunto had, will fully appear. And this he, the said defendant, is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc.

A. & R., defendant's attorneys.

Burr. App. 355, §646; 3 Chit. Pl. 930.

B. *Plea, Release of Party Jointly Liable*.

"And the said defendant, Rice, comes and defends the wrong and injury when, etc., and says, actio non, because he says that after the making of the said promises in said declaration mentioned, the said plaintiffs, by J. B. Webster, their attorney, in that behalf duly authorized, executed their certain release, under their hands and seals (with other persons therein named), which release is now to the court here shown, in the words and figures following: (copy of agreement releasing one and attempting to except other from release)."

Whereby the said plaintiffs released the said Rice from his liability on the said promises; and the said defendant, Rice, avers that the said Wiley did make a good title to the said farm therein mentioned in said release to said Carter & Fenno, free and clear of all right to dower and incumbrance; and this said Rice is ready to verify; wherefore he prays judgment, etc. Rice v. Webster, 18 Ill. 331.

II. Answers.

A. *Answer Setting Up Release*.

That after making the contract (or, other instrument) and the alleged breach thereof (or, after committing the said supposed grievances), in the complaint mentioned (or, in the _____

cause of action in the complaint mentioned), and before this action, to-wit, on the _____ day of _____, 18____, the plaintiff (or, the plaintiffs jointly, or, A. B., one of the plaintiffs), in consideration of _____, by deed, released this defendant from the claim set up in the complaint (or, executed to this defendant a release, of which the following is a copy: giving copy). 2 Abb. Forms 35.

B. Supplemental Answer of Release and Discharge Since Last Continuance.

"Exhibit 'C.'"

"Now comes the defendant by its attorneys, by leave of the court first obtained, and files this its supplemental answer, and avers and shows that heretofore, to-wit: On the 29th day of March, A. D. 1880, and since the last trial of this cause, the plaintiff James A. Seehorn, has made and delivered to this defendant, for a valuable consideration, a full release, discharge, and satisfaction of all claims and demands, of every name and kind, between this plaintiff and the defendant, and especially a full release, discharge, and satisfaction of all claims and demands averred in this amended complaint of plaintiff on file in this court in this cause.

"Wherefore, defendant prays that this action be dismissed." Seehorn v. Big Meadows & B. W. Road Co., 60 Cal. 242.

III. Replications.

A. Replication by Way of Traverse to Plea of Release.

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says, that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, * because he says, that the said supposed writing of release in the said (last) plea mentioned, was not, nor is the deed of him, the said plaintiff. And this he prays may be inquired of by the country, etc. Burr. App. 377, §686; 3 Chit. Pl. 1158.

B. Replication to Plea of Release Obtained by Fraud.

(As in II. A. to the *, and then as follows): because he says, that the said supposed writing of release in the

said plea mentioned, was had and obtained from him, the said plaintiff, by the fraud and covin of the said defendant, to-wit, at, etc. (venue) aforesaid. And this, etc. (Conclude with verification). Burr. App. 382, §697; 3 Chit. Pl. 1158.

RELIEF.—See PRAYER FOR RELIEF.

REMAINDERS.—See LIFE ESTATES AND REMAINDERS.

REMITTITUR.

I. Remittitur From Appellate Court, 1051

II. Remittitur From Appellate Court, With Costs, 1052

III. Remittitur From Appellate Court With Costs and Damages, 1053

CROSS-REFERENCES:

APPEALS:

Notice of Filing Remittitur.

JUDGMENT RECORDS:

Judgment Record of Entry of Remittitur From Supreme Court (Affirmance).

MANDATE:

Mandate, United States Supreme Court to State Court;

Mandate, Appellate Court to Common Pleas;

Mandate From United States Supreme Court to District Court;

Mandate of State Supreme Court.

I. Remittitur From Appellate Court.

Pleas before the justices of the supreme court of the state of _____, at the capital in the city of _____, on the _____ day of _____, in the year of our Lord one thousand eight hundred _____ (the day given by the last continuance).

Witness, _____, Justice,

(Chief Justice,

_____, clerk.

The people of the state of _____ have sent to their justices of their court (of common pleas) their writ close in these words, to-wit:

The (people of the state of _____ to our justices of our court of (common pleas) greeting: Because, etc. (here copy the writ of error and allowance indorsed thereon, and proceed as follows): At which day, by virtue of the said writ, the transcript of the record of the judgment (or final determination), aforesaid, in the plaint aforesaid, and all things con-

cerning the same, are brought before the justices of the supreme court, in a certain schedule with the said writ annexed, according to the exigency of the said writ; which said schedule is in the words and figures following, to-wit: (insert the return to the writ with the schedule containing the transcript, and then proceed as follows):

And thereupon, comes here into the said supreme court at the capitol in the city of _____ (or, according to the place where the court may be sitting at the return of the writ of error), the said C. D. in his proper person (or by G. H., his attorney; or if an infant, by G. H., his guardian); and prays a day to assign error or errors in the record (or, final determination), and proceedings aforesaid; whereupon a day is given to him by the court here, to assign errors in the record (or, final determination) aforesaid, until the _____ day of _____ next, etc., here (or, at the _____ in the city of _____, or according to the place where the court shall sit on the dies datus).

Pleas before the justices of the supreme court of the state of _____, at the capitol in the city of _____ (or, according to the place where the court shall sit on the dies datus), on, etc. (the dies datus).

Witness, _____, esquire,
Chief Justice.
_____, clerk.

At which day come here into the said supreme court, as well the said C. D. in his proper person (or, by G. H., his attorney; or, by G. H., his guardian; as the case may be), as the said A. B., in his proper person (or, by E. F., his attorney); and says, that in the record and proceedings aforesaid, and also in giving the judgments (or, final determination) aforesaid, there is manifest error in this, that the declaration aforesaid, and the matters therein contained, are not sufficient in law, for the said A. B. to have or maintain his aforesaid action thereof against him the said C. D.: And also, there is error in this, that the judgment (or, final determination) aforesaid, by the record aforesaid, appears to have been given for the said A. B. against the said C. D.; whereas, by the law of the land, the said judgment ought to have been given for the said C. D. against the said A. B.: And the

said C. D. prays, that the judgment (or, final determination) aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for naught; and that he may be restored to all things which he hath lost by occasion of the said judgment (or, final determination), etc.

And hereupon, afterwards, to-wit, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____ (the day of filing the joinder in error), the said A. B., by E. F., his attorney, comes here into court, and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment (or, final determination) aforesaid; and he prays that the said supreme court of the state of _____, now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error; and that the judgment (or, final determination), in the manner aforesaid given, may be in all things affirmed, etc. But because the said supreme court before the aforesaid justices thereof, now here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, here (or, if the next sitting of the court will be at a different place, omit the word, here; and instead thereof insert, at the capitol in the city of _____), on the _____ day of _____ next (or, instant), before the same court, to hear judgment thereupon; for that the said supreme court of the state of _____, here, is not yet advised thereof, etc.

At which day, come here, into the said supreme court, as well the said C. D. by G. H., his attorney, as the said A. B. by the said E. F., his attorney: Whereupon, all and singular the premises being seen, and by the said court now here fully understood, and as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid by the said C. D. above for error assigned, being by the said court, now here diligently examined and inspected and due and mature deliberation being thereupon had; it appears to the said supreme court, here, that there is no error, either in the record and proceedings aforesaid, or in giving the

judgment (or, final determination) aforesaid: Therefore it is considered, by the said supreme court, that the judgment (or, final determination) aforesaid, in form aforesaid given, be in all things affirmed, and stand in full force and effect, the said causes and matters above for error assigned and alleged, in any wise notwithstanding, etc.

It is further considered by the said supreme court, here, that no costs be allowed to either party in this court as against the other: Whereupon the record and proceedings of the justices of the supreme court, before them had in the premises, are remitted by the said justices, here, to the (court of common pleas) before the aforesaid justices thereof, at the _____ in the city of _____ (or, according to the place where the court shall sit, at the next term after the remittitur is sent) according to the form of the statute in such case made and provided, in order that such proceedings may be thereupon had, as well for execution as otherwise, as may be agreeable to law and justice. Burr. App. 432, §833a; 2 Humphrey's Prec. 1181.

II. Remittitur From Appellate Court With Costs.

(As in last form, to and including the words, "And it is further considered," and then as follows:) by the said supreme court, here, that the said A. B. recover against the said C. D., _____ dollars, by the supreme court, here, adjudged, to the said A. B., and with his assent, according to the form of the statute in such case made and provided, for his costs and charges which he hath expended about his defense on the prosecution of the said writ of error: Whereupon the record and proceedings, etc. (as in last form to the end). Burr. App. 434, §833b.

III. Remittitur From Appellate Court With Costs and Damages.

(As in last form, to and including the words, "on the prosecution of the said writ of error," and then as follows:) And also _____ dollars for his damages for the delay and vexation which he hath sustained on procees of the prosecution of the said writ of error: Whereupon the record and proceedings, etc. (as in last form, to the end). Burr. App. 434, §833c; 2 Humph. Prec. 1181.

REMOVAL OF CAUSES.

- I. Notice of Motion, 1053
- II. Order To Show Cause, 1053
- III. Petition for Removal, 1054
- IV. Security Offered by Petitioner, 1054
- V. Notice of Offer To Be Endorsed on Bond, 1055
- VI. Order Removing Cause to United States District Court, 1055
- I. Notice of Motion for Removal of Cause.

Take notice, that upon the petition and appearance of the defendant of which a copy is hereto annexed, and which were on, etc. (or, upon the petition a copy of which is hereto annexed, and which, together with the petitioner's appearance herein already served on you, was on, etc.) filed in this court, and upon the bond of the petitioner and his sureties (or, the bond on behalf of the petitioner) a copy of which is also annexed, this court will be moved at a special term thereof to be held at _____, on _____, that the petition be granted, and the cause be removed to the district court mentioned in the petition, and that this court accept the surety offered and proceed no further herein (and that the bail taken from the petitioner in this court shall be discharged), and for such other or further relief as may be just.

(Date.)

(Signature.)

(Address.)

2 Abb. Forms 653.

II. Order To Show Cause on Motion To Remove Cause.

The defendants having this day entered their appearance in this cause, and at the same time filed a petition praying for a removal of this action to the district court of the United States for the southern district of New York, pursuant to the Act of Congress of the United States in such case provided, and offered the surety as there-in provided, by a bond now filed, it is ordered that the plaintiff's show cause on _____, at _____ o'clock in the _____ noon at a special term of this court, to be held at _____, why the prayer of the said petition should not be granted. 2 Abb. Forms 653.

III. Petition for Removal Into United States District Court.

To the _____ court.

I. The petition of _____ shows that an action has been brought in this court against the petitioner (and others) by the plaintiff above named.

II. That this action is brought upon the following cause (here the nature of the cause of action should be stated sufficiently to enable the court to see that it cannot form an exception to the general rule).

III. That the matter in dispute exceeds the sum of _____ dollars exclusive of costs, as appears by (here refer to complaint or summons, and if the demand is unliquidated, state facts supporting the allegation as to its amount).

(Where the defendant is an alien.)

IV. That the petitioner is an alien (or, the petitioner and all his co-defendants in this action are aliens), to-wit, a subject or citizen of Canada and a subject of the United Kingdom of Great Britain and Ireland (except _____ who is a mere nominal party, as appears by the foregoing allegations).

(Where the parties are citizens of different states.)

V. That the plaintiffs in this action are all citizens of this state (except _____ who is a mere nominal party, as appears by the foregoing allegations), or, that the plaintiffs are a corporation created by the law of this state of _____, and doing business therein.

That the petitioner and all his co-defendants are citizens of other states of the United States, to-wit: X. is a citizen of the state of _____, and Y. and Z. are citizens of the state of _____ (or, if they are a corporation, created by the laws of the state of _____, and doing business therein, and said corporation have not any agent within this state on whom process against it may be served according to the laws of this state).

(Where the action is by an assignee.)

VI. That the assignor of the chose in action under whom the plaintiff in this action claims (here allege his alienage or citizenship according to the fact, so as to show the jurisdiction of the district court).

VII. That the petitioner now does

enter his appearance in this action; but has not done so heretofore.

VIII. That he hereby offers good and sufficient surety for his entering in the next district court for the _____ district of the state of _____ (or, if in the district of Maine, or, Kentucky), to the district court next to be held in the district of Maine (or, Kentucky), on the first day of its session, copies of the process against him in this action; and also for his there appearing and entering special bail in the action, if special bail were originally requisite therein, according to the law and practice of the United States and its courts.

Your petitioner, therefore, asks that the said cause may be removed for trial into the next district court to be held in the district where the same is pending, to-wit, into the next district court for the (southern) district of the state of (New York), pursuant to the provisions of the said statutes of the United States, in such case made and provided, and that this court do accept the surety offered by your petitioner, as aforesaid, and do proceed no further in the said cause. (And that the bail, originally taken from your petitioner in the said cause, be discharged). And for such further or other order or relief in the premises as may be just.

(Signature.)

(Verification.)

2 Abb. Forms 648.

IV. Security Offered by Petitioner on Removal.

Know all men by these presents, that we, M. N., of _____, and O. P., of _____, are hereby held and firmly bound unto A. B. (plaintiff in the action), his executors, administrators, and assigns, in the sum of _____ dollars, lawful money of the United States of America, to be paid to the said A. B., his executors, administrators, or assigns, for which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, and every of them, forever by these presents.

Scaled with our seals this _____ day of _____, in the year of our Lord, 1863.

I. Whereas, the above named A. B. has commenced an action in the _____ court against (the above bounden) Y. Z.

II. And whereas, the said Y. Z. has entered his appearance in such action in said court, and at the same time has filed his petition for the removal of the cause into the next district court to be held (etc., as in the petition). Now, therefore, the condition of the above obligation is such that if the said Y. Z. shall enter in said district court, on the first day of its session, copies of the process against him in said cause, and shall also then and there appear and enter special bail in the cause if special bail was originally requisite therein according to the law and practice of the United States, and its courts, then these presents and obligation shall be void, or otherwise to remain in full force.

(Acknowledgement and justification as in other cases.) 2 Abb. Forms 651.

V. Notice of Offer To Be Endorsed on Bond on Removal.

Take notice, that within is a copy of a bond which the defendant in this action hereby offers to give upon the removal of this cause to the district court of the United States for the _____ district of _____.

(Date.) (Signature.)

(Address.)

2 Abb. Forms 652.

VI. Order Removing Cause to United States District Court.

(At a special term, etc.)

A petition having been filed by the defendant in this cause at the time of entering his appearance herein, on the _____ day of _____, praying for the removal thereof into the district court for the southern district of New York, pursuant to the statutes of the United States in such case made and provided, and the said petitioner having offered good and sufficient security, pursuant to the directions of, and as required by the said statute; now, on motion of Mr. W., of counsel for the petitioner, and after hearing Mr. H., of counsel for the plaintiff, in opposition thereto, it is declared that it is made to appear, to the satisfaction of this court, that the present suit is commenced in this court by a citizen of the state of New York against a citizen of another state (or, that the present suit is commenced in this court against an alien), and that the matter in dispute exceeds five hundred dol-

lars, exclusive of costs. And it is hereby further declared and ordered, that this court accepts the surety offered by the petitioner, and that the said cause be removed for trial into the next district court to be held in the southern district of the state of New York, pursuant to the said statutes; and that this court do proceed no further therein, and that all proceedings in this court in the said cause be and the same are hereby stayed.

And it is further ordered that this removal shall not operate of itself to dissolve the injunction heretofore issued in this cause, but the same shall remain in force until dissolved by this court, or by the said district court. 2 Abb. Forms 654.

REMOVAL OF CLOUD.—See QUIETING TITLE.

RENDITION AND ENTRY OF JUDGMENT.—See JUDGMENT RECORDS; JUDGMENTS.

RENTS.—See LANDLORD AND TENANT.

REPLEADER.

I. Order for Repleader, 1055

II. Judgment Record on Repleader, 1055

I. Order for Repleader.

This cause having been brought to argument, and counsel for the respective parties having been heard, it appearing to the court that the (plea) of the (defendant) and the issue thereupon joined, do not determine the right, and that no judgment should be given upon the verdict entered thereon, it is ordered that the parties do replead; that is, that the defendant do answer anew to the declaration filed in this cause, and that the parties do further proceed until an issue or issues, in fact or law, be duly joined. Burr. App. 465, §944.

II. Judgment Record on Repleader.

(To the end of the poston [see Judgment Records], and then continue as follows):

But because the said court, before the aforesaid justices thereof now here, are not yet advised, etc. (continued), and then as follows: At which day, before the justices aforesaid, at the (capital) aforesaid, came the parties aforesaid, by their respective attorneys aforesaid. And hereupon, all and sin-

gular the premises being seen, and by the court now here fully understood, and mature deliberation being thereupon had, it seems to the said court now here that (the replication of the said plaintiff, in manner and form above pleaded, is not sufficient in law to be answered unto; for that the said plaintiff in the said replication attempts to draw in question an immaterial fact, to-wit (the precise day on which the payment and satisfaction, in the said defendant's plea alleged, was made by the said defendant: Whereas the material question in that plea was, whether the bond or writing obligatory, in the said plaintiff's declaration mentioned, was in fact paid and satisfied or not), and that the issue aforesaid, thereupon above joined, was not aptly or properly joined. Wherefore it is considered that the parties aforesaid, to the issue aforesaid, do replead; that is to say, that the said plaintiff do reply anew, until an apt and proper issue be joined therein: And the verdict aforesaid, of the jurors aforesaid, in form aforesaid given, is, for the cause aforesaid, hereby vacated and held for naught.

And thereupon the said plaintiff, by way of replication anew, says that, etc. (here proceed with the entry of the new pleadings). Burr. App. 181, §334; Yates' Forms 781, 49.

REPLEVIN.

I. Declarations, 1057

- A. *In Cepit*, 1057
- B. *In Detinet*, 1057
- C. *In Cepit et Detinet*, 1058

II. Writs, 1058

- A. *Writ of Replevin*, 1058
- B. *Writ of Replevin*, 1058
- C. *Pluries Writ*, 1058

III. Returns, 1058

- A. *Goods Part Found, Defendant Not Found*, 1058
- B. *Goods Not Found, Defendant Arraigned*, 1059
- C. *Goods Replevied, Defendant Summoned*, 1059

IV. Bonds, 1059

- A. *Plaintiff's Bond*, 1059
- B. *Plaintiff's Second Bond*, 1059
- C. *Exception to Sureties*, 1060
- D. *Defendant's Bond*, 1060

V. Summonses, 1060

- A. *Summons in Replevin*, 1060
- B. *Alias Summons*, 1060

VI. Pleading by Defendant, 1060

- A. *Avowry for Damage Feasant*, 1060
- B. *Avowry, Part Rent Paid*, 1061
- C. *Cognizance for Rent*, 1061
- D. *Plea, Property in Defendant or Stranger*, 1062

VII. Pleas, 1062

- A. *Denial of Title*, 1062
- B. *Escape by Defective Fence*, 1062
- C. *Eviction*, 1062
- D. *Tender Before Impounding*, 1063
- E. *No Rent in Arrear*, 1063
- F. *Cepit in Alia Loco*, 1063
- G. *Defendant Was Not Bailiff*, 1063
- H. *No Rent in Arrear in Part, Tender*, 1063

VIII. Replications, 1064

- A. *Denial of Defective Fences*, 1064
- B. *Denial of Duty To Repair*, 1064
- C. *Denial of Tender*, 1064
- D. *Demand After Tender*, 1065

IX. Rejoinder by Plaintiff, 1065

X. Demurrers, 1065

- A. *General Demurrer to Avowry*, 1065
- B. *General Demurrer to Plea*, 1065

XI. Writs of Inquiry, 1065

- A. *On Default*, 1065
- B. *On Retorno Habendo*, 1066

XII. Retorno Habendo, 1066

- A. *For Want of Plea*, 1066
- B. *On Non Pros.*, 1067
- C. *After Verdict*, 1067

XIII. Complaints, 1068

- A. *Goods Taken*, 1068
- B. *Goods Taken From Bailee*, 1068
- C. *Goods Wrongfully Detained*, 1068
- D. *Possession Innocently Derived*, 1068
- E. *Fraudulent Buyer*, 1068
- F. *Fraudulent Buyer and His Transferee*, 1069

XIV. Answers, 1069

- A. *Denial of Taking*, 1069
- B. *Title in Defendant or Stranger*, 1069
- C. *Defendant Part Owner*, 1069
- D. *Lien for Storage or Freight*, 1069
- E. *Lien for Services*, 1069
- F. *Distrain Doing Damage*, 1070

CROSS-REFERENCES:

DISMISSAL, DISCONTINUANCE AND NON-SUIT:

Entry of Non Pros. for Not Declaring in Replevin;

Judgment Record on Discontinuance in Replevin, Etc.

GENERAL ISSUE AND GENERAL DENIAL:

Plea of Non Cepit in Replevin;

Plea of Non Detinet in Replevin.

JUDGMENT RECORDS:

Judgment Record on Default for Not Pleading in Replevin;

Judgment Record on Default of Plaintiff To Plead to Avowry in Replevin;

Judgment Record on Verdict on Non Cepit for Plaintiff;

Judgment Record on Non-Detinet for Plaintiff.

JUDGMENTS:

Judgment for Defendant, Goods Replevied;

Judgment for Defendant, Goods Not Replevied;

Judgment in Replevin, Not Pleading;

Judgment in Replevin for Recovery of Possession;

Judgment, Non Pros., Not Declaring in Replevin;

Judgment on Non Detinet in Replevin for Plaintiff;

Judgment on Default of Plaintiff To Plead to Avowry in Replevin;

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias for Plaintiff in Replevin;

Fieri Facias for Plaintiff in Replevin Where Goods Were Not Replevied;

Capias Ad Satisfaciendum in Replevin for Plaintiff.

SCIRE FACIAS:

Scire Facias To Revive a Judgment in Replevin.

VERDICT:

Postea for Plaintiff, Plea of Non Detinet in Replevin;

Postea for Defendant on Assessment of Damages in Replevin.

I. Declarations.

A. *Declaration in Cepit (for taking goods).*

Supreme court. (Of (May) term, in the year one thousand eight hundred and (forty-six). (City and) county (of New York), ss.:

C. D., defendant in this suit, was summoned to answer A. B. plaintiff in this suit, of a plea wherefore he

took certain goods and chattels (or certain goods, wares and merchandise), the property of the said plaintiff, hereinafter set forth, and unjustly detained the same against sureties and pledges, until, etc. And thereupon the said plaintiff, by E. F., his attorney, complains for that the said defendant, on the (second day of February), in the year one thousand eight hundred and (forty-six), at (the city of New York, in the county of New York), aforesaid (in a certain dwelling house, or store, or warehouse, etc.), there, to-wit, in Pearl street, at number ———, in the said street, wrongfully and unjustly took certain goods and chattels (or goods, wares and merchandise), to-wit, two mahogany tables, twelve chairs, etc. (or three bales of ———, five boxes of ———, etc., specifying the goods or articles taken, as in the writ of replevin), the property of him the said plaintiff, of great value, to-wit, of the value of (five hundred) dollars, and wrongfully and unjustly detained the same, until, etc., and still continues to detain the same. To the damage of the said plaintiff of (one thousand) dollars (a sum sufficient to cover damages), and thereof the said plaintiff brings suit, etc. Burr. App. 296, §561.

B. *Declaration in Detinet (for detaining goods).*

Supreme court. Of (May) term, in the year one thousand eight hundred and (forty-six). (City and) county (of New York), ss.:

C. D., defendant in this suit, was summoned to answer A. B., plaintiff in this suit, of a plea wherefore he unjustly detains certain goods and chattels (or "certain goods, wares and merchandise"), the property of the said plaintiff, described in the writ of replevin in this cause, and hereinafter set forth. And thereupon the said plaintiff, by E. F., his attorney, complains for that the said defendant, on the ——— day of ———, in the year one thousand eight hundred and ———, at (the city of New York, in the county of New York), aforesaid, received from the said plaintiff (or "from one I. J.") (here describe the articles specifically as in the writ) the property of him the said plaintiff, of great value, to-wit, of the value of (five hundred) dollars, to be delivered to the said plaintiff, when the said de-

defendant should be thereunto afterwards requested. And the said defendant, although often requested so to do, to-wit, on divers days and times between the time of his receiving the said property, and the time of the commencement of this suit, to-wit, at the place aforesaid, has not delivered the same to the said plaintiff, but refuses so to do, and wrongfully detains the same property; to the damage of the said plaintiff of (one thousand) dollars, and thereof the said plaintiff brings suit, etc. Burr. App. 297, §562.

C. Declaration in Caput et Detinet (taking and detaining).

C. D., defendant in this suit, was summoned to answer A. B., plaintiff in this suit, of a plea wherefore he took one horse, one cow and five sheep (or one silver tankard, one mahogany table, and six chairs, etc., or the grain) of the said plaintiff, and unjustly detained the same (against sureties and pledges), until, etc. And thereupon the said plaintiff, by E. F., his attorney, complains for that the said defendant, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, in the town of (Poughkeepsie), in the county aforesaid, in a certain dwelling house there (or, if on land, in a certain close, or common there called _____), wrongfully took one horse, one cow, and five sheep (or one silver tankard, one mahogany table and six chairs, etc.; or the grain, describing it, of him the said plaintiff, of great value, to-wit, of the value of (three hundred) dollars, and unjustly detained the same (against sureties and pledges), until, etc. (and still continues to detain the same). Wherefore the said plaintiff saith that he is injured, and hath sustained damage to the amount of (five hundred) dollars, and therefore he brings his suit, etc. Burr. App. 296, §561a; 2 Chit. Pl. 843; Till. Forms 582.

II. Writs.

A. Writ of Replevin.

The people of the state of New York, to the sheriff of the (city and) county of (New York), greeting:

Whereas A. B. complains that C. D. (has taken and) does unjustly detain two tables, twelve chairs, etc. (or three bales of _____, five boxes of _____, or one horse, one cow and five sheep, or otherwise, particularly describing the property to be replev-

ied): therefore we command you, that if the said A. B. shall give you security, as required by law, to prosecute his said complaint, and to return the aforesaid goods and chattels, if return thereof shall be adjudged, and to pay all such sums of money as may be recovered against him hereupon, that you cause the said goods and chattels to be replevied and delivered to the said A. B. without delay; and also that you summon the said C. D. to appear before our justices of our supreme court of judicature, at the (city hall in the city of New York), on the (first Monday of May) next, to answer the said A. B. in the premises. And in case you cannot find the aforesaid goods and chattels, within your county, so as to replevy the same, as you are above commanded, then we do further command you, that you take the body of the said C. D., and that you have him before our said justices, at the place and on the day above mentioned, to answer the said A. B. in the premises.

Witness, Greene C. Bronson, esquire, our chief justice, at the (capitol in the city of Albany, the eighteenth day of January, one thousand eight hundred and forty-six).

_____, clerk.

_____, attorney.

Burr. App. 496, §1006.

B. Alias Writ of Replevin.

(Same as the last form, adding after the words, "we command you," the words, "as we have heretofore before commanded you.") Burr. App. 496, §1006a.

C. Writ of Replevin, Pluries Writ.

(Same as II, A, adding after the words, "we command you," the words, "as we have oftentimes before commanded you.") Burr. App. 496, §1006b.

III. Returns.

A. Return to Writ of Replevin, Goods Part Found, Defendant Not Found.

By virtue of the within writ, and the affidavit accompanying the same, I have duly replevied and delivered to the plaintiff within named a part only of the goods and chattels within specified, to-wit (here specify the particulars), and the residue thereof I could not find, the same being removed or concealed, so as to make replevin or delivery thereof. And I do further certify and return that the within

named defendant cannot be found in my bailiwick.

The answer of S. T., sheriff.

Burr. App. 439, §846b.

B. Return to Writ of Replevin, Goods Not Found, Defendant Arrested.

I do certify and return to the within writ, that no part of the goods and chattels therein mentioned could be found by me, so as to make replevin and delivery thereof, as within I am commanded. Wherefore I took the body of the within named defendant, who with sureties, to-wit (name them), executed to me a bail-bond to appear according to the exigency of the said writ, in the penalty of _____ dollars. And I have also caused the said defendant to be summoned to appear according to the exigency of the said writ.

The answer of S. T., sheriff.

Burr. App. 439, §846a.

C. Return to Writ of Replevin, Goods Replevied, Defendant Summoned.

By virtue of the within writ, and the affidavit accompanying the same, I have duly replevied and delivered to the plaintiff within named the goods and chattels within specified, as within I am commanded, and I have also duly caused the within defendant to be summoned, to appear according to the exigency of the said writ. And I do certify that the sureties in the replevin bond given to me by the within named plaintiff are K. L., of _____, and M. N., of _____ (giving the additions, occupations and places of residence of each), and that the penalty of the said bond is (one thousand) dollars.

The answer of S. T., sheriff.

Burr. App. 439, §846; Yates' Forms 542.

IV. Bonds.

A. Plaintiff's Bond in Replevin.

Know all men by these presents, that we, A. B., of _____, K. L., of _____, and M. N., of _____, are held and firmly bound unto J. A., esq., sheriff of the (city and) county of _____, in the sum of _____ dollars (at least double the value of the property specified in the writ), lawful money of the United States of America, to be paid to the said sheriff, or to his assigns: for which payment well and truly to be made, we bind our-

selves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the (third) day of (August), one thousand eight hundred and _____.

The condition of this obligation is such that if the above bounden A. B. shall prosecute to effect, and without delay, a certain suit in replevin which he has commenced in the (supreme court of judicature of the people of the state of New York) against C. D., the defendant, for taking and unjustly detaining (here specify the property), and if the said defendant shall recover judgment against him in the said action, then if the said A. B. shall return the same property, if return thereof be adjudged, and shall pay to the defendant all such sums of money as may be recovered against him by such defendant in the said action, for any cause whatever, then the above obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered
in the presence of

A. B. (L. S.)

K. L. (L. S.)

M. N. (L. S.)

(Subscribing witnesses.)

Burr. App. 42, §80.

B. Plaintiff's Second Bond in Replevin.

Know all men by these presents, that we, etc. (form of penalty as in former bond to the sheriff, the sum to be to his satisfaction).

Whereas in and by virtue of a writ of replevin, issued out of the supreme court of judicature of the people of the state of New York, tested on the _____ day of _____, and returnable on the _____ day of _____, and directed and delivered to the said sheriff, be the said sheriff was commanded (here recite the writ): And whereas upon the taking of the said goods and chattels, by virtue of the said writ, in order to make delivery thereof to the said A. B., plaintiff in the said writ, one L. M., before such delivery, claimed property in the said goods and chattels, and thereupon a jury was summoned by the said sheriff to try such claim; and which said jury have, by their inquiry under their hands and seals, found in favor of such claim; and the said plaintiff having still persisted and demanded from the

said sheriff, notwithstanding the said inquisition found by the said jury, to have delivery made to him of the said goods and chattels, upon such writ of replevin:

Now, therefore, the condition of the above obligation is such, that if the said A. B., his heirs, executors and administrators, shall well and truly indemnify and save harmless him the said sheriff, his heirs, executors and administrators, of, and from all damages, costs and charges, which he the said sheriff, his heirs, etc., shall sustain, or in any wise be put to, for or by reason of the delivery by him the said sheriff of the property claimed as aforesaid by the said A. B., and demanded as aforesaid, to be delivered to him, then this obligation to be void, otherwise to remain in full force and effect.

(Signatures and seals of obligors.)

Sealed and delivered

in the presence of

(Subscribing witnesses.)

Burr. App. 43, §81; Yates' Forms 545.

C. Exceptions to Sureties in Replevin Bond.

Sir: Please to take notice that I have this day excepted to the sufficiency of the sureties taken of the plaintiff, and named in the replevin bond in this cause. Dated (New York, December 16th, 1845).

Yours, etc.,

G. H., attorney for defendant.

No. _____ Nassau St.

To E. F., Esq., plffs. attorney.

Burr. App. 195, §360.

D. Defendant's Bond in Replevin.

Know all men by these presents, that we, C. D., of _____, K. L., of _____, and M. N., of _____, are held and firmly bound unto J. A., esquire, sheriff of the county of _____, in the sum of _____ dollars (double the value of the property described in the writ), to be paid, etc. (as in IV, A).

The condition of this obligation is such that if the above bounden C. D. shall abide the order and judgment of (the supreme court of judicature of the people of the state of New York), in an action of replevin commenced in the said court by one A. B. against the above bounden C. D., and shall cause special bail to the said action to be put in, if the same be required, then

this obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered

in presence of

(Subscribing witnesses.)

Burr. App. 43, §82; 2 R. S. 432, 524, §12; Yates' Forms 541.

V. Summonses.

A. Summons in Replevin.

By virtue of a writ of replevin to me directed and delivered, I do hereby summon you to appear before the justices of the supreme court of judicature of the people of the state of New York, at the city hall in the city of New York, on the first Monday of May next (or otherwise, according to the writ), to answer A. B. in a writ of replevin (prosecuted by E. F., his attorney, and), issued out of the said court.

S. T. sheriff of the county of _____.

To C. D., the above named defendant.

Burr. App. 483, §985.

B. Alias Summons in Replevin.

The people, etc., to the sheriff, etc., greeting:

Whereas, by our writ of replevin, to you lately directed and delivered, we commanded you (here recite the writ of replevin): And whereas you, at that day, made return to our said writ that (recite the return). Now, therefore, we command you, as before we commanded you, that you summon the said defendant to appear before our justices, etc. (as in the writ of replevin, II, A), to answer the said plaintiff in the premises in our said writ of replevin contained. And have you then there this writ.

Witness, etc. (teste as in the writ of replevin). Burr. App. 483, §985a; 1 Humphrey's Prec. 149.

VI. Pleading by Defendant.

A. Avowry for Damage Feasant.

Because he saith, that the said place in which, etc., now is, and at the said time when, etc., was the close, soil and freehold of the said defendant, and because the said (cattle), at the said time when, etc., were in the said place in which, etc., eating up the grass there then growing, and doing damage there to the said defendant, he the said defendant well avows the taking of the said (cattle) in the said place in which, etc., and justly, etc., as for and in the name of a distress for the said damage so there done and doing as aforesaid. And this, etc. 3 Chit. Pl. 1058.

Note.—"The action of replevin differs from other actions in the names of the pleadings. If the defendant pleads some matter confessing the taking, but showing lawful title or excuse, such pleading is not (as it would be in other actions) called a plea in bar, but an avowry, or a cognizance; the former term applying to the case where the defendant sets up right or title in himself; the latter being used when he alleges the right or title to be in another person, by whose command he acted. Com. Dig. Pleader (3 K. 13, 14) The answer to the avowry or cognizance, is called the plea in bar; and then follow replication, rejoinder, etc.; the ordinary name of each pleading being thus postponed by one step." Steph. Pl. 195 (d).

B. Avowry Where Part of Rent is Paid.

And the said C. D., defendant in this suit, by J. B. S., his attorney, comes and defends the wrong and injury, when, etc., and well avows the taking of the said goods and chattels in the said declaration mentioned, in the said dwelling house (or, according to the place stated in the declaration), in which, etc., and justly, etc.; because he says that the said plaintiff (or "one J. K."), for a long time, to-wit, for the space of _____ years next before and ending on the _____ day of _____, in the year, etc., and from thence until, and at the said time when, etc., held and enjoyed the said (dwelling house) in which, etc., with the appurtenances, as tenant thereof to the said defendant, under and by virtue of a certain demise thereof to him the said plaintiff, theretofore made, at and under a certain yearly rent, to-wit, the yearly rent of (five hundred) dollars, payable quarterly, on, etc. (stating the days of payment), in every year, by even and equal portions, and because a large sum of money, to-wit, the sum of _____ dollars, parcel of the sum of _____ dollars of the rent aforesaid, for the said space of _____ ending, as aforesaid, on the said _____ day of _____, in the year aforesaid, and from thence until, and at the said time, when, etc., was due and in arrear from the said plaintiff, to the said defendant (the residue of the said sum of _____ dollars, of the rent aforesaid, having been before then paid and satisfied), he the said

defendant well avows the taking of the said goods and chattels in the said declaration mentioned, in the said dwelling house, in which, etc., and justly, etc., as, for and in the name of a distress for the said sum of _____ dollars, parcel, etc., so due and in arrear as aforesaid; and which said sum of _____ dollars, parcel, etc., still remains due and in arrear to the said defendant, as aforesaid. And this, etc. (conclude as in last form). Burr. App. 404. §749; 3 Chit. Pl. 1048; Yates' Forms 551.

C. Cognizance for Rent.

And the said C. D., defendant in this suit, by W. C. W., his attorney, comes and defends the wrong and injury when, etc., and, as the bailiff of L. M., well acknowledges the taking of the goods and chattels (or otherwise, according to the declaration), in the said declaration mentioned, in the said dwelling house (or, according to the premises stated in the declaration), in which, etc., and justly, etc., because he says that the said plaintiff (or one J. K.), for a long time, to-wit, for the space of _____ years next before and ending on the _____ day of _____, in the year, etc., and from thence until and at the said time when, etc., held and enjoyed the said (dwelling house), in which, etc., with the appurtenances, as tenant thereof, to the said L. M., by virtue of a certain demise thereof to him the said plaintiff (or the said J. K.), theretofore made at and under a certain yearly rent, to-wit, the yearly rent of _____ dollars, payable quarterly on, etc. (stating the days of payment), in every year, by even and equal portions (or, according to the facts); and because the sum of _____ dollars of the rent aforesaid, for the space of _____ ending as aforesaid on the said _____ day of _____, in the year aforesaid, and from thence until and at the said time when, etc., was due and in arrear from the said plaintiff to the said L. M., he the said defendant, as bailiff of the said L. M., well acknowledges the taking of the said (goods and chattels) in the said dwelling house, in which, etc., and justly, etc., as, for, and in the name of a distress for the said sum due, and in arrear to the said L. M., as aforesaid; and which rent still remains due and unpaid. And this he the said defend-

ant is ready to verify. Wherefore he prays judgment and a return of the said (goods and chattels), together with his damages, etc., according to the form of the statute in such case made and provided, to be adjudged to him, etc. Burr. App. 404, §750; 3 Chit. Pl. 1047; Yates' Forms 550.

D. Plea in Bar. Property in Defendant or Stranger.

Because he saith that the said (goods and chattels) in the said declaration mentioned, at the said time when, etc., were the property of the said defendant (or of one E. F.), and not of the said plaintiff, as by the said declaration is above supposed. And this he the said defendant is ready to verify; wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, and he also prays return of the said (goods and chattels), together with his costs in this behalf, according to the form of the statute in such case made and provided, to be adjudged to him, etc. 3 Chit. Pl. 1044.

VII. Pleas.

A. Plea to Avowry, Damage Feasant, Denial of Title of Defendant.

And the said plaintiff, as to the said avowry of the said defendant, saith that the said defendant, by reason of anything by him in that avowry above alleged, ought not to avow the taking of the said cattle (or goods and chattels, as in the declaration), in the said place in which, etc., and justly, etc., because he says that the said place in which, etc., now is, and at the said time when, etc., was the close, soil and freehold of him the said plaintiff, and not the close, soil and freehold of the said defendant (or L. M.), in manner and form as the said defendant hath above in his said avowry (or "cognizance"), in that behalf alleged. And this he the said plaintiff prays may be inquired of by the country, etc. Burr. App. 406, §754; 3 Chit. Pl. 1195.

B. Plea to an Avowry of Damage Feasant, Escape of Cattle by Defective Fence.

And the said plaintiff, as to the said avowry of the said defendant, saith that the said defendant, by reason of anything by him in that avowry above alleged, ought not to avow the taking of the said cattle (or goods and chat-

tels, as in the declaration), in the said place in which, etc., and justly, etc., because he says that the said plaintiff, before and at the said time when, etc., was lawfully possessed of and in a certain close, etc. (state the plaintiff's possession of the adjoining close, and the obligation of the occupier of the locus in quo, to repair the fence, and that the fence was out of repair, and that the plaintiff's cattle thereby escaped into the locus in quo, and after stating such escape, proceed as follows): and remained therein until the said defendant before the said plaintiff had, or could have any notice that the said cattle were in the said place in which, etc., to-wit, at the said time when, etc., of his own wrong, took the said cattle in the said place in which, etc., and unjustly detained the same against sureties and pledges, in manner and form as he the said plaintiff hath above thereof complained against him the said defendant. And this, etc. (conclude with a verification). Burr. App. 407, §756; 3 Chit. Pl. 1196.

C. Plea in Bar to Avowry, Eviction.

And the said plaintiff, as to the said avowry of the said defendant, saith that the said defendant, by reason of anything by him in that avowry above alleged, ought not to avow the taking of the said cattle (or "goods and chattels," as in the declaration), in the said place in which, etc., and justly, etc., because he says that the said defendant, after the making of the said demise in the said (first) avowry mentioned, and before any part of the said rent therein mentioned became due or in arrear, to-wit, on the _____ day of _____, in the year, etc., at _____, in the county aforesaid, with force and arms, etc., entered into a certain messuage or dwelling house, parcel of the said demised premises in the said avowry alleged to have been demised, in and upon the possession of him the said plaintiff thereof, and him the said plaintiff from his possession thereof, ejected, expelled, put out and moved and kept and continued the said plaintiff so ejected, expelled, put out and moved, from his possession thereof, from thence until, and upon, and after the said _____ day of _____, in the year, etc. And this, etc. (conclude with verification). Burr. App. 406, §753; 3 Chit. Pl. 1192.

D. Plea to Avowry Damage Feasant, Tender Before Impounding.

And the said plaintiff, as to the said avowry of the said defendant, saith that the said defendant, by reason of anything by him in that avowry above alleged, ought not to avow the taking of the said cattle (or goods and chattels, as in the declaration), in the said place in which, etc., and justly, etc., because he says that after the taking of the said cattle in the said place in which, etc., by the said defendant, and before the impounding of the same, to-wit, on the same day and year in the said declaration mentioned, at the town aforesaid, in the county aforesaid, he the said plaintiff tendered and offered to pay to the said defendant a certain sum of money, to-wit, the sum of (twenty-five) dollars, as amends for the said damage done to him the said defendant, by the said cattle in the said place in which, etc., as aforesaid, and which was then and there sufficient amends for the same; which said sum of (twenty-five) dollars the said defendant then and there wholly refused to accept from the said plaintiff, and unjustly detained the said cattle against sureties and pledges, etc., until, etc., in manner and form as the said plaintiff hath above thereof complained against him the said defendant. And this, etc. (conclude with verification). Burr. App. 407, §757; 3 Chit. Pl. 1198; Yates' Forms 559.

E. Plea, Traverse to Avowry, No Rent in Arrear.

And the said plaintiff, as to the said avowry of the said defendant, saith that the said defendant, by reason of anything by him in that avowry above alleged, ought not to avow the taking of the said cattle (or goods and chattels, as in the declaration), in the said place in which, etc., and justly, etc., because he saith that no part of the said supposed rent in the said avowry mentioned, was or is in arrear from the said plaintiff to the said defendant, in manner and form as the said defendant hath in his said avowry in that behalf alleged. And this the said plaintiff prays may be inquired of by the country, etc. Burr. App. 405, §751; 3 Chit. Pl. 1190.

F. Plea (by Defendant) Cepit en Alio Loco.

And the said C. D., defendant in this suit, by B. H., his attorney, comes

and defends the wrong and injury, when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he took the said cattle in the said declaration mentioned, in a certain close called the _____, in the town of _____, aforesaid, in the county aforesaid; without this, that he took the said cattle, or any or either of them, in the said place called the _____, in the said town of _____, in the county aforesaid, as the said plaintiff hath in his said declaration in that behalf alleged; and this he the said defendant is ready to verify: Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 361, §657.

G. Plea by Way of Traverse, of Cognizance That Defendant Was Not Bailiff.

And the said plaintiff, as to the said cognizance of the said defendant, saith that the said defendant, by reason of anything by him in that cognizance above alleged, ought not, as bailiff of the said L. M., to acknowledge the taking of the said (goods and chattels), in the said place in which, etc., and justly, etc.; because he saith that the said defendant, at the said time, when, etc., was not the bailiff of the said L. M., in manner and form as the said defendant hath above in his said cognizance in that behalf alleged. And this the said plaintiff prays may be inquired of by the country, etc. Burr. App. 408, §753; 3 Chit. Pl. 1190.

H. Plea in Traverse to Cognizance, No Rent in Arrear in Part, Tender in Part.

And the said plaintiff, as to the said cognizance of the said defendant, by him above made, saith that the said defendant ought not by reason of anything in that cognizance alleged to acknowledge the taking of the said goods and chattels in the said place in which, etc., and justly, etc., because, as to the sum of _____ dollars, parcel of the said rent in the said cognizance alleged to be due and in arrear, and unpaid from the said plaintiff to the said J. K., the said plaintiff saith that as part of the said sum of _____ dollars, at the said time when, etc., was in arrear, in manner and form as the said defendant hath, in his said cognizance, above

alleged. And this he the said plaintiff prays may be inquired of by the country, etc. And as to the sum of ——— dollars, residue of the said rent or sum of ——— dollars, in the said cognizance alleged to be due and in arrear, and unpaid from the said plaintiff to the said J. K., the said plaintiff saith that after the ——— day of ——— in the year, etc., and before the said time when, etc., to-wit, on the ——— day of ———, in the year aforesaid, at, etc., he the said plaintiff tendered and offered to pay to the said J. K. (or to L. M., then and there being the bailiff of the said J. K., and by him duly authorized to receive the said rent and make the said distress), the said sum of ——— dollars, which the said J. K. then and there refused to accept and receive of and from him the said plaintiff; and that after the said tender, and before the said distress was so made and taken as aforesaid, no request or demand of the said sum of ——— dollars was ever made by, or on the behalf of, the said J. K. And this he the said plaintiff is ready to verify. Wherefore, inasmuch as the said defendant hath above acknowledged the taking of the said cattle (or goods and chattels), in the said place in which, etc., he the said plaintiff prays judgment, and his damages, by reason of the taking and unjustly detaining the same, to be adjudged to him, etc. Burr. App. 405, §752; 3 Chit. Pl. 1191; Yates' Forms 556.

VIII. Replications.

A. *Replication to Plea to Avowry, Denial of Defect of Fences.*

And the said defendant, as to the said plea in bar of the said plaintiff to the said (first) avowry of him the said defendant, says that he, by reason of anything by the said plaintiff, in that plea above alleged, ought not to be barred from avowing the taking of the said cattle in the said declaration mentioned in the said place in which, etc., and justly, etc., because he says that the said hedge and fence, in the said plea in bar mentioned, before or at the time when, etc., were not ruinous, prostrate or fallen down for want of needful or necessary making, repairing or amending thereof, in manner and form as the said plaintiff hath above, in his said plea in that behalf alleged. And of this he the said defendant puts himself upon the country,

etc. Burr. App. 409, §763; Yates' Forms 561.

B. *Replication to Plea to Avowry, Denial of Duty to Repair Fences.*

And the said defendant, as to the said plea in bar of the said plaintiff to the said (first) avowry of him the said defendant, says that he, by reason of anything by the said plaintiff, in that plea above alleged, ought not to be barred from avowing the taking of the said cattle in the said declaration mentioned in the said place in which, etc., and justly, etc., because he says that he the said defendant, and all other the tenants and occupiers of the said close in which, etc., for the time being, from time whereof the memory of man is not to the contrary, have not repaired and amended, nor have been used and accustomed to repair and amend, nor of right ought to have repaired and amended, nor ought the said defendant before, or at the said several times, when, etc., of right to have repaired and amended, nor still of right ought to repair and amend the said hedge and fence between the said close of the said defendant, and the said close in which, etc., when, and as often as occasion hath required, to prevent cattle feeding and depasturing, or being in the said close of the said defendant, from erring or escaping thereout through the defects and insufficiency of the said hedge and fence into the said close in which, etc., and doing damage there, in manner and form as the said plaintiff hath above in his said plea in bar, in that behalf alleged. And of this he the said defendant puts himself upon the country, etc. Burr. App. 409, §762; Yates' Forms 560.

C. *Replication to Plea to Avowry, Denial of Tender.*

And the said defendant, as to the said plea in bar of the said plaintiff to the said (first) avowry of him the said defendant, as to the said sum of one hundred dollars, residue of the said rent, in the said avowry mentioned, says that he, by reason of anything by the said plaintiff in that plea above alleged, ought not to be barred from avowing (or acknowledging) the taking of the said cattle (goods and chattels) in the said declaration mentioned, in the said place in which, etc., and justly, etc., * because he says that the

said plaintiff did not tender or offer to pay to him the said defendant the said sum of (one hundred) dollars of the rent aforesaid, in manner and form as the said plaintiff hath above, in his said plea in bar, alleged. And of this he the said defendant puts himself upon the country, etc. Burr. App. 408, §760; Yates' Forms 559.

D. Replication to Plea to Avowry, Demand After Tender.

(As in preceding form to the *, and then as follows): because he says that after the said, etc. (the day when the rent became due, as stated in the avowry), and after the said supposed tender in that plea mentioned, and before the taking of the said goods and chattels in the said place in which, etc., to-wit, on, etc., at, etc., the said L. M. demanded of the said plaintiff the said sum of (one hundred) dollars, the residue of the said rent, and required him to pay the same to the said L. M., which the said plaintiff then and there wholly neglected and refused to do; wherefore the said defendant, as the bailiff of the said L. M., well acknowledges the taking of the said goods and chattels in the said place in which, etc., and unjustly, etc., for and in the name of a distress for the said rents so due, in arrear and unpaid to the said L. M. as aforesaid; and the said rent still remains so due and unpaid in manner and form as the said defendant hath above alleged. And this he the said defendant is ready to verify. Wherefore, as before, he prays judgment, and a return of the said cattle (goods and chattels, together with his damages, etc., according to the form of the statute in such case made and provided, to be adjudged to him, etc. Burr. App. 408, §761; Yates' Forms 560.

IX. Rejoinder by Plaintiff in Replevin.

And the said plaintiff, as to the said replication of the said defendant to the said plea in bar of him the said plaintiff, to the said avowry of the said defendant, says that the said defendant ought not, by reason of anything by him in that replication alleged, to avow the taking of the said cattle in the said close in which, etc., and justly, etc., because he says that, etc. (here state the subject-matter of the rejoinder, and conclude to the country, or with a verification, as in a plea in bar).

Burr. App. 410, §764. See note to Replication, Replevin, Steph. Pl. 195n.

X. Demurrers.

A. General Demurrer to an Avowry or Cognizance.

And the said plaintiff saith that the said avowry (or cognizance) of the said defendant, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said defendant to avow or acknowledge the taking of the said (cattle), in the said declaration above mentioned, in the said place in which, etc., to be just; and that he the said plaintiff, is not bound by law to answer the same. And this he the said plaintiff is ready to verify. Wherefore he prays judgment and his damages, by reason of the taking and unjustly detaining of the said (cattle), to be adjudged to him, etc. Burr. App. 399, §738; 3 Chit. Pl. 1257.

B. General Demurrer to Plea in Bar to Cognizance.

And the said defendant saith that the said plea in bar of the said plaintiff to the said cognizance of him the said defendant, and the matters in the said plea in bar contained, are not sufficient in law to bar him the said defendant from having a return of the said (cattle); and that he the said defendant is not bound by the law of the land to answer the same; and this he the said defendant is ready to verify; wherefore, for want of a sufficient plea in bar in this behalf, he the said defendant, as before, prays judgment, and a return of the said (cattle), together with his damages, costs and charges by him in this behalf expended, according to the form of the statute in such case made and provided, to be adjudged to him, etc. Burr. App. 400, §740; Yates' Forms 561.

XI. Writs of Inquiry.

A. Writ of Inquiry in Explein, on Default for Not Pleading.

The people of the state of New York, to the sheriff of the county of _____, greeting:

Whereas C. D. was summoned to be in our supreme court of judicature, before our judges thereof, to answer A. B. of a plea whereunto the said C. D. on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, at the

_____ of _____, in your county (in a certain place there called _____), took the (cattle) goods and chattels of the said A. B., to-wit (here set out the goods, etc., as in the declaration), and unjustly detained the same (against sureties and pledges, until, etc.). Wherefore the said A. B. said that he was injured, and had sustained damage to the value of _____ dollars, and therefore he brought his suit, etc. And such proceedings were thereupon had in our supreme court, before our aforesaid justices thereof, that it was afterwards considered by the same court, that the said A. B. ought to recover against the said C. D., his damages on occasion of the taking and unjust detention of the (cattle) goods and chattels aforesaid: But because it is unknown to our said justices of our supreme court of judicature aforesaid what damages the said A. B. hath sustained, by means of the premises aforesaid, and also what is the value of the (cattle) goods and chattels, aforesaid: Therefore we command you, that by the oath of twelve good and lawful men of your county, you diligently inquire what damages the said A. B. hath sustained, as well by means of the premises aforesaid, as for his costs and charges by him about his suit in this behalf expended; and also what is the value of the (cattle), goods and chattels aforesaid; and that you send to our said court, before our justices thereof, at the (city hall in the city of New York, on the first Monday of May) next (the return day), the inquisition which you shall thereupon take, under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ.

Witness, Greene C. Bronson, esquire, our chief justice, at the (capitol in the city of Albany, the seventeenth day of January, in the year one thousand eight hundred and forty-six).

_____, clerk.

_____, attorney.

Burr. App. 490, §998; 2 R. S. 436, 437, 530, §§47, 48.

B. Writ of Inquiry to Assess Damages on Judgment Retorno Habendo.

The people of the state of New York, to the sheriff of the county of _____, greeting:

Whereas C. D. was summoned to be

in our supreme court of judicature, before our justices thereof, at, etc., on, etc., to answer A. B., of a plea wherefore the said C. D. on, etc., at, etc., took the goods and chattels of the said A. B., to-wit, etc., and unjustly detained them, etc. And the said C. D. having on that day duly appeared in our said court, such proceedings were thereupon had in the said court, before our said justices thereof, that it was afterwards considered by our said court that the said plaintiff should take nothing by the said writ, but that he and his pledges to prosecute, be in mercy; and that the said defendant should go thereof without day; and that he should have a return of the said goods and chattels, and also that he should recover his damages by reason of the detention thereof, etc. And thereupon the said defendant, according to the form of the statute in such case made and provided, prayed our writ to be directed to you to inquire of the said damages, and it was granted to him, etc., as by the record and proceedings thereof, still remaining in our said supreme court, before our aforesaid justices thereof, fully appears: Therefore we command you, that according to the form of the statute in such case made and provided, you diligently inquire by the oath of twelve good and lawful men of your county what damages the said defendant hath sustained by reason of the detention of the goods and chattels aforesaid: And that the inquisition which you shall thereupon take, you send to our justices of our supreme court of judicature, at the _____, in the city of _____, on the _____ day of _____ next, under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ.

Witness, etc. (teste in XI, A). Burr. App. 492, §1000; 2 R. S. 437, 531, §53.

XII. Retorno Habendo.

A. Retorno Habendo for Want of Plea in Bar to Avowry.

The people of the state of New York, to the sheriff of the county of (Washington), greeting:

Whereas C. D. was summoned to be in our supreme court of judicature before our justices thereof, to answer A. B. of a plea, wherefore the said C. D., on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, at the

town of _____, in your county, in a certain place there called _____, took the (cattle), goods and chattels of him the said A. B., to-wit, etc. (here set out the goods, etc., as in the declaration), and unjustly detained them until, etc., as it was said. And the said C. D. appearing in our said court, before our justices thereof, for a certain reason by him alleged in our same court, as bailiff of E. F., well acknowledged the taking of the said (cattle), goods and chattels in the said place in which, etc., and justly, etc. (for damage there done): Whereupon the said A. B., being afterwards solemnly called in our said court, before our aforesaid justices thereof, came not, nor did he further prosecute his writ aforesaid; wherefore it was considered in our said court, before our said justices, that the said A. B. should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be in mercy, etc., and that the said C. D. should go thereof, without day, etc., and that he should have a return of the said (cattle), goods and chattels, etc. Therefore we command you, that without delay you cause the said (cattle), goods and chattels to be returned to the said C. D. And in what manner you shall have executed this our writ, make appear to our said justices of our supreme court of judicature aforesaid, at the (city hall in the city of New York, on the first Monday of May next). And have you then there this writ. Witness, etc. Burr. App. 125, §249; Till. Forms 98.

B. Retorno Habendo on Non Pros.
(Return goods to defendant.)

The people of the state of New York, to the sheriff of the county of (Allegany), greeting:

Whereas C. D. was summoned to be in our supreme court of judicature, before our justices thereof, to answer A. B. of a plea, wherefore he took the goods and chattels of the said A. B., and unjustly detained them, etc., as it was said: And the said A. B., afterwards, in our same court, before our said justices, made default: Wherefore it was considered in our same court, that he and his pledges to prosecute should be in mercy, etc., and that the said C. D. should go thereof, without day, etc., and that he should have a return of the said goods and chattels, etc. Therefore we command you, that

without delay, you cause the said goods and chattels, to-wit (specify the articles), to be returned to the said C. D.: And in what manner you shall have executed this our writ, make appear to our said justices of our supreme court aforesaid, at the (city hall in the city of New York), on the (first Monday of May) next, and have you then there this writ. Witness, etc. (as in XI, A). Burr. App. 125, §248; Till. Forms 98.

C. Retorno Habendo After Verdict.
The people of the state of New York, to the sheriff of the county of (Tioga), greeting:

Whereas C. D. was summoned to be in our supreme court of judicature, before our justices thereof, etc. And the said C. D. appearing in our said court, before our said justices, alleged and said that he, as bailiff of E. F., took the cattle, goods and chattels aforesaid, in the said place in which, etc., being the soil and freehold of the said E. F., doing damage there; and the said C. D. prayed a return of the said cattle, goods and chattels, to be adjudged to him, etc. And afterwards, by a certain jury of the country upon which as well the said C. D. as the said A. B. had put themselves in that behalf, taken on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, before R _____ M _____, esquire, one of our circuit judges, it was found that the said place in which, etc., at the said time when, etc., was the soil and freehold of the said E. F., as the said C. D. had alleged; and the jurors of the said jury, according to the form of the statute in such case made and provided, assessed the damages of the said C. D., on occasion of the premises, besides his costs and charges by him laid out, about his defense in this behalf, to _____ dollars, and for these costs and charges to _____. Whereupon it was afterwards considered in our supreme court, before our aforesaid justices thereof, that the said A. B. should take nothing by his writ aforesaid; but that he and his pledges to prosecute should be in mercy, etc., and that the said C. D. should go thereof without day, etc., and that he should have a return of the cattle, goods and chattels aforesaid. (And it was also further considered in our supreme court, before our aforesaid justices thereof, that the said C. D.

should recover against the said A. B., his damages aforesaid, by the jury aforesaid, in form aforesaid assessed, and also ——— dollars for his costs and charges aforesaid, by our said supreme court, before our aforesaid justices thereof, then there adjudged of increase to the said C. D., and with his assent, according to the form of the statute in such case made and provided.) Therefore we command you, that without delay, you cause the cattle, goods and chattels aforesaid to be returned to the said C. D.; and in what manner you shall execute this our writ, make appear to our said justices of our supreme court aforesaid, at the (academy in the city of Utica), on the (first Monday of July) next. And have you then there this writ. Witness, etc. (as in XI, A). Burr. App. 126, §250; Till. Forms 100.

XIII. Complaints.

A. Complaint for Goods Wrongfully Taken From Plaintiff's Possession.

I. That at the time hereinafter mentioned, the plaintiff was lawfully possessed of (briefly designate the goods), of the value of ——— dollars, then and ever since his property.

II. That on the ——— day of ———, 18—, at (here state the place definitely), the defendant wrongfully took said goods and chattels from the possession of this plaintiff, and still unjustly detains the same, to the damage of the plaintiff ——— dollars.

Wherefore this plaintiff demands judgment against the defendant for the recovery of the possession of said goods and chattels, or for the sum of ——— dollars, the value thereof, in case a delivery cannot be had; together with ——— dollars, his damages, and for his costs. 1 Abb. Forms 508.

B. Complaint to Recover Goods Taken From Lessee or Bailee.

I. That at the time hereinafter mentioned, the plaintiff was, and still is, the owner of (briefly designate the goods), of the value of ——— dollars; which goods were then in the possession of one M. N., to whom the plaintiff had leased the same for a certain term (or with whom the plaintiff had deposited the same for storage, or otherwise, according to the fact).

II. That on the ——— day of ———, 18—, at ———, the de-

fendant wrongfully took said (goods) and chattels from the possession of said M. N., and still unjustly detains the same, to plaintiff's damage ——— dollars.

III. That before this action said term expired, and thereupon the plaintiff became entitled to the immediate and exclusive possession of said goods.

Demand for judgment, as in preceding form. 1 Abb. Forms 510.

C. Complaint To Recover Goods Wrongfully Detained.

That on, and ever since, the ——— day of ———, 18—, the defendant detained from the plaintiff his (title deeds of land, called ———, in the county of ———); that is to say (describe the deeds).

Wherefore this plaintiff demands judgment against the defendant for the recovery of the possession of said goods and chattels, or for the sum of ——— dollars, the value thereof, in case a delivery cannot be had; together with ——— dollars, his damages, and for his costs. 1 Abb. Forms 511.

D. Complaint To Recover Goods From One Having Derived Possession Innocently.

(I. As in Form XIII, B.)

II. That on the ——— day of ———, 18—, at ———, one M. N. (or certain persons of the plaintiff unknown) wrongfully took said goods and chattels from the possession of the plaintiff (or otherwise), and unjustly detained the same.

III. That thereafter the same came to the possession of the defendant, who refuses to deliver them to the plaintiff, although, before this action, to-wit, on the ——— day of ———, 18—, by the plaintiff duly requested so to do; but, on the contrary, still unjustly detains them from the plaintiff, to his damage ——— dollars.

Demand for judgment as in Form XIII, B.) 1 Abb. Forms 511.

E. Complaint by Seller To Recover Goods From Fraudulent Buyer.

I. That on the ——— day of ———, 18—, at ———, the defendant, with intent to deceive and defraud the plaintiff by inducing the plaintiff to sell goods to him, falsely and fraudulently represented to the plaintiff that he was solvent, and worth ——— dollars over all his lia-

bilities (or otherwise, as the representations were).

II. That the plaintiff, relying on said representations, was thereby induced to sell (and deliver) to him (briefly designate the goods), of the value of _____ dollars.

III. That the said representations were false in that (stating what respect), and were then known by the defendant to be so.

IV. That the defendant having so obtained from the plaintiff the possession of said goods, wrongfully detains them from the plaintiff, to his damage _____ dollars.

Wherefore this plaintiff demands judgment against the defendant for the recovery of the possession of said goods and chattels, or for the sum of _____ dollars, the value thereof, in case a delivery cannot be had; together with _____ dollars, his damages, and for his costs. 1 Abb. Forms 512.

F. Complaint To Recover Goods From Fraudulent Buyer and His Transferee.

I, II and III, as in last form.

IV. That the said (buyer) afterwards transferred said goods to the defendant Y. Z., who wrongfully detains them from the plaintiff.

V. That on the _____ day of _____, 18—, at _____, the plaintiff demanded of said Y. Z. that he deliver the same to him, but said Y. Z. refused so to do, to his damage _____ dollars.

Demand for judgment as in preceding form. 1 Abb. Forms 512.

XIV. Answers.

A. Denial of Taking.

Denies that at the time alleged in the complaint, or at any other time, at the place alleged in the complaint, or at any other place, the defendant wrongfully took the said goods and chattels from the possession of the plaintiff, or that he still unjustly detains the same, to the damage of the plaintiff _____ dollars, or any other sum, or that by reason of the taking alleged in the complaint, or of any act or acts of the defendant, the plaintiff has sustained damage to the amount of _____ dollars, or any damage whatever. 2 Abb. Forms 112.

B. Answer, Title in Defendant or in a Stranger.

That the goods mentioned in the

complaint were the property of the defendant (or the property of one M. N.) at the time mentioned in the complaint, and not the property of the plaintiff. (If title is in defendant, demand relief as in next form.) 2 Abb. Forms 149.

C. Answer, Defendant Part Owner.

That at the several times mentioned in the said complaint, one undivided half of the said goods and chattels was, and still is, the property of this defendant, and not of the plaintiff; and the whole of said goods and chattels then were rightfully in the possession of this defendant.

Wherefore this defendant demands judgment for a return of said goods and chattels, with damages for the taking and detention thereof; and for the costs of this action. 2 Abb. Forms 148.

D. Answer, Lien for Storage or Freight.

I. That on the _____ day of _____, 18—, the plaintiff deposited the goods mentioned in the complaint with the defendant for storage (or delivered the goods mentioned in the complaint to the defendant to be carried to _____), agreeing to pay for the same _____ cents per ton (per month).

II. That the defendant duly performed all the conditions of the contract on his part, and has always been, and still is, ready and willing to deliver the said goods to the plaintiff upon payment of the money due for storage (or freight).

III. That the plaintiff has not paid or tendered the same; wherefore the defendant detained (and still detains) said goods. 2 Abb. Forms 149.

E. Answer, Lien for Services.

I. That said goods were manufactured by the defendant, as a carpenter and joiner; and that he detained them by virtue of his lien as a workman; and the manufacturer thereof, as security for the payment of _____ dollars, the money due him from the plaintiff for work and labor in manufacturing them.

II. That said sum is still due from the plaintiff therefor, and unpaid, wherefore the defendant detained (and still detains) said goods. 2 Abb. Forms 142.

F. Answer, Property Distrained, Doing Damage.

I. That at the times mentioned in the complaint, this defendant (or one M. N.) was lawfully possessed of the real property upon which the (cattle) therein mentioned were taken, to-wit, a certain meadow, called _____ (or otherwise identify it), situate at _____.

II. That the (cattle) alleged in the complaint to have been taken and carried away by this defendant were, at the time therein stated, wrongfully upon said premises of the defendant (or of said M. N.), and then incumbering the same and doing damage thereon.

III. That (acting by command of said M. N.), this defendant then and there took said property, and removed and carried the same away to a convenient distance, doing no unnecessary damage thereto, and there left the same for the use of the plaintiff.

IV. That these acts are the same of which the plaintiff complains. 2 Abb. Forms 152.

REPLICATION AND REPLY.

I. Replication, 1071

A. To Pleas in Abatement, 1071

1. *Coverture*, 1071
2. *Estoppel*, 1071

B. In Bar, 1072

1. *In Traverse to Plea*, 1072
2. *Of Nul Tiel Record*, 1072
3. *Several Replications*, 1072

C. In Equity, General Form, 1072

II. Replies, 1072

A. General Form, 1072

B. General Form, Denial of New Matter, 1072

C. Statute of Limitations, 1073

D. In Avoidance of New Matter, When Directed, 1073

CROSS-REFERENCES:

ACCORD AND SATISFACTION:

Replication to Plea of Accord and Satisfaction, General;

Replication to Plea That Bill Was Given in Settlement;

Arbitration;

Replication to Plea of Arbitrament.

ARRAIGNMENT AND PLEA:

Replication, General Form;

Replication to Plea to Jurisdiction;

Replication to Plea in Abatement;

Replication to Plea of Auterfois Acquit;

Replication to Plea of Auterfois Convict;

Replication to Special Plea of Former Jeopardy.

ASSAULT AND BATTERY:

Replication, New Assignment, Different Assault;

Replication to Plea of Son Assault Demesne.

CORPORATIONS:

Replication by Way of Traverse to Plea of Nul Tiel Corporation.

DEMURRER:

Special Demurrer to a Replication;

Demurrer to Reply.

DOWER, PROCEEDINGS TO RECOVER:

Replication That They Were Lawfully Married in England;

Replication, Married Without Jurisdiction.

DURESS:

Replication to Plea of Duress.

ERRORS, ASSIGNMENT OF:

Replication to Plea of Release to Assignment of Error. 2

ESTOPPEL:

Replication by Way of Estoppel.

EXECUTORS AND ADMINISTRATORS:

Replication to Plea of Ne Unques Executor;

Replication to Plea of Statute of Limitations, Plaintiff Sued as Executor Within One Year of Decease.

GARNISHMENT:

Replication to Answer of Garnishee.

INFANTS:

Replication to Plea in Abatement of Infancy;

Replication to Plea of Infancy, Ratification After Coming of Age;

Replication to Plea of Infancy, Goods Were Necessities;

Replication, Traverse to Plea of Infancy;

Replication to Plea of Statute of Limitations, Plaintiff an Infant.

INHERITANCE:

Replication to Plea of Rien Per Descent, That Defendant Had Assets at Time of Commencement of Suit;

Replication to Plea of Rien Per Descent, That Defendant Had Assets Before Commencement of Suit.

INSURANCE:

Replication, Waiver by Defendant of Conditions.

ISSUES IN PLEADING AND PRACTICE:

Similiter and Replication.

JURIES AND JURORS:

Replication to Plea to Challenge of Jury.

LIBEL AND SLANDER:

Replication to Plea Justifying Words De Injuria.

LIBERUM TENEMENTUM:

Replication, Traverse to Plea of Liberum Tenementum;

Replication to Liberum Tenementum, Demise to Defendant;

Replication, New Assignment to Plea of Liberum Tenementum.

LIMITATION OF ACTIONS:

Replication to Plea of Action Non Accrevit;

Replication to Plea of Non-assumpsit;

Replication of Statute of Limitations to Set-off;

Replication to Statute of Limitations, Plaintiff Was Imprisoned (a, b);

Replication to Plea of Statute of Limitations, Plaintiff Was Feme Covert;

Replication to Plea of Statute of Limitations, Defendant Was Out of State;

Replication to Plea of Statute of Limitations, Defendant Left State;

Replication to Plea of Statute of Limitations, Process Issued Within Six Years.

PARTIES:

Replication to Plea of Non-joinder.

PAYMENT:

Replication to Plea of Payment.

RELEASE:

Replication by Way of Traverse to Plea of Release;

Replication to Plea of Release Obtained by Fraud.

REPLEVIN:

Replication to Plea to Avowry, Denial of Defect of Fences;

Replication to Plea to Avowry, Denial of Duty To Repair Fences;

Replication to Plea to Avowry, Denial of Tender;

Replication to Plea to Avowry, Demand After Tender.

RES JUDICATA:

Replication of Nul Tiel Record to Plea of Judgment Recovered;

Replication to Plea of Judgment Recovered.

SET-OFF AND COUNTERCLAIM:

Replication to Plea of Set-Off;

Statement Admitting Counterclaim.

TENDER:

Replication to Plea of Tender.

Replication, Traverse to Plea of License.

TRESPASSING ANIMALS:

Replication to Plea of Escape of Cattle Through Defective Fence;

Replication to Plea of Distress, Damage Feasant, That Defendant Turned Cattle Into Locus In Quo;

Replication to Plea of Distress, Damage Feasant, Defect of Fences.

USURY:

Replication to Plea of Usury.

I. Replications.

A. To Pleas in Abatement.

1. Replications, To Plea in Abatement of Coverture.

And the said plaintiff saith, that his said bill (or, the said writ, or declaration), by reason of anything by the said defendant in her said plea above alleged, ought not to be quashed, because he says, that at the time of exhibiting the said bill (or at the time of the commencement of this suit), (or according to the language of the plea), against the said defendant, she the said defendant was not married to the said S. F., in the said plea mentioned, in manner and form as the said defendant hath above in her said plea in that behalf alleged. And this be the said plaintiff prays may be inquired of by the country. And the said defendant likewise, etc. Burr. App. 374; 3 Chit. Pl. 1142.

2. Replication by Way of Retoppel To Plea in Abatement.

And the said plaintiff saith that the said person against whom he the said plaintiff hath exhibited his said bill, by the name of C. D., ought not to be admitted or received to plead the plea by him above pleaded, for quashing the said bill of the said plaintiff; because he saith that the said person against whom he the said plaintiff hath exhibited his said bill, by the name of C. D., heretofore, to-wit, in the term of (January) last past, came into this court here, and put in bail at the suit of the said plaintiff, in the plea above said, by the name of C. D., as by the record thereof, remaining in the said court before the justices thereof, at ———— aforesaid, more fully appears; and this be the said plaintiff is ready to verify by that record; wherefore he

prays judgment, if the said person against whom he the said plaintiff hath exhibited his said bill, by the name of C. D., ought to be admitted or received to his said plea for quashing the said bill, contrary to his own acknowledgment, and the said record, etc., and that he may answer over to the said bill. Burr. App. 374, §678; 3 Chit. Pl. 1143.

B. In Bar (Nul Tiel Record).

1. Replication in Traverse to Plea of Nul Tiel Record.

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says that he the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him the said defendant, because he says that there is such a record of the said recognizance (or, if a judgment, say, "recovery"), remaining in the said supreme court of judicature, before the aforesaid justices thereof, as he the said plaintiff hath above in his said declaration in that behalf alleged.) And this he the said plaintiff prays may be inquired of by the country. And the said defendant likewise, etc. Burr. App. 389, §715b.

2. Replication of Nul Tiel Record.

And the said plaintiff, as to the said plea of the said defendant, by him (secondly) above pleaded, says that he the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him the said defendant, because he says that there is not any record of the said supposed recovery in the said plea mentioned, remaining in the said supreme court of judicature of the people of the state of New York, before the justices thereof, at the (capitol in the city of Albany), in manner and form as the said defendant hath above in his said plea alleged. (And this he the said plaintiff prays may be inquired of by the country. And the said defendant likewise, etc.)

E. F., plaintiff's attorney.

Burr. App. 388, §715a.

3. Several Replications.

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says that the

said plaintiff, etc.; because he says, etc. (setting out the first replication).

And the said plaintiff, by special leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that he the said plaintiff, by reason, etc. (insert second replication). Burr. App. 387, §711.

Note.—The English statute permitting duplicity in pleas did not extend to replications. Look for such authority in statutes of the particular state.

C. (Equity Jurisdiction and Procedure.) Replication in Equity, General Form.

The replication of A. B., plaintiff, to the answer of C. D., defendant.

This repliant, saving and reserving to himself all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he hath already prayed. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2147.

II. Replies.

A. General Form of Reply.

The plaintiff, replying to the counterclaim contained in the answer of the defendant (or the first, or other counterclaim contained in the answer of the defendant), says (or denies, etc., continuing as in an answer to a complaint). 2 Abb. Forms 174.

B. General Form of Reply, Both Denial and New Matter.

The plaintiff, replying to the answer of the defendant (W. X.) herein:

As to the (first) counterclaim:

First. Denies each and every allegation of the answer respecting the same.

Second. For a second defense to said counterclaim, the plaintiff says:

That at the time alleged in the com-

plaint as the time of the making of the supposed note therein mentioned, this plaintiff was an infant under the age of twenty-one years, to-wit, of the age of _____ years (or stating other defense, as if in an answer to a complaint). 2 Abb. Forms 174.

C. Reply of Statute of Limitations.

That the said cause of action, alleged for a counterclaim (or demand alleged as a set-off) in said answer, did not accrue at any time within _____ years next before the commencement of this action. 2 Abb. Forms 175.

D. Reply in Avoidance of Matter When Directed by the Court.

The plaintiff, by direction of the court, replying to the new matter alleged as a defense, by way of avoidance (or to the first, or second defense contained in the answer of the defendant), says (etc., continuing as in an answer to a complaint). 2 Abb. Forms 175.

RES JUDICATA.

I. Pleas, 1073

A. *In Assumpsit*, 1073

B. *In Debt*, 1073

C. *Retrahit in Former Action*, 1074

II. Replications, 1074

A. *Nul Tiel Record*, 1074

B. *To Plea of Judgment Recovered*, 1074

CROSS-REFERENCE:

ANSWERS:

Answer of Former Judgment.

I. Pleas.

A. *Plea of Judgment Recovered in Assumpsit*.

Because he says, that the said plaintiff heretofore, to wit, in _____ term, in the _____ year of our Lord one thousand eight hundred and _____ in the supreme court of judicature of the people of the state of New York, before the justices thereof, at the _____ in the _____ of _____ (or, if the plea be of a judgment recovered in another court, state the recovery particularly), impleaded the said defendant in a certain plea of trespass on the case on promises, to the damage of the said plaintiff of _____ dollars, for the not performing the very same identical promises and undertakings in the said declaration mentioned; and such proceedings were

thereupon had in the said court in that plea, that afterwards, to-wit, in that same _____ term the said plaintiff by the consideration and judgment of the said court, recovered in the said plea against the said defendant _____ dollars, for his damages which he had sustained, as well on occasion of the performing the same identical promises and undertakings, in the said declaration mentioned, as for the costs and charges by him about his suit in that behalf expended, whereof the said defendant was convicted; as by the record and proceedings thereof still remaining in the said court of the said people before the aforesaid justices thereof, at the _____ in the _____ of _____ more fully and at large appears. Which said judgment still remains in full force and effect, not in the least reversed, satisfied or made void. And this he, the said defendant, is ready to verify by the said record. Wherefore he prays judgment, etc. (usual conclusions). *Ball. App.* 354; 3 *Chit. Pl.* 928; *Till. Forms* 475.

B. *Plea of Judgment Recovered in Debt.*

(Action non.) Because he says, that the said plaintiffs heretofore, to-wit, in _____ term, in the _____ year of the reign of our said lord the king, in the court of our said lord the king, before the king himself (or if in C. P., before Sir _____, knight, and his companions, his Majesty's justices of the Bench) at Westminster, in the county of Middlesex, impleaded the said defendant in a certain plea of debt, for the detaining and not paying the very same identical debt, and for and in respect of the same identical causes of action in the said declaration mentioned, and such proceedings were thereupon had in the said plea in that court, that afterwards, to-wit, in that same term, the said plaintiffs, by the consideration and judgment of the said court, recovered in the said plea against the said defendant, the same identical debt of _____ (the amount at the commencement) in the said declaration mentioned, as also _____ for their damages by them sustained, as well by the detention thereof, as for their costs and charges by them about their suit in that behalf expended, whereof the said defendant was convicted, as by the record and proceedings thereof still remaining

in the said court of our said lord the king, at Westminster aforesaid, more fully and at large appears, which said judgment still remains in full force and effect, not in the least reversed, satisfied, or made void, and this the said defendant is ready to verify, wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. 3 Chit. Pl. 956.

C. Plea of Retrahit in Former Action.

(Action non.) Because he says, that heretofore, to-wit, in _____ term, in the year of our Lord _____, the said plaintiff impleaded the said defendant in the court of our said lord the king of the bench (if the plea be of a judgment recovered in another court, state the recovery particularly) for the non-performance of the same identical promises and undertakings in the said declaration mentioned, and such proceedings were thereupon had in that court, that afterwards, to-wit, in the said last-mentioned term, the said plaintiff came into the said court, in his own proper person, and confessed that he would not further prosecute his said suit against the said defendant, but from the same altogether withdrew himself; therefore it was then and there considered by the said court, that the said plaintiff should take nothing by his said bill, but that he and his pledges to prosecute should be in mercy, etc., and that the said defendant should go thereof without day, as by the record and proceedings thereof still remaining in the said court more fully and at large appears, which said judgment still remains in full force and effect, not in the least reversed, satisfied, or made void, and this, etc. (Conclude with a verification.) 3 Chit. Pl. 930.

II. Replications.

A. Replication of Nel Tiel Record to Plea of Judgment Recovered.

(Precludi non.) Because he saith, that there is not any record of the said supposed recovery in the said plea mentioned, remaining in the said court of our said lord the king, before the king himself (or, in C. P., of the bench aforesaid), at Westminster aforesaid, in manner and form as the said defendant hath above in his said plea al-

leged, and this be the said plaintiff is ready to verify when, where, and in such manner as the court here shall order, direct or appoint and because the court of our said lord the king now here (or in C. P. before the justices of the bench will advise themselves upon the inspection and examination of the said record by the said defendant, in his said plea alleged, a day is given to the parties aforesaid, before our said lord the king (or, in C. P. before the justices of the bench) at Westminster aforesaid, until _____ next after _____ (or, by original, until _____ wheresoever, etc., or in C. P. until _____), to hear the judgment of said court thereupon, for that the said court of our said lord the king now here, are not yet advised thereof, etc. 3 Chit. Pl. 1157.

B. Replication to Plea of Judgment Recovered.

(Precludi non.) Because he saith, that the said several promises and undertakings in the said declaration mentioned, were not, nor was any or either of them, any of, or any one of the same identical promises and undertakings as those or any of those in the said plea, mentioned, and for and in respect whereof the said supposed judgment in the said plea mentioned was recovered, in manner and form as the said defendant hath above in his said plea alleged. And this the said plaintiff prays may be inquired of by the country, etc. 3 Chit. Pl. 1158.

RESCISSION AND CANCELLATION.

I. Bills, 1075

- A. *To Cancel Agreements, Bonds, Etc.*, 1075
- B. *To Cancel Bond for Supposed Interest*, 1076
- C. *To Cancel Deed Obtained by Fraud*, 1077
- D. *To Cancel Contract for Fraud*, 1078

II. Decrees, 1078

- A. *Rescission and Cancellation*, 1078
- B. *Purchase Through Fraud Set Aside*, 1078
- C. *Settlement by Lunatic Set Aside*, 1078

III. Complaints, 1079

- A. *To Cancel Contract for Fraud*, 1079

B. Rescission of Contract and Repayment of Advances, 1079

IV. Judgment for Cancellation, 1079

CROSS-REFERENCES:

ANSWERS:

Answer, Rescission of Contract.

FRAUDULENT CONVEYANCES:

Decree, Conveyance in Contemplation of Insolvency Set Aside as Fraudulent.

PLEA IN EQUITY:

Plea to Bill for Rescission, Plaintiff Not Administrator.

I. Bills.

A. Bill To Cancel or To Rectify and Reform Agreements, Bonds and Other Instruments.

Humbly complaining, sheweth unto your honors, the plaintiff, W. A., of, etc., that on or about ———, a certain indenture of lease was made and duly executed between E. L., then of, etc., etc., etc., whereby the said E. L. did, etc. (stating the lease to the plaintiff), as in and by the said indenture, to which the plaintiff craves leave to refer, when produced to this honorable court will appear. And the plaintiff further sheweth, that he entered upon and possessed the said farm and lands under and by virtue of the said lease; and that the said E. L. departed this life in or about, etc., and that after his death, J. H., of, etc., the defendant hereinafter named, became, by purchase or otherwise, seized of or entitled to the possession of the said farm and lands, subject to the said lease. And the plaintiff further sheweth that no notice was ever given to the plaintiff to determine or make void the said lease at the end of ——— years from the commencement of the said term of ——— years thereby demised, pursuant to the proviso therein contained or otherwise, but upon the expiration of such ——— years the said J. H. proposed to the plaintiff to enter into a new agreement as to the said farm and lands, giving the plaintiff to understand that the interest of the plaintiff therein was determined. And the said J. H., upon that occasion, as he had frequently done before, expressed great friendship for the plaintiff, and declared that it was his wish and intention that the plaintiff should continue in possession of the said farm as long as he lived. And the plaintiff further sheweth that the plaintiff can neither write

nor read, and that the plaintiff fully believing that his interest in the said lease was determined, and that the said defendant, who is a man of fortune, was dealing fairly by the plaintiff, and was not intending to take any advantage of him, the plaintiff consented to enter into the new agreement proposed by the said J. H.; and thereupon the said defendant caused such agreement to be reduced into writing by one M. B., and the plaintiff set his mark thereto, but the same was not read once or in any manner explained to him, and such agreement was in the words and figures or to the purport and effect following (that is to say): (To remain one year and pay the land tax, which he was not to pay by his lease) as in and by said agreement, etc. And the plaintiff further sheweth, that, confiding in the said J. H.'s profession of friendship for the plaintiff, and in his aforesaid declarations that it was his wish that the plaintiff should continue on his said farm as long as the plaintiff lived, the plaintiff proceeded to expend considerable sums of money in erecting new buildings upon the said farm and lands, and in other improvements thereof. And the plaintiff further sheweth that in or about, etc., the said J. H. informed the plaintiff that he must either pay an advanced rent of \$———, or deliver up possession of the said premises. And the plaintiff having refused to comply with such unexpected and unjust demand, the said J. H., on or about, etc., caused the plaintiff to be served with a notice to quit the said farm on the ——— day of ———. And the plaintiff further sheweth that after he had received the said notice, the plaintiff having complained to one of his relations of the great hardship of being obliged to quit his farm after he had expended so much money in improving it, in consequence of the said defendant's assurances that the plaintiff should continue on it during his life, and having, in the course of such conversation, mentioned his lease from the said E. L., his said relation desired to see that lease, and upon perusing the same read to the plaintiff the proviso therein contained, whereby it appeared that the said lease was not to determine at the end of the first ——— years, without ——— months' previous notice. And the plaintiff further

showeth that he has since, by himself and his agents, repeatedly applied to the said J. H. and requested him to deliver up the said agreement of the _____ day of _____ to be cancelled, and to confirm the said indenture of lease of _____ day of _____, and return to the plaintiff the land-tax, which he has paid in respect of the said farm since the making of the said agreement, and which he was thereby bound to pay, although he was not liable to pay it by the said indenture of lease; with which just and reasonable requests the plaintiff well hoped that the said J. H. would have complied, as in justice and equity he ought to have done. But now so it is, etc. And the said J. H. has commenced an action of _____ in the _____ court, etc., etc., to obtain possession of the said premises. And the said defendant sometimes pretends that previously to the making of said agreement of the _____ day of _____, the said defendant had fully explained to the plaintiff that the plaintiff was entitled to hold the said premises under the said indenture of lease, until the end of the term of _____ years therein mentioned, and that the plaintiff was desirous to surrender and determine the said lease. Whereas the plaintiff expressly charges the contrary thereof to be the truth and that the said defendant never did in any manner explain to the plaintiff, or give him to understand that he was entitled to hold the said farm until the end of the said term of _____ years. And the defendant well knew at the time of making the said agreement of the _____ day of _____, that the plaintiff would not have entered into the same if he had been aware of his rights under the said indenture of lease, and the said defendant for that reason concealed from the plaintiff that he had such rights. And the plaintiff charges that at the time of making the said agreement the plaintiff had not the advice or assistance of any person whatsoever, but acted therein according to the suggestions of the said defendant, supposing he meant to be kind toward him, and would deal fairly by him. All which actings, etc.

And that the defendant may answer the premises; and that the said agreement, bearing date the _____ day of _____, may be decreed to be de-

livered up to the plaintiff to be cancelled; and that the defendant may confirm the said indenture of lease of the _____ day of _____. And that an account may be taken of what the plaintiff has paid for land-tax of the said farm since the making of the said agreement, and that the defendant may be decreed to pay the same to the plaintiff; and that in the meantime the defendant may be restrained by the order and injunction of this honorable court from proceeding in the said action of _____, and from commencing or prosecuting any other proceedings at law against the plaintiff for recovering possession of the said premises. (And for further relief, etc.) May it please, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1982.

B. Bill for Cancellation of Bond Given To Secure Payment for Supposed Interest of Testator, Etc.

Humbly complaining, show unto your honors, your orators, I. L., of, etc., farmer, and I. L., junior, of, etc., the son of your orator I. L. That T. C., late of, etc., but now deceased, and who was a coach-master and also a farmer, did, in or about the beginning of the year _____, dispose of part of his business as coach-master, and also his stage horses, to your orator I. L., junior, for the sum of \$_____. And your orators further show that the said T. C. then occupied _____ farms at, etc., which were the property of F. S., and the said T. C. represented to your said orator that he was entitled to the said _____ farms for the residue of a term of _____ years, commencing as to the meadow land on _____, and as to the rest of the premises on _____, at the annual rent of \$_____. And the said T. C. proposed to sell his said interest in the said _____ farms to your said orator for the residue of the said term of _____ years, at the price of \$_____. And your orators show that your said orator I. L., junior, thereupon agreed with the said T. C. to purchase his said interest in the said _____ farms, for the sum of \$_____, and your said orator not being prepared to pay the money, it was further agreed between them that your orator I. L., junior, in a bond for securing the said sum of \$_____ to the said T. C. And your orators further show

that Mr. H., the attorney of the said T. C., having, by his directions, prepared a common money bond from your orators to him the said T. C., for the payment of the said sum of \$_____ and interest, your orator I. L. objected thereto, and desired to have the transaction stated in the bond, to which the said T. C. answered that it mattered nothing between them, but your said orator not being satisfied with such answer, desired the said Mr. H. to make a minute in writing of the consideration for which the bond was really given as aforesaid, and the said Mr. H. accordingly made such minute in writing, with the consent of the said T. C., and then read the same over to your orators and the said T. C., who, upon hearing it, observed that it was perfectly right, and your orators then executed said bond which bears date in or about the month of _____.

And your orators further show, that upon the execution of the said bond your orators entered into the occupation of the said _____ farms, and have ever since occupied the same; but the said T. C. never made or executed any actual assignment of his said pretended interest therein to your orators or either of them. And your orators further show that the said T. C., some time in the month of _____, departed this life, having first duly made and published his last will and testament in writing, and thereof appointed E. T., of, etc., and A. G., of, etc. (the defendants hereinafter named), executors, who thereupon duly proved the same in the proper court, and undertook the executorship thereof, and thereby became his legal personal representatives. And your orators further show that in the month of _____ last, the said E. T., as agent or steward of the said F. S., served your orators with a notice to quit said _____ farms at the end of the then current year, insisting, as the fact appears to be, that the said T. C. was only tenant from year to year of the said _____ farms, and had no power to dispose of the same to your orators for the residue of the said term or _____ years. And your orators further show that the said bond for \$_____ and interest having, therefore, been given by your orators to the said T. C. without consideration, and by reason of the false representations

of the said T. C. that he had such interest in the said _____ farms as aforesaid, your orators have, by themselves and their agents, repeatedly applied to the said E. T. and A. G., and have requested them to deliver up to your said orators the aforesaid bond to be canceled. And your orators well hoped that the said E. T. and A. G. would have complied with such your orators' reasonable requests, as in justice and equity they ought to have done. But now so it is, etc., _____, they refuse so to do. And although the said defendants well know that the said bond was given by your orators as a consideration for the supposed interest of the said T. C. in the said _____ farms, for the residue of the said term of _____ years, yet defendants have lately commenced an action at law in court upon the said bond, and have caused your orators to be held to bail thereon, and the said defendants threaten and intend to proceed to judgment and execution on the said bond, unless they are restrained therefrom by the injunction of this honorable court. To the end, therefore, etc. (Prayer for the bond to be delivered up and an injunction to restrain proceedings at law.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1984.

C. Substance of Bill for Cancellation of Deed Obtained by Fraud.

Bill alleges that plaintiff was aged and infirm, unable to read and write, and unaccustomed to the transaction of business, that the defendant, his brother-in-law, obtained from him authority to collect his rents and take charge of his property; and some time afterwards, with intention to defraud the plaintiff, plied him with intoxicating liquors and brought him while thus intoxicated, a document to sign, fraudulently representing it to be a power to collect rents and to manage his property; that this document was not read to the plaintiff, nor was he informed of its true contents, and that he signed it with his mark, relying entirely upon said representation; that he is now informed that it was a deed of conveyance of his whole estate, to the defendant, for the nominal consideration of one hundred dollars; that the consideration was entirely nominal, that nothing was ever paid or agreed to be paid by the defendant for the land, and that the defendant never

agreed to buy, and the plaintiff never agreed to sell or convey the land to him, or have any consideration or thought about such sale; that the defendant now assumed to own the entire estate conveyed in said deed, and had incumbered it with two mortgages (described in the bill) entirely without the consent, knowledge, or acquiescence of the plaintiff, and was about to convey away the whole estate, as the plaintiff feared and had reason to believe.

The bill prayed that the defendant might be restrained from further mortgaging, encumbering, or conveying the land, or exercising any act of ownership over it; that the deed to the defendant might be given up and canceled; and for further relief. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1987; *Dodd v. Cook*, 11 Gray (Mass.) 495.

D. Bill for Cancellation of Contract for Fraud.

Humbly complaining, sheweth unto your honors John Lee, of, etc., in the county of _____, esq., the above-named plaintiff, as follows:

1. That on the _____ day of _____, 1865, the plaintiff was the owner of a farm situate in the town of _____, county of _____. (Describe the farm.)

2. That the plaintiff being then old, infirm, and blind, and by reason thereof incapacitated from attending properly to business, the defendants on that day fraudulently taking advantage of the plaintiff's said incapacity, procured him to sign a certain writing, without paying him any consideration therefor, and which writing they falsely and fraudulently represented to be a mere matter of form.

3. That the plaintiff has since, and on the _____ day of _____, 1865, applied to the defendants for said writing, or for information as to the contents thereof; but the defendants refused to allow him to see said writing or to give him any information concerning the same. That, as the plaintiff is informed and believes, the said writing is under seal and is a deed of said premises, and conveys the same, or some interest therein, to the defendants, and that they intend to use the same for their own benefit, and to the prejudice of the plaintiff.

Whereupon the plaintiff prays that this court will declare the same to be void, and decree that defendants pro-

duce said writing and deliver it up to be canceled, and for his costs of this suit. (Further relief.)

(Prayer for subpoena.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1988.

II. Decrees.

A. Decree of Rescission and Cancellation.

This court doth declare, that the release dated, etc., obtained by the defendant C. from the plaintiff M., was a fraud on her, and ought to be delivered up to be canceled. And doth order and decree, that the said defendant C. (within, etc.), deliver up the said release to the plaintiff M.; and, in the meantime, that the said defendant be restrained from pleading or setting up the said release in bar to the action brought by the plaintiffs P. and M., in the names of the plaintiffs M. and S., upon the bond executed to them by the said defendant for the benefit of the plaintiff P.; defendant C. to pay plaintiffs' cost of suit, except so much of such costs as relate to the deposition of, etc. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2271.

B. Decree, Purchase Completed Through Fraud and Misrepresentation Set Aside.

"This court doth declare, that the plaintiff B. was induced to complete his purchase of the estates, etc., in the pleadings mentioned, by the fraudulent misrepresentations of the defendants A. and W.; and the court doth further declare, that the several agreements entered into by the plaintiff for the purchase of the said estates, etc., and carried into effect and completed by him, ought to be rescinded; and the court doth order and decree that the same be delivered up to be canceled." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2271.

C. Decree, Settlement by Lunatic, Since So Found, Set Aside.

And it appearing by the evidence aforesaid that the indenture of settlement, dated, etc., made or expressed to be made between F. of the one part and the defendants M. and S. of the other part, was executed by the said F., since deceased, when of unsound mind, the court doth declare that the said indenture of settlement of the _____ day of _____, is null and void; and it is thereupon ordered and decreed that the defendants M. and S. deliver up

the said indenture of settlement to the plaintiff to be cancelled; directions to tax, raise and pay costs of all parties out of fund in court (being the settled fund), and for transfer of the residue to the legal representatives of the lunatic. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2273; 1 Seton Dec. (Eng. ed., 1862) 648.

III. Complaints.

A. Complaint To Cancel a Contract for Fraud.

I. That on the _____ day of _____, 18—, the plaintiff was the owner of a farm situate in the town of _____, county of _____ (briefly describing it).

II. That the plaintiff being then old, infirm and blind, and by reason thereof incapacitated from attending properly to business, the defendants, on that day, fraudulently taking advantage of the plaintiff's said incapacity, procured him to sign a certain writing, without paying him any consideration therefor, and which writing they falsely and fraudulently represented to be a mere matter of form.

III. That the plaintiff has since, and on the _____ day of _____, 18—, applied to the defendants for said writing, or for information as to the contents thereof; but the defendants refused to allow him to see said writing, or to give him any information concerning the same. That, as the plaintiff is informed and believes, the said writing is under seal, and is a deed of said premises, and conveys the same, or some interest therein, to the defendants; and that they intend to use the same for their own benefit, and to the prejudice of the plaintiff.

Wherefore plaintiff asks judgment that the same is void; and that the defendants produce said writing, and deliver the same up to be cancelled; and for the costs of this action. 1 Abb. Forms 585.

B. Complaint for Rescission of a Contract and Repayment of Advances on the Ground of Fraud.

I. That the plaintiff, on the _____ day of _____, 18—, bargained with the defendant to buy of the defendant a piece of ground at _____ (briefly designating it), which was chiefly valuable for the purpose of dividing into city lots, and purchased by the plaintiff for that purpose, as defendant well knew.

II. That the defendant, well knowing said premises to contain a much less quantity than _____ acres of land, viz., _____ acres only, then and there falsely and fraudulently represented to him that the premises contained _____ acres; and falsely and fraudulently induced him to buy the said premises for _____ dollars.

III. That plaintiff, relying on said representations, agreed to buy the premises, and paid defendant _____ dollars, part of the purchase money.

IV. That the premises did not contain _____ acres, but only _____ acres; whereby the plaintiff was deprived of all the benefit and advantage which he otherwise would have derived from the said sale.

V. That on or about the _____ day of _____, 18—, as soon as he had ascertained that the said representations were untrue, he demanded of defendant a return of said _____ dollars, which defendant refused, and still refuses.

Wherefore the plaintiff demands judgment:

1. For _____ dollars, with interest from the _____ day of _____, 18—.

2. That the said agreement of purchase be delivered up and canceled.

3. For the costs of this action. 1 Abb. Forms 587.

IV. Judgment for Cancellation.

(Recitals, continuing):

It is adjudged that the instrument signed by M. N., in the plaintiff's complaint set forth, bearing date the _____ day of _____, 18—, and purporting to assign to the plaintiff _____, is void, and of no legal force or effect, and that the plaintiff recover of the defendant _____ dollars, costs of this action. 2 Abb. Forms 561.

RESCUE AND ESCAPE.

I. Declarations, 1080

- A. Against Sheriff for Escape, 1080
- B. For Rescue, 1080

II. Complaint for Escape, 1081

III. Answer, Return of Debtor, 1082

IV. Indictments, 1082

- A. Against Prisoner for Escape, 1082
- B. For Escape From Jail, 1082
- C. For Aiding Escape From Jail, 1082

- D. *Against Jailer for Permitting Escape*, 1083
 E. *For Rescuing Prisoner From Officer*, 1084

CROSS-REFERENCES:

ARREST IN CIVIL CASES:

Return, Arrest and Rescue,

SHERIFFS AND CONSTABLES:

Declaration Against Sheriff for Escape Under Capias Ad Satisfaciendum.

I. Declarations.

A. *Declaration Against Sheriff for Escape on Mesne Process.*

For that whereas one J. K., heretofore, to-wit, on, etc. (the teste of the writ, or the day it issued; the former is preferable), at, etc., was indebted to the said plaintiff in a large sum of money, to-wit, the sum of _____ dollars, upon and in respect of certain causes of action (it must be stated and proved that the plaintiff had a cause of action against the party arrested), before then accrued to him, the said plaintiff, against the said J. K., and the said J. K. being so indebted, he the said plaintiff, for the recovery of his said debt (or demand), afterwards, to-wit, on the day and year aforesaid, sued and prosecuted out of the _____ court of _____ (of the people) of the state of _____, before the justices thereof, etc. (here state the capias ad respondendum, the delivery to the sheriff, and the arrest, and after stating the arrest, proceed as follows): Yet the said defendant so being sheriff of the said county of _____ as aforesaid, not regarding the duty of his office as such sheriff, but wrongfully and unjustly contriving and intending to injure the said plaintiff, and to delay and hinder him in and from the recovery of his said debt, afterwards, to-wit, on, etc., at, etc., without the leave or license, and against the will of the said plaintiff, voluntarily suffered and permitted the said J. K. to escape and go at large wheresoever he would, out of the custody of the said defendant, so being such sheriff as aforesaid; the said debt (or demand), for which the said J. K. was so arrested as aforesaid, and every part thereof, then and still being wholly unpaid to the said plaintiff. And the said plaintiff in fact saith that the said J. K. did not appear in the said court of the said people, before the

aforesaid justices thereof, at the return of the said writ, according to the exigency thereof, but therein wholly failed and made default, whereby the said plaintiff hath been and is greatly injured and delayed in the recovery of his aforesaid debt, and is likely to lose the same; and thereby also he the said plaintiff hath lost and been deprived of the means of recovering his costs and charges by him paid, laid out, and expended in and about his said suit, so commenced and prosecuted against the said J. K., as aforesaid, amounting together to a large sum of money, to-wit, the sum of _____ dollars, to-wit, at, etc.

(Same as last count to the end of the statement of the delivery of the writ to the sheriff, and then proceed as follows): And the said plaintiff in fact saith that the said J. K., at the time of the delivery of the said last mentioned writ to the said defendant, so being sheriff of the said county of Oneida as aforesaid, and from thence until the return of the said last mentioned writ, was within the said sheriff's bailiwick, and the said sheriff at any time during that period might have taken and arrested the said J. K. by virtue of the said last mentioned writ, at the suit of the said plaintiff, if he would so have done; whereof the said defendant, so being sheriff as aforesaid, during all that time had notice. Yet the said defendant, so being sheriff of Oneida as aforesaid, not regarding the duty of his said office, but contriving and intending wrongfully and unjustly to injure the said plaintiff, and to delay and hinder him in and from the recovery of his debt (or demand) last aforesaid, did not, nor would, at any time before the return of the said last mentioned writ (although often requested, etc.), take or cause the said J. K. to be taken, as by the said writ last mentioned he was commanded; and the said J. K. did not appear, etc. (as in first count). Burr. App. 319, §587a; 2 Chit. Pl. 738.

B. *Declaration for Rescue.*

(Proceed as in the declaration for an escape, as in I, A, to the end of the statement of the delivery of the writ to the sheriff, and then state the sheriff's warrant and arrest and rescue as follows): And thereupon the said

G. H., so being such sheriff as aforesaid, afterwards, and before the return of the said writ, to-wit, on the day and year last aforesaid, at, etc. (venue), aforesaid, made his certain warrant in writing, under his seal of office of the sheriff of the said county of _____ as aforesaid, directed to the keeper of the jail of the said county of _____ as aforesaid, and to J. K. and L. M., the said sheriff's bailiffs; and thereby commanded them jointly and severally, that they should take the said E. F., if he should be found in his the said sheriff's bailiwick, and safely keep him, so that the said sheriff might have the body of the said E. F. before our said lord the king at Westminster aforesaid, on, etc. (return day), to answer to the said plaintiff in a plea, and to the said bill in the said last mentioned writ mentioned; which said last mentioned warrant, afterwards and before the return of the said writ, to-wit, on the said _____ day of _____, in the year aforesaid, at, etc. (venue), aforesaid, was delivered to the said J. K. and L. M. to be executed according to due form of law. By virtue of which writ and warrant the said J. K. and L. M., before the time appointed for the return of the said writ, to-wit, on the day and year last aforesaid, and within the bailiwick of the said sheriff, to-wit, at, etc. (some place in the sheriff's bailiwick), took and arrested the said E. F. by his body, and had him in their custody for the cause in the said writ and warrant mentioned. Nevertheless the said defendant, well knowing the premises, but contriving to injure the said plaintiff, and to deprive him of the means of recovering his said debt, afterwards and whilst the said E. F. was so in custody of the said J. K. and L. M., as aforesaid, and before the return of the said writ, to-wit, on the day and year last aforesaid, at, etc. (venue), aforesaid, rescued the said E. F. from and out of the custody of the said J. K. and L. M., and caused the said E. F. to escape and go at large, and the said E. F. did thereby then and there escape and go at large out of the custody of the said J. K. and L. M. wheresoever he would, the said plaintiff not then nor yet being paid or satisfied his said debt, and by means of the premises, the said sheriff could not

have the body of the said E. F. before our lord the king, at Westminster, at the return of the said writ, nor did the said E. F. appear in the said court at the return of the said writ, according to the exigency thereof, but therein wholly failed and made default, whereby the said plaintiff hath been and is greatly injured and delayed in the recovery of his aforesaid debt, and is likely to lose the same; and thereby also the said plaintiff hath lost and been deprived of the means of recovering his costs and charges by him paid, laid out and expended in and about his said suit so commenced and prosecuted against the said E. F. as aforesaid, amounting together to a large sum of money, to-wit, the sum of _____ l, to-wit, at, etc. (venue), aforesaid. 2 Chit. Pl. 735.

II. Complaint for an Escape, Common Form.

I. That at the time of the issuing of the execution and of the escape hereinafter mentioned, the defendant was the sheriff of the county of _____, in this state.

II. That on the _____ day of _____, 18—, in an action brought in the supreme court of this state, in the county of _____ (or other court), by this plaintiff against one M. N. (or by one M. N. against this plaintiff), for wrongfully converting property (or state other case authorizing arrest), this plaintiff recovered judgment, duly given by said court, against said M. N. for _____ dollars.

III. That on the _____ day of _____, 18—, an execution against the property of said M. N. was duly issued by this plaintiff on said judgment, and thereafter duly returned wholly unsatisfied (if partly satisfied, add: except as to the sum of _____ dollars).

IV. That thereafter and on the _____ day of _____, 18—, an execution against the person of the said M. N. was duly issued by this plaintiff on said judgment, and then directed and delivered to the defendant as said sheriff, whereby he was required to arrest said M. N. and to commit him to the jail of said county _____, until he should pay said judgment, or be discharged according to law.

V. That thereafter the defendant, as such sheriff, arrested said M. N. and

committed him to jail, pursuant to said execution; but in violation of his duty as such sheriff, has since, to-wit, on the _____ day of _____, 18—, without the consent of the plaintiff, permitted said M. N. to escape (or, but since then, to-wit, on the _____ day of _____, 18—, said M. N. went and was at large without the limits and boundaries of the liberties of said jail, without the assent of the plaintiff), to the damage of the plaintiff _____ dollars. 1 Abb. Forms 425.

III. Answer, Return of Debtor After Escape.

I. That the said M. (the prisoner) wrongfully, and without the privity of the defendant, escaped from his custody.

II. That before the commencement of this action, to-wit, on the _____ day of _____, the said M. voluntarily returned into the defendant's custody (or, upon fresh pursuit the defendant retook said M. into his custody), where he ever since has remained by virtue of the process mentioned in the complaint. 2 Abb. Forms 115.

IV. Indictments.

A. *Indictment at Common Law Against Prisoner for Escape.*

That A. B., late of, etc., yeoman, constable of our said lord the king, in and for the town of, etc., in the said county, on, etc., at, etc., within the town and constable-wick aforesaid, in the county aforesaid, did take and arrest one C. D., late of, etc., on suspicion of having committed a certain felony, in feloniously taking and carrying away one black gelding, the property of E. F., of the value of _____; and thereon, he the said C. D., under the custody of him the said A. B., the constable aforesaid, was then and there brought before I. K., esquire, one of the justices of our said lord the king, assigned to keep the peace in * the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and he, the said I. K., by his warrant, directed to the said A. B. and others, did then and there command the said A. B. to carry and convey the said C. D. to the gaol of our said lord the king, at, etc., in the county aforesaid, there to be safely kept until he should

be lawfully delivered from thence by due course of law, by virtue of which said warrant, he the said C. D. was then and there taken and detained by him the said A. B. and as he the said A. B. was conveying and carrying him the said C. D. to the gaol aforesaid, afterwards, to-wit, on, etc., aforesaid, he the said C. D., at, etc., aforesaid, with force and arms, did feloniously break away and escape from and out of the custody of him the said A. B., the constable aforesaid, against the will of him the said A. B. and against the peace, etc. 2 Chit. Cr. L. 158.

B. *Indictment for Escape From Jail.*

That C. D., late of, etc., on, etc., at, etc., aforesaid, was arrested, imprisoned and detained in the gaol of our said lord the king in and for the county of _____, situate at, etc., for a certain felony by him committed, that is to say, for feloniously stealing, taking, and carrying away one black gelding, the property of A. B., of the value of _____, and that he the said C. D., on, etc., at, etc., with force and arms, the aforesaid gaol of our said lord the king, at, etc., aforesaid, feloniously did break, and thereby did then and there escape from and out of said gaol, against the peace, etc. 2 Chit. Cr. L. 160.

C. *Indictment for Aiding Escape From Jail.*

That on, etc., at, etc., one C. D. was taken and apprehended on suspicion of having then lately before feloniously stolen, taken, and carried away, one, etc., of the goods and chattels of A. B. and the said C. D. having been so taken and apprehended as aforesaid, was then and there committed to, and confined and imprisoned in a certain place of confinement there situate, called the cage, until the said C. D. could be taken and conveyed before some or one of the justices of our said lord the king, assigned, etc., to be further dealt with according to law, touching and concerning the premises aforesaid. And the jurors, etc., further present, that A. B., late of, etc. (and other defendants) well knowing the premises, and contriving and intending to prevent the due course of law and justice, and to procure the escape of the said C. D. from the said place of confinement, afterwards, and whilst the said C. D. was so confined

in the said place of confinement as aforesaid, to-wit, on, etc., with force and arms at, etc., unlawfully did force and break open, and cause and procure to be forced and broken open, the door of the said place of confinement so that the said C. D. might thereby make her escape from and out of the said place of confinement, by means whereof the said C. D. did then and there, with force and arms, unlawfully and voluntarily escape and go at large from and out of the said place of confinement, where she was as aforesaid, before she had been taken and conveyed before any one of the justices of our said lord the king, assigned in form aforesaid, to be dealt with according to law, touching and concerning the premises aforesaid, and that the said (defendants) on the said, etc., with force and arms, at the said, etc., wilfully, advisedly, and unlawfully, did aid, abet, comfort, and assist the said C. D. so being in the place of confinement aforesaid, for the cause aforesaid, in making her escape from and out of the said place of confinement, in contempt, etc., to the evil, etc., and against the peace, etc. 2 Chit. Cr. Pl. 169.

D. Indictment Against Jailer for Permitting Escape (a).

That at the assizes and general delivery of the gaol of our lord the king, holden at Hereford, in and for the county of Hereford, on, etc., before Sir R. P., knight, one of the barons of our said lord the king of his court of exchequer at Westminster, F. B., esq., one of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king before the king himself, and others their fellows, justices of our said lord the king, assigned by letters patent of our said lord the king, to deliver his gaol of the said county of H. of the prisoners therein, being upon the oath of F. G., esq., U. P., esq., etc. (here set out the names of the grand jury), good and lawful men of the said county of H., then and there sworn and charged to inquire for our said lord the king, and the body of the said county of H. It was presented that W. D., etc. (here set forth the indictment). Wherefore the sheriff of the county of H. aforesaid, was commanded that he should not omit by reason of any liberty in his baili-

wick but that he should take the said W. D. to answer the premises. And thereupon at the same assizes and general delivery of the gaol of our said lord the king, holden at H., in and for the county of H., aforesaid, on, etc., aforesaid, before the said justice of our said lord the king above named, and others their fellows, aforesaid, came into court there, the said W. D. under the custody of the said Sir E. B., baronet, sheriff of the county of H. aforesaid (into whose custody in the gaol aforesaid, for the cause aforesaid he was before committed) and being brought to the bar, there in his own proper person was committed to the said sheriff, and forthwith concerning the premises, in the indictment above specified and charged on him, being asked in what manner he would be acquitted thereof, the said W. D. said that he was not guilty thereof, and concerning that for good and ill he put himself upon his country, therefore a jury was thereupon immediately commanded to come before the said justices of our said lord the king above named, and others their fellows, aforesaid, there by whom and so forth, and who were of no affinity to the said W. D. to recognize upon their oath whether the said W. D. was guilty of the felony aforesaid or not, and the jurors of the said jury, by the said sheriff to that matter impaneled and returned, to-wit, J. B., T. H., etc. (here set out the names of the petit jury), being called, came, who being chosen, tried, and sworn to speak the truth of and concerning the premises aforesaid, said upon their oath, that the said W. D. was guilty of the felony aforesaid, in the indictment above specified, in manner and form as in and by the said indictment was above against him set forth, and that the said W. D. at the time of the committing of the said felony, or at any time since, had no goods or chattels, lands or tenements, to the knowledge of the said jurors, and upon this it was required by the court there of the said W. D. if he had or knew anything to say for himself, why the court there ought not to proceed to judgment and execution concerning him, upon the said verdict; and the said W. D. prayed the court there, that the benefit of the statute in that case made and provided, might be

granted unto him, and it was granted unto him accordingly. Whereupon all and singular the premises being seen and understood by the court there, it was considered and adjudged by the court there that the said W. D. should be imprisoned six calendar months, and within that time, that is to say, on Saturday, the twenty-second day of April then next, between the hours of eleven and one, should be publicly whipped for two hundred yards, at the market place in Hereford, and then discharged. And the jurors now here sworn and charged to inquire for our said lord the king, and the body of the said county of H. do further present, that afterwards, to-wit, at the said assizes, and general delivery of the gaol of our said lord the king, above mentioned, he the said W. D. was committed to the care and custody of R. D., then and still being keeper of the gaol of our said lord the king, of the county of H. aforesaid, at H. aforesaid, there to be kept and imprisoned in the jail aforesaid, according to, and in pursuance of the judgment and sentence aforesaid, and the said R. D. him the said W. D. in the custody of him the said R. D. had, for the cause aforesaid, in the jail aforesaid. And the jurors last aforesaid, upon their oath aforesaid, do further present, that the said R. D., late of the parish of Saint Peter, in the city of H., in the said county of H., yeoman, afterwards, and before the expiration of the said six calendar months, for which he the said W. D. was so ordered to be imprisoned as aforesaid, to-wit, on, etc., at, etc., unlawfully, voluntarily, and contemptuously did permit and suffer the said W. D. to escape and go at large wheresoever he would, whereby the said W. D. did then and there escape out of the said prison, and go at large whithersoever he would, in contempt of our said lord the king and his laws, contrary to the duty of him the said R. D. so being keeper of the gaol aforesaid, in manifest hindrance of justice, and against the peace, etc. 2 Chit. Cr. L. 173.

Indictment Against Jailer for Permitting Escape (b).

(Set out proceedings under which prisoner was convicted as in other cases.) And the jurors aforesaid now sworn here upon their oath aforesaid, do further present, that A. B., late of

C. in the county aforesaid, yeoman, then being keeper of his majesty's gaol of ——— aforesaid, in the county aforesaid, and having the custody of the said W. P. for the cause aforesaid, before then lately committed to the said gaol for the cause aforesaid, on, etc., well knowing that the said W. P. then a prisoner in the said gaol, and in the * custody of the said A. B. as aforesaid, had been convicted and committed to the said gaol in execution of and for the felony aforesaid, and did then and there remain so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, afterwards, to-wit, on, etc., with force and arms, at, etc., did voluntarily and feloniously permit and suffer the said W. P. then and there being in the said gaol in the custody of him the said A. B. and so convicted and committed upon and in execution of the said judgment for the said felony as aforesaid, to escape and go at large whithersoever he would, out of the said gaol and custody, whereby he the said W. P. did then and there escape from and out of the said gaol, and go at large, to-wit, at, etc., against the peace, etc. 2 Chit. Cr. L. 171.

E. Indictment for Rescuing Prisoner From Officer.

That on, etc., at, etc., J. P., esq., then and there being one of the justices of our said lord the king assigned to keep the peace of our said lord the king, in and for the said county of ——— (or city of ———), and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county (or city) committed, did make his certain warrant in writing under his hand and seal, directed to A. C., of, etc., in the said county, yeoman, then and there being constable of the parish of, etc., aforesaid, in the county aforesaid, by which said warrant he the said A. C. the constable aforesaid, was commanded to take the body of A. O., late of, etc., yeoman, and bring and have him the said A. O. before the said J. P. to be examined by him the said J. P. concerning an assault, said to have been committed by him the said A. O. upon A. J., of, etc., at, etc., aforesaid, yeoman; and which said warrant was afterwards, to-wit, on, etc., aforesaid, delivered to the said A. C.

so being such constable as aforesaid, to be executed in due form of law; and which said A. C. so being such constable as aforesaid, afterwards, that is to say, on, etc., at, etc., aforesaid, by virtue of the said warrant did take and arrest the said A. O. for the cause aforesaid and him the said A. O. in his custody, by virtue of the said warrant then and there had; and that the said A. O., late of, etc., and B. O., late of, etc., well knowing the said A. O. so to be arrested as aforesaid, afterwards, to-wit, on the said, etc., at, etc., aforesaid, with force and arms in and upon the said A. C. the constable aforesaid, then and there being in the peace of God and of our said lord the king, and in the execution of his said office then and there being, did make an assault, and him the said A. C. then and there did beat, wound, and ill-treat, and that the said B. O. him the said A. O. out of the custody of the said A. C. and against the will of the said A. C. then and there with force and arms unlawfully did rescue, and put at large to go where he would, and that the said A. O. himself out of the custody of the said A. C. and against the will of the said A. C., then and there with force and arms unlawfully did rescue and escape at large where he would go, in contempt of our said lord the king and his laws, to the great damage of the said A. C., to the evil example, etc., and against the peace, etc. (Add a common count for an assault on officer in the execution of his office of constable, and a count for an assault and battery generally.) 2 Chit. Cr. L. 182.

RESPONDEAT OUSTER.—See JUDGMENT RECORDS; JUDGMENTS.

RESPONDEAT SUPERIOR.—See NEGLIGENCE.

RETAINER.—See APPEARANCES.

RETURNS.

I. Personal Service, 1086

- A. *Return*, 1086
- B. *Certificate of Service*, 1086
- C. *At Residence*, 1086
- D. *Service of Declaration*, 1086
- E. *Return of Summons Against Corporation*, 1087

II. Return to Writ of Inquiry, 1087

III. Final Process, 1087

A. *Fieri Facias*, 1087

B. *Nulla Bona*, 1087

C. *Fieri Facias, Nulla Bona to Part*, 1087

D. *To Fieri Facias, Special*, 1087

E. *Unsold for Want of Buyer*, 1088

F. *Resistance*, 1088

G. *To Capias Ad Satisfaciendum*, 1088

1. *Cepi Corpus*, 1088

2. *Non Est Inventus*, 1088

IV. Criminal Process, 1088

A. *Arrest*, 1088

B. *Some Arrested, Others Not Found*, 1088

C. *Arrest and Commitment*, 1088

D. *Arrest and Property Found*, 1089

E. *Magistrate Absent*, 1089

F. *Rescue and Resistance*, 1089

CROSS-REFERENCES:

ADMIRALTY:

Marshal's Return, Attachment and Notice;

Marshal's Return, Defendant Not Found, Attachment;

Marshal's Return, Garnishee Summoned;

Return of the Marshal to Venditioni Exponas;

Return, From District Court to Supreme Court.

ARREST IN CIVIL CASES:

Return to Capias, Out on Bail;

Return to Capias, in Custody;

Return to Capias, Non Est Inventus;

Return to Capias, Cepi Corpus as to One, Non Est Inventus as to Other;

Return to Capias, Discharge on Supersedeas;

Return to Order of Arrest, Defendant Arrested;

Return to Order of Arrest, Not Found;

Return, Arrest and Imprisonment for Want of Bail;

Return, One Arrested, the Other Not Found;

Return That Defendant Has Made Deposit in Lieu of Bail;

Return, Arrest and Rescue.

ATTACHMENT:

Return of Writ of Attachment, Property of Great Bulk;

Return to Attachment;

Return of Writ of Attachment, No Property Found;

Schedule of Property Attached.

BANKRUPTCY:

Trustee's Return of No Assets.

CERTIORARI:

Return to Indorsement of Allowance of Writ of Certiorari in Aid of Writ of Error, Issued on Allegation of Diminution.

DEPOSITIONS:

Return to Commission.

EXTRADITION:

Sheriff's Return to Warrant for Arrest.

HABEAS CORPUS:

Return to Habeas Corpus (a, b);
Traverse to Return of Habeas Corpus (a, b).

INQUIRY, WRIT OF:

Return To Be Indorsed on Writ of Inquiry.

JURIES AND JURORS:

Return by Officer to Venire.

MANDAMUS:

Return to Writ of Mandamus.

NE EXEAT:

Return to Writ of Ne Exeat Defendant Arrested;
Return Where Defendant Has Been Let To Bail.

PARTITION:

Return to Writ De Partitione Facienda.

PROHIBITION:

Return That Court Was Without Jurisdiction;
Return From Court Below to Writ of Prohibition.

REPLEVIN:

Return to Writ of Replevin, Goods Part Found, Defendant Not Found;
Return to Writ of Replevin, Goods Not Found, Defendant Arrested;
Return to Writ of Replevin, Goods Replevied, Defendant Summoned.

SCIRE FACIAS:

Return to Scire Facias Served on Defendant;
Return on Scire Facias, Defendant Cannot Be Found.

SEARCH WARRANTS:

Return to Search Warrant, Goods Found, Arrest Made;
Return to Search Warrant for Stolen Goods When Goods Are Found;
Return to Search Warrant for Stolen Goods, Not Found.

SHERIFFS AND CONSTABLES:

Declaration Against a Sheriff for a False Return;
Complaint Against Sheriff for False Return;

Notice to Sheriff To Return Capias Ad Respondendum;
Notice to Sheriff To Return Capias Ad Satisfaciendum;
Notice to Sheriff To Return Fieri Facias.

STAY OF PROCEEDINGS:

Return to Capias Ad Respondendum, Stay of Proceedings.

WRIT OF ERROR:

Return in Supreme Court.

I. Personal Service.**A. Return Personally Served.**

This writ has been personally served on the within named defendant, to-wit, on the _____ day of _____, 18____.

The answer of S. T., sheriff.

(Common form.)

"Personally served.

S. T., sheriff."

Burr. App. 437, §840.

Note.—Statutes have made additional requirements in many states. See next form.

B. Sheriff's Certificate of Service on the Defendant Personally.

I hereby certify that on the _____ day of _____, 18____, at _____, I served * on Y. Z. (one of the defendants), above named, the (within) summons (and complaint) in this action, by delivering a copy thereof to him personally, and leaving the same with him. 1 Abb. Forms 100.

C. Sheriff's Certificate, Service at Residence.

(As in I, B, to the *, and then as follows): the summons in this action, of which a copy is hereto annexed, upon the defendant Y. Z., by leaving a copy thereof at the residence of the said defendant aforesaid, delivering the same to W. Z., whom I knew to be the wife of said defendant (or, whom I knew to be the child of the defendant, and who appeared to be of proper age to receive such service, to-wit, about the age of sixteen years), and who received the same; and that deponent left said copy with said W. Z. (and further, that, on the _____ day of _____, 18____, at _____, I put another copy of said summons, properly enveloped and directed to the defendant Y. Z., at his said place of residence, into the post-office in said town, and paid the postage thereon. 1 Abb. Forms 106.

Note.—In substituted service par

ticular care must be exercised in making the return correspond with the requirements of the statutes of the particular state.

D. Certificate of Sheriff of Service of Declaration.

_____ county, ss.: I hereby certify, that on the _____ day of _____, instant, I served on the within (or, "above") named defendant C. D., personally, a declaration (with notice to plead indorsed thereon), of which the within (or "annexed") are true copies.

A. H. M., sheriff.

Burr. App. 69, §137.

E. Return of Summons Against Corporation.

I have summoned the within named (the _____ company, of _____, etc.), as by the within summons I am commanded, by delivering a certified copy of the within to P. R. the (secretary) thereof personally, on the _____ day of _____, etc.

S. T., sheriff.

Burr. App. 442, §855.

Note.—Consult statute. Generally the designated officers of the corporation must be served. Admission not sufficient.

II. Return to Writ of Inquiry.

The execution of this writ appears in the inquisition hereunto annexed.

The answer of S. T., sheriff.

Burr. App. 440, §847.

III. Final Process.

A. Return, Fieri Facias.

(Have caused to be made.)

By virtue of this writ to me directed, I have caused to be made of the goods and chattels, lands and tenements, of the within named defendant, the damages (or, "debt and damages") within mentioned, which I have ready before the justices of the supreme court of judicature of the people of the state of New York, at the day within contained, to render to the said plaintiff for his damages (or, "debt and damages"), aforesaid, as within I am commanded.

The answer of S. T., sheriff.

(Common form.)

"Satisfied.

S. T., sheriff."

Burr. App. 440, §849; Till. Forms 129.

B. Return to Fieri Facias, Nulla Bona.

The within named defendant has no goods or chattels, lands or tenements, in my county, whereof I can cause to be made the damages (or, "debt and damages") within mentioned, or any part, thereof, according to the exigency of this writ.

The answer of S. T., sheriff.

(Common form.)

"No goods or chattels, lands or tenements.

"S. T., sheriff."

Burr. App. 440, §848.

C. Return, Fieri Facias to Part, Nulla Bona to Part.

By virtue of this writ to me directed, I have caused to be made of the goods and chattels, lands and tenements, of the within named defendant, the sum of _____ dollars, which money I have ready before the said justices of the supreme court within mentioned, at the day within contained, to render to the said plaintiff in part of his damages (or, "debt and damages"), within mentioned; and I further certify to the said court, that the said defendant has not any other, or more goods or chattels, lands or tenements, in my bailiwick, whereof I can cause to be made the residue of the damages (or, "debt and damages") aforesaid, according to the exigency of this writ.

The answer of S. T., sheriff.

Burr. App. 440, §850; Till. Forms 129.

(Common form.)

"Satisfied in part, to-wit, for _____ dollars and _____ cents, and as to the residue, the within named defendant hath no goods or chattels, lands or tenements, in my county, whereof I can cause the within execution to be satisfied.

"S. T., sheriff."

Burr. App. 441, §850; Yates' Forms 45.

D. Return to Fieri Facias, Special.

By virtue of the annexed writ, I did, on the _____ day of _____, etc., levy upon divers (dry goods, groceries, etc.), being the goods and chattels of the within named defendant, and sufficient in value to satisfy the said writ, and did thereupon take a receipt for said goods and chattels, of which the subjoined is a copy; and left the same goods and chattels in the possession of the said defendant. I do

further return that after the said levy was made, to-wit, on the _____ day of _____, I was served with an order made by (D. M., circuit judge, etc.), staying the proceedings upon said writ, until the first Tuesday of _____ then next, and until the further order of the supreme court. And I do further return that before the expiration of the time mentioned in said order, to-wit, on the _____ day of _____, etc., the said goods and chattels were casually consumed by fire, with the building in which I found and left them, excepting a small portion thereof, which I have sold according to law, and upon which sale I have made _____ dollars, parcel of the damages within mentioned, besides my costs upon the same. I further certify that S. S. E., the person who gave the receipt, is of sufficient responsibility for the same. Dated, etc.

The answer of U. H., sheriff.

By C. P. B., under-sheriff.

Burr. App. 441, §851a; 5 Hill 588.

E. Return to Fieri Facias, Unsold for Want of Buyer.

By virtue of this writ to me directed, I have taken goods and chattels of the within-named defendant, to the value of the damages (or, "debt and damages") within mentioned, which goods and chattels remain in my hands unsold for want of buyers; therefore I cannot have that money before the said justices of the _____ court of _____ (of the people) of the state of _____, at the day within contained, as I am within commanded.

The answer of S. T., sheriff.

(Short form.)

"Goods taken, but unsold for want of buyers.

S. T., sheriff."

Burr. App. 441, §851; Till. Forms 130.

F. Return of Rescue and Resistance to an Execution.

I, the sheriff of said county, do certify and return to the supreme court now here, that by virtue of the within execution, to me directed and delivered for execution, I did on the _____ day of _____ between the hours of ten and eleven o'clock in the forenoon proceed to the residence of the defendant in _____, in said county, to execute the same as I am therein commanded, and that having been in-

vited into the dwelling house of the defendant by the said defendant, I then and there in due form levied on one piano forte then in the possession of the said defendant under and by virtue of the said execution, and while taking the same into my possession, I was violently resisted by the said _____ and one _____ and then and there aiding the said defendant, and who then and there violently and with force rescued the said levy and ejected me from the house, and that before I could command assistance to retake the same the said piano forte was removed and I have not been able to find the same since.

A. B., sheriff of _____ county.

Crocker on Sheriffs 512.

G. To Capias Ad Satisfaciendum.

1. Return Capi Corpus in Custody.

I have taken the within named defendant, whose body I have ready at the day and place within contained, as within I am commanded.

The answer of S. T., sheriff.

(Common form.)

"Defendant taken.

"S. T., sheriff."

Burr. App. 442, §852.

2. Return to Capias Ad Satisfaciendum, Non Est Inventus.

The within named defendant is not found in my bailiwick.

The answer of S. T., sheriff.

(Common form.)

"Not found.

"S. T., sheriff."

Burr. App. 442, §853.

IV. Criminal Process.

A. Return to Warrant on Arrest.

I have arrested the within named defendant, and I have him now here in my custody before the court, as I am within commanded.

A. B., sheriff.

Crocker on Sheriffs 514.

B. Return, Some Arrested and Others Not Found.

I have arrested the within named defendant _____, and have him now here before the court; but the within named _____ cannot be found.

A. B., sheriff.

Crocker on Sheriffs 514.

C. Return of Arrest and Commitment to Jail.

I have arrested the within named de-

defendant and have committed him to jail.

A. B., sheriff.

Crocker on Sheriffs 514.

D. Return, Arrest for Larceny Where the Property Is Found.

I have arrested the within defendant and have also taken the property alleged to be stolen, which I found on the person of the defendant (or in the possession of the defendant), and have him and the said property now here before the court.

A. B., sheriff.

Crocker on Sheriffs 514.

E. Return Where Magistrate Issuing Warrant Is Absent.

I have arrested the within defendant as I am within commanded; and I further return that on making such arrest, I forthwith brought the said defendant to the office of the magistrate before whom the within warrant is made returnable, but that said magistrate was then absent therefrom and could not be found, to proceed upon the said warrant.

A. B., sheriff.

Crocker on Sheriffs 515.

F. Return of Rescue and Resistance to Criminal Process.

I, the sheriff of said county, do certify and return to the court of oyer and terminer in and for ——— county, now here, that by virtue of the within warrant, delivered to me for execution on the ——— day of ———, I did on the ——— day of ———, 187—, proceed as by the said writ I was commanded, to execute the same; and that when I had arrived at the dwelling of the said ———, in ———, in said county, and had demanded admittance after having duly announced the purpose of my coming, I was resisted and violently assaulted by the said ——— and ———, his son, and one ———, then present, and was violently beat and bruised by the said ———, and that in consequence of said resistance I was unable to execute the said writ alone or with the aid of my deputies, but was compelled to raise the power of the county to aid in enforcing the execution of the same.

Dated ——— 187—.

A. B., sheriff of ——— county.

Crocker on Sheriffs 511, No. 25.

REVERSIONS.

I. Declaration for Injury to Reversion, 1089

II. Declaration for Injury to Reversionary Interest in Goods, 1090

CROSS-REFERENCES:

LANDLORD AND TENANT:

Complaint, Grantee of Reversion Against Lessee for Rent;

Complaint, Heir of Reversioner Against Lessee;

Complaint, Assignee of Devisee of Reversion and Rent Against Assignee of Part of Premises.

WASTE:

Complaint by Heirs Against Doweress and Her Husband;

Complaint by Devisee for Damages for Waste.

For other forms, see **Waste**, where forms in case of remaindermen can be readily adapted.

I. Declaration in Case for Injury to the Reversion.

For that whereas, before and at the time of the committing of the grievances by the said defendant as hereinafter mentioned, a certain messuage and premises, with the appurtenances, situate in the county of ——— (or, at, etc.) was in the possession and occupation of a certain person, to-wit, one E. F. as tenant thereof to the said plaintiff (the reversion thereof then and still belonging to the said plaintiff) to-wit, at, etc. (venue). Yet the said defendant well knowing the premises, but contriving, and wrongfully and unjustly intending to injure, prejudice, and aggrieve the said plaintiff in his reversionary estate and interest of and in the said messuage and premises, with the appurtenances, whilst the said messuage and the premises were so in the possession and occupation of the said tenant, as such tenant thereof to the said plaintiff as aforesaid, and whilst the said plaintiff was so interested therein as aforesaid, to-wit, on, etc., and on divers other days and times between that day and the day of exhibiting this bill (or, if in U. S. "before the commencement of this suit") at, etc. (venue) aforesaid, wrongfully and unjustly, without the leave or license of, and against the will of the said plaintiff (here state the nuisance or subject-matter of complaint, and which must be shown to

have been of such a permanent nature as to effect the reversionary interest). By means of which said several premises the said plaintiff hath been and is greatly injured, prejudiced, and aggrieved in his reversionary estate and interest of and in the said messuage and premises, with the appurtenances so in the possession and occupation of the said E. F. as tenant thereof to the said plaintiff as aforesaid, to-wit, at, etc. (venue) aforesaid. 2 Chit. Pl. 777.

II. Declaration in Case for Injury to Reversionary Interest in Goods.

For that whereas the said plaintiff, before and at the time of the committing of the grievance hereinafter next mentioned, was the owner and proprietor of divers goods and chattels, to-wit, etc. (here specify them according to the exact description, as in trover) of great value, to-wit, of the value of £——— and which said goods and chattels had been and were, before then, let to hire to one E. F. for a certain time then to come and unexpired, and the same were then in the possession of the said E. F. under and by virtue of the said letting, to-wit, at, etc. (venue). Yet the said defendant, well knowing the premises, but contriving and wrongfully and unjustly intending to injure, prejudice and aggrieve the said plaintiff in his reversionary interest and property in the said goods and chattels, and to deprive him of the benefit and advantage thereof, whilst the said plaintiff so was the owner and proprietor of the said goods and chattels, and whilst the same were so let to and in the possession of the said E. F. as aforesaid, to-wit, on, etc., at, etc. (venue) aforesaid, wrongfully and unjustly broke, damaged and spoiled the said goods and chattels (or, "seized and took the said goods and chattels of the said plaintiff, from and out of the possession of the said E. F. and converted and absolutely sold and disposed thereof to his own use, according to the fact). And whereby the said plaintiff hath been and is greatly injured, prejudiced, and aggrieved in his reversionary estate and interest of and in the said goods and chattels, to-wit, at, etc., aforesaid. (Add a count in trover.) Wherefore the said plaintiff saith that he is injured, and hath sustained damage to the amount of £———, and there-

fore he brings his suit, etc. 2 Chit. Pl. 787.

REVIVOR.

I. Bills, 1091

- A. *Death of Plaintiff and Birth of Heir of Defendant*, 1091
- B. *On Marriage of Female*, 1092
- C. *By Administrator, Executor Renouncing*, 1092
- D. *In Nature of, Devisee Against Vendee*, 1093

II. Orders, 1094

- A. *To Revive*, 1094
- B. *On Marriage of Female*, 1094

III. Answer to Original and Bill of Revivor, 1094

IV. Proceedings Under Codes, 1094

- A. *Notice of Motion on Death of Plaintiff*, 1094
- B. *Petition by Receiver or Assignee*, 1094
- C. *Verification of Petition*, 1095
- D. *Petition After Marriage of Female*, 1095
- E. *Petition by Executor, Administrator or Heir*, 1095
- F. *Affidavit Corroborating Petition To Revive*, 1095
- G. *Order Reviving Action*, 1096
- H. *Notice of Motion To Revive or Serve Supplemental Complaint*, 1096
- I. *Petition by Surviving Plaintiff To Compel Representative To Revive*, 1096
- J. *Order by Consent Substituting Executors*, 1096
- K. *Petition by Defendant To Revive*, 1096
- L. *Order To Show Cause on Petition by Defendant*, 1097
- M. *Order To Revive, Absolute*, 1097
- N. *Order on Petition by Defendant, Alternative*, 1097
- O. *Affidavit on Motion To Abate*, 1097
- P. *Notice of Motion To Abate*, 1097
- Q. *Order Abating Action*, 1097
- R. *Notice of Motion of Plaintiff, Death of Defendant*, 1098
- S. *Affidavit on Motion of Plaintiff on Death of Defendant*, 1098
- T. *Order on Motion of Plaintiff on Death of Defendant*, 1098
- U. *Affidavit on Attachment, Death of Defendant Before Publication*, 1098

V. *Order on Attachment, Death of Defendant Before Publication*, 1098

W. *Stipulation To Revive in Name of New Corporation*, 1098

CROSS-REFERENCES:

BILLS AND ANSWERS:

Title to Answer of Bill of Revivor.

JUDGMENTS AND DECREES. REVIVAL OF:

Notice of Motion To Revive Dormant Judgment;

Order Reviving Dormant Judgment;

Notice of Motion To Vacate Order Reviving Judgment;

Complaint for Revival of Judgment by Action.

OFFICERS:

Notice of Motion of Substitution of Officer's Successor;

Order of Substitution of Officer's Successor.

PLEA IN EQUITY:

Plea to Bill of Revivor, Plaintiff Not Administrator;

Plea to Revivor, Defendant Never Administrator.

SUPPLEMENTAL PLEADING:

Decree To Carry on Proceedings on Supplemental Bill, Nature of Bill of Revivor, Original Decree Made After Suit Abated.

I. Bills.

A. *Bill of Revivor and Supplement; Death of Plaintiff and Birth of Heir of Defendant.*

Humbly complaining, show unto your honors your orators R. W., of, etc., and N. W., of, etc., executors, named and appointed in and by the last will and testament of H. W., late of, etc., gent., deceased, that, on or about the _____ day of _____, the said H. W., exhibited his bill of complaint in this honorable court against T. W., late of, etc., gent., deceased, thereby praying that the said T. W. might be decreed by this honorable court to come to a just and fair account with the said H. W., for the principal and interest then due and owing to him on the mortgage security, in the said bill mentioned, and might pay the same to the said H. W., by a short day to be appointed by this honorable court, together with his costs; and in default thereof, that the said T. W. might stand absolutely barred and foreclosed of and from all manner of benefit and advantage of redemption or claim in or to

the residue of two several terms of five hundred years and four hundred years in the respective mortgaged premises in the said bill mentioned, and every part thereof. And the said defendant T. W. being duly served with process appeared thereto and departed this life on or about the _____ day of _____, without having put in his answer to the said bill. And your orators show unto your honors, by way of supplement to the said original bill, that the said defendant T. W. departed this life intestate, leaving his wife E. W., a defendant hereinafter named, enciente with a child since born and named A. W., and the said A. W. is now sole heiress-at-law of the said T. W., deceased, and as such entitled to the reversion and remainder of the freehold part of the said mortgaged hereditaments and premises, expectant upon the determination of the said term of five hundred years therein. And your orators further show that on the _____ day of _____, letters of administration of the goods, chattels, and effects of the said T. W., deceased, were duly granted unto his widow, the said E. W., who was thereby become his sole personal representative. And your orators show unto your honors that the said complainant H. W. departed this life on or about the _____ day of _____, having previously duly made and published his last will and testament in writing, bearing date on or about the _____ day of _____, and thereby appointed your orators joint executors, and on or about the _____ day of _____, your orators duly proved the said will in the proper court, and took upon themselves the burden of the execution thereof. And your orators further show, that upon the death of the said H. W., the said several terms of five hundred years and four hundred years became, and the same are now, vested absolutely at law in your orators, as his personal representatives, subject, nevertheless, to the redemption on payment of the principal money and interest thereby secured. And your orators further show unto your honors that the said suit having become abated by the death of said T. W., your orators are advised that they, as the personal representatives of the said H. W., deceased, are entitled to have the same revived and restored as against the said E. W. and

A. W., to the same plight and condition in which it was at the time of the death of the said T. W. and to have the same relief against the said E. W. and A. W. To the end therefore, etc.

And that the said E. W. and A. W. may answer the said original bill, and that they may be decreed by this honorable court to come to a just and fair account with your orators for the principal and interest now due and owing to your orators on the said mortgage securities, and may pay the same to your orators by a short day to be appointed by this honorable court, together with your orators' costs, etc., etc., and that the said suit may stand and be revived against the said defendants, and be in the same plight and condition in which the same was at the time of the decease of the said defendant T. W., or that the said E. W. and A. W. respectively may show good cause to the contrary. May it please, etc.

Pray subpoena to revive and answer the original bill and supplemental bill against E. W. and A. W. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2093, 2094.

B. Bill of Revivor on Marriage of Female.

Humbly complaining, show unto your honors, your orator and oratrix, A. B., of, etc., and E. B., his wife, that on or about ———, your oratrix, by her then name, of E. M., exhibited her original bill of complaint in this honorable court against ——— and W. M., as defendants thereto, thereby stating, etc., and praying, etc. (state the prayer of the bill). And your orator and oratrix further show, that the said several defendants being duly served with process, severally appeared and put in their answers to the said original bill; as in and by, etc. And your orator and oratrix further show that your oratrix took several exceptions to the answer put in by the said defendant W. M. to the said original bill, and which said exceptions were, upon argument, allowed by the master, to whom the same was referred. And your orator and oratrix further show that your oratrix afterwards obtained an order of this honorable court to amend her said original bill, and that the said defendant W. M. might answer the said amendments at the same time that he answered the said exceptions. And

your orator and oratrix further show that before the said W. M. had put in his answer to the said exceptions, or any further proceedings were had in the said suit, and on or about the ——— day of ———, your oratrix intermarried with your orator A. B. whereby the said suit and proceedings became abated. And your orator and oratrix are advised that they are entitled to have the same revived, and to be put in the same plight and condition as the same were in at the time of the abatement thereof. To the end, therefore, that the said suit and proceedings, which so became abated as aforesaid may stand revived, and be in the same plight and condition as the same were in at the time of such abatement, or that the said defendants may show good cause to the contrary. May it please your honors to grant unto your orator and oratrix a writ of subpoena to revive, issuing out of and under the seal of this honorable court, to be directed to the said W. M., thereby commanding him, at a certain day, and under a certain penalty to be therein inserted, personally to be and appear before your honors in this honorable court, then and there to answer and show cause, if he can, why the said suit, and the proceedings therein had, should not stand and be revived against him, and be in the same plight and condition as the same were in at the time of the abatement thereof, and further to stand to and abide such order and decree in the premises as to your honors shall seem meet.

And your orator and oratrix will ever pray, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2087.

C. Bill of Revivor by Administrator, Executor Renouncing.

Humbly complaining, sheweth unto your honors, your orator C. D., of, etc., that J. A., late of, etc., but now deceased, on or about ———, exhibited his original bill of complaint in this honorable court against G. T. W., of, etc., as the defendant thereto, thereby stating, etc., praying, etc. (here state the prayer). And your orator further sheweth unto your honors, that the said defendant, having been duly served with process for that purpose, appeared and put in his answer to said bill, as in and by the said original bill, etc. And your orator further sheweth, that some proceedings have been had

before ———, one of the masters of this court, to whom this cause stands referred, but no general report has yet been made in the said cause; and that the said J. A., lately and on or about the ——— day of ———, departed this life, having first made and published his last will and testament in writing, bearing date the ——— day of ———, and a codicil thereto, bearing date the ——— day of ———, and thereby appointed M. C. and W. W. executors thereof. And your orator further sheweth, that the said M. C. and W. W. have renounced probate of the said will and codicil of the said J. A., deceased, and decline to act in the trusts thereof, and that your orator has obtained letters of administration with the will annexed of the goods, chattels, rights, and credits of the said J. A., deceased, to be granted to him by and out of the proper court, and has thereby become and now is his legal personal representative. And your orator further sheweth, that the said suit and proceedings have become abated by the death of the said J. A., and your orator is, as he is advised, entitled to have the said suit and proceedings revived against the said defendant G. T. W., and the said accounts by the aforesaid order of reference directed, prosecuted and carried on, and to have the said cause put in the same plight and condition as the same was in previously to the abatement thereof by the death of said J. A.

To the end, therefore, that the said defendant may answer the premises; and that the said suit and proceedings which so became abated as aforesaid may stand revived, and be in the same state and condition as the same were in at the time of the death of the said J. A., or that the defendant may show good cause to the contrary; may it please your honors to grant unto your orator a writ of subpoena to revive (and answer), issuing out of and under the seal of this honorable court to be directed to the said G. T. W., thereby commanding him at a certain day and under a certain penalty, to be therein limited, personally to be and appear before your honors, in this honorable court, then and there (to answer the premises and) to show cause, if he can, why the said suit, and the proceedings therein had, should not stand

and be revived against him, and be in the same plight and condition as the same were in at the time of the abatement thereof; and further to stand to, and to abide such order and decree in the premises as to your honors shall seem meet. And your orator shall ever pray, etc. (Where it is only necessary to pray a subpoena to revive, the words within brackets should be omitted.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2086.

D. Bill in Nature of Bill of Revivor, Devisee Against Vendee for Specific Performance.

Your orator, A. B., of, etc. That your orator, on or about ———, filed his bill of complaint in this honorable court against C. D., of, etc., thereby stating (see form of specific performance of an agreement). (Set forth the material part of the bill, and the prayer.) That the said C. D. being served with process of subpoena, appeared to the said bill, but before he put in his answer thereto, he, the said C. D., departed this life, having first, when of sound mind, duly made and published his last will and testament in writing (which was executed by him, and attested as by law is required for passing real estates by devisees), and thereby gave and devised all his real estates (comprising the estate so agreed to be sold by him to your orator as aforesaid), to E. F., of, etc. (the defendant hereinafter named), his heirs and assigns forever, as by the said will, reference being thereunto had will appear. And your orator further sheweth unto your honors, that the said suit became abated by the death of the said C. D.; but notwithstanding your orator is advised that he is entitled to have the said agreement specifically performed by the said E. F. as such devisee as aforesaid; and which said devise your orator expressly charges is in every respect valid and effectual. To the end, therefore, etc. And that your orator, under the circumstances aforesaid, may have all such benefit against the said E. F. of the said suit, so commenced as aforesaid, as he would have had in case the said C. D. had been living, or that the said E. F. may show good cause to the contrary. May it please, etc. (subpoena). 2 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2101.

II. Orders.**A. Order To Revive.**

Upon motion, etc., by counsel for the plaintiff, who alleged (state the last material proceeding in the suit, and the subsequent events in concise form), this court doth order, that this suit, which has become abated in manner aforesaid, stand revived, and be in the same plight and condition as the same was in at the time of the said abatement. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2351.

B. Order To Revive on Marriage of Female Sole Plaintiff.

If no next friend required, it is ordered that the cause stand revived, at the suit of the said A. (husband), and the above named plaintiff, now the wife of the said A., against all the defendants, and be in the same plight, etc. If a next friend required, it is ordered that this cause stand revived, at the suit of the above named plaintiff, now the wife of B., by C., of, etc., her next friend, against all the defendants, and against the said B., and be in the same plight, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2352.

III. Answer to Original Bill and Bill of Revivor and Supplement.

The answer of _____, one, etc., to the original bill of complaint of _____, the above named plaintiff, and _____, also to the bill of revivor and supplement of the said plaintiff.

In answer to the said original bill, I say as follows, etc.

In answer to the said bill of revivor and supplement, I say as follows, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2141.

IV. Proceedings Under Codes.**A. Notice of Motion To Revive on Death or Disability of Plaintiff.**

In the matter of the petition of A. B. and C. D., to have continued an action pending in this court between said A. B., plaintiff, and one Y. Z., defendant.

Please take notice, that on the annexed petition, and on the pleadings in this cause, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, for an order directing the * action re-

ferred to in the annexed petition, heretofore pending in this court between A. B., plaintiff, and Y. Z., defendant, to be continued by C. D. as plaintiff jointly with A. B., plaintiff above named (or, in the name of C. D., describing his official or trust capacity if any, as plaintiff, in place of A. B., plaintiff above named), and granting the said C. D. leave to amend the complaint herein, as he shall be advised, and for such other relief as may be just. 2 Abb. Forms 219.

B. Petition by Receiver or Assignee of Plaintiff's Title, To Revive Action in His Own Name.

(Title as in preceding form.)

To the supreme court held in and for the county of _____.

The petition of A. B. and C. D. shews to the court:

I. That on or about the _____ day of _____, 18____, A. B., above named, commenced an action in this court against * one Y. Z. for (here state briefly the cause of action, and then proceed to show what stage the cause is in, *e. g.*, thus), that issue was joined therein by the service of the defendant's answer on the _____ day of _____, 18____; that said action was referred, by order of this court, on the _____ day of _____, 18____, to R. F., esq., to hear and determine the same; that the trial thereof is now pending and undetermined before him.†

II. That pending said action, and on the _____ day of _____, 18____, upon application duly made by O. P., a judgment creditor of said A. B. in proceeding supplementary to execution, your petitioner was, by the order of Hon. _____, one of the justices of the supreme court (or, county judge for the county of _____), duly appointed receiver of the property of said A. B.

(Or, II. That pending said action, and on the _____ day of _____, 18____, said A. B., plaintiff in said action, duly assigned and transferred the note in the complaint mentioned, for a valuable consideration, to your petitioner, who is now the lawful owner and holder thereof.)

Wherefore your petitioner prays that he may be substituted as plaintiff in said action in place of said A. B., and that said action may be continued in his name, and that he may have such

other relief as may be just. 2 Abb Forms 220.

C. Verification of Petition by Receiver or Assignee To Revive Action.

C. D., being duly sworn, says that he has read (or, heard read) the foregoing petition subscribed by him, and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true. 2 Abb. Forms 221.

D. Petition, After Marriage, of Female Plaintiff, Filed by Husband To Revive in Joint Names.

(As in IV, B, to the †, continuing):
II. That pending said action, and on the _____ day of _____, 18—, your petitioner, A. B., was married to your petitioner C. D., above named, who thereby became, and now is, a necessary party plaintiff herein, as your petitioners are advised and believe.

Wherefore, your petitioners pray the order of this court, that said action may be continued by your petitioners jointly as plaintiffs against said Y. Z., and that your petitioners may have (leave to amend the complaint as they may be advised, and) such other relief as may be just. (Verification as in IV, C.) 2 Abb. Forms 221.

E. Petition by Executor, Administrator or Heir of Deceased Plaintiff.

(Title as in IV, A.)

To the supreme court held in and for the county of _____.

The petition of C. D. and E. F., executors of the last will and testament (or, administrators of the goods, etc., which were) of A. B., deceased (or heirs of A. B., deceased), shows to the court:

I. That on or about the _____ day of _____, 18—, one A. B. commenced an action in this court against one Y. Z. for (state the cause of the action, and its condition, as in IV, B).

II. That said A. B. died on or about the _____ day of _____ last, and pending said action, having first duly made and published his last will and testament, by which, among other things, he appointed your petitioners his executors; that your petitioners have

proved said will, and letters testamentary thereon were duly made and issued to them by the surrogate of the county of _____, on the _____ day of _____, 18—, and that they have undertaken the execution thereof.

(Or, where the application is by administrators: II. That said A. B. died intestate on or about the _____ day of _____, 18—, and pending said action; and that letters of administration upon his estate were duly made and issued, on the _____ day of _____ last, by the surrogate of the county of _____, to the petitioners, who have qualified and entered upon their duties as such administrators.)

III. That at the time of his death the said note (or other cause of action) was still owned by the said A. B.; and the amount thereof, with the interest thereon, is still due from the said defendant; and the said (note) is now held by this deponent, and forms a part of the assets in his hands belonging to the estate of said A. B., deceased.

(Or, where the application is by heirs, substitute for II. and III. above: II. That said A. B. died intestate on or about the _____ day of _____, 18—, and pending said action, and leaving your petitioners, who are his only children, his heirs at law, and as such they inherited all his interest and estate in the lands which are the subject of said action.)

IV. That your petitioners are desirous of continuing the action above referred to, as executors (or, administrators, or heirs) of said A. B., against said Y. Z.

Wherefore, your petitioners pray that said action may be so continued by them, and that your petitioners may have leave to amend the complaint therein as they may be advised; and may have such further relief as may be just. (Verification, as in IV, C.) 2 Abb. Forms 222.

F. Affidavit Corroborating Petition To Revive.

M. N., of _____, being duly sworn, says that he was the attorney of A. B., in his lifetime, in the action mentioned in the foregoing petition; and that the said action was commenced, issue joined therein, and was pending and undetermined at the time of the death of the said A. B., as stated in

said affidavit; and that O. P., of ——— aforesaid, is the attorney of the said defendant in said action. 2 Abb. Forms 224.

G. Order Reviving Action.

On reading and filing the petition of C. D. and affidavit of M. N., dated the ——— day of ———, and the pleadings in this action (and proof of due service of notice of this motion), and on motion of Q. R., counsel for said C. D., assignee (or, receiver, or executor, or, administrator, or, heir) of the plaintiff, deceased, and after hearing O. P., of counsel for the defendant (or, no one appearing) in opposition: *

Ordered, that the above entitled action be continued by C. D., as plaintiff, jointly with A. B., plaintiff above named (or, that C. D. be substituted as plaintiff herein, in the place of A. B., plaintiff above named), and that the above entitled action be continued by him as receiver (or otherwise) of said A. B. (and further, that he be allowed to amend the complaint, or, say, serve a supplemental complaint, herein, as he shall be advised). 2 Abb. Forms 224.

H. Notice of Motion To Revive Action, or To Serve Supplemental Complaint.

Take notice, that on the affidavit of which a copy is herewith served upon you, and on the pleadings in this action, C. D., as executor of the plaintiff, will move the court, at a special term, thereof to be held at ———, in ———, on the ——— day of ———, 18——, at ——— o'clock in the ——— noon, or as soon thereafter as counsel can be heard, for leave to continue this action (or, to serve a supplemental complaint) in the name of the said (executor) as plaintiff, or for such other or further relief as may be just. 2 Abb. Forms 225.

I. Petition by Surviving Plaintiff To Compel Representative To Revive.

(State action by two plaintiffs and death of one, leaving joint interest in his representatives and the survivor; see IV, K, to the *, and continuing): the said action has not been revived or continued, or anything done therein; and that said (representative) refuses to allow your petitioner to con-

tinue said action in his name as administrator, as one of the plaintiffs.

Wherefore, your petitioner prays for an order requiring the said (representative) to join your petitioner in an application to have the said action revived and continued in the name of the said (representative) as administrator as aforesaid, and this petitioner as plaintiff, by a certain time therein * be specified; or that your petitioner be allowed to take such proceedings as may be necessary to revive and continue said action, making the said (representative) administrator as aforesaid, a party defendant in said action. (Verification, as in IV, C.) 2 Abb. Forms 226.

J. Order by Consent, Substituting Executors, Without Prejudice to Proceedings Already Had.

On reading and filing the affidavit of M. N., showing the death of A. B., the plaintiff in the above entitled action, and the granting of letters testamentary, under and by virtue of his last will and testament, to C. D. and E. F., by the surrogate of ——— county, and on motion of M. N., plaintiff's attorney * (the defendant's attorney consenting thereto):

Ordered, that this action be and the same is hereby revived and continued in the name of the said C. D. and E. F., executors of the last will and testament of A. B., deceased, as plaintiffs; and that the said executors be and they hereby are substituted as plaintiffs in the place and stead of the said A. B., deceased, and that such revivor and continuance be without prejudice to any of the proceedings already had in this action. 2 Abb. Forms 226.

K. Petition by Defendant To Revive Action, Plaintiff Dead.

To the supreme court held in and for the county of ———.

The petition of Y. Z., defendant above named, shows to this court:

I. That, on or about the ——— day of ———, 18——, A. B., above named, commenced an action in this court against this defendant for (here state the cause of action, and its condition).

II. That, as the petitioner is informed and believes, A. B., plaintiff above named, died on or about the ——— day of ——— last, having

first made and published his last will and testament in due form of law, by which, among other things, he appointed C. D. and E. F. his executors; that they have proved said will, and taken upon themselves the execution thereof; but, to the best of your petitioner's information and belief, * have failed to make any application to have the above entitled action continued by them as plaintiffs.

Wherefore, your petitioner prays that the above entitled action may be continued in their names, or that the complaint herein be dismissed, so far as their interests are concerned, and that your petitioner have judgment thereupon against the said C. D. and E. F., as executors as aforesaid, for the costs of such action; or for such other order as may be just. (Verification as in IV, C.) 2 Abb. Forms 227.

L. Order To Show Cause on Petition by Defendant To Revive.

On the within petition, let the plaintiffs show cause at a special term, to be held at _____, on the _____ day of _____, 18____, at _____ o'clock in the forenoon, why the above entitled action should not be continued in the names of C. D. and E. F., executors above named, or the complaint herein be dismissed, so far as the interests of said executors are concerned, with costs (or, why the petition should not be granted). 2 Abb. Forms 228.

M. Order on Petition by Defendant To Revive, Absolute.

(As in IV, G, to the *, continuing): Ordered, that the above entitled action be continued in the names of C. D. and E. F. as executors of A. B., plaintiff above named (or, that the complaint herein be dismissed so far as the interests of C. D. and E. F., executors of A. B., plaintiff above named, are concerned; and that the defendant have leave to enter judgment against said C. D. and E. F., as executors, for the costs of the action, with _____ dollars costs of this motion. 2 Abb. Forms 228.

N. Order on Petition by Defendant To Revive, Alternative.

(As in IV, G, to the *, continuing): Ordered, that the said C. D., executor as aforesaid, revive and continue said action, by filing and serving a supplemental complaint therein, within twenty days after service of a copy of this order; or that, in default

thereof, the complaint in said action be dismissed, and the defendant have leave to enter judgment against the said C. D., executor, as aforesaid, for the costs of such action. 2 Abb. Forms 229.

O. Affidavit on Motion To Abate Action, Unless Revived.

Y. Z., being duly sworn, says:

I. That he is the defendant in the above entitled action.

II. That this action is brought to recover (state nature and object of action briefly, and the condition of the cause).

III. That, as deponent is informed and believes (after issue was joined), in this action, to-wit, on the _____ day of _____, 18____, the above named plaintiff died, having first made and published his last will and testament, by which he appointed C. D., of _____, his sole executor.

IV. That letters testamentary have been duly made and issued by the surrogate of _____ to the said C. D., who has accepted the same, and entered upon the duties of his office. 2 Abb. Forms 229.

P. Notice of Motion To Abate Action Unless Revived.

Please take notice, that on the affidavit of which a copy is herewith served, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, * to require this action to be revived and continued by the executor of the above named A. B., deceased, as plaintiff herein, within a time to be fixed by the court, or that, in default thereof, the action shall be deemed abated; or for such other relief as may be just. 2 Abb. Forms 229.

Q. Order Abating Action, Unless Revived.

(As in IV, J, to the *, continuing): Ordered, that C. D., executor of the above named A. B., deceased, be at liberty to continue this action as plaintiff therein in place of the said A. B., and that in the event of his failure to appear and proceed therein as such, within _____ months after service of a copy of this order upon _____, this action be deemed abated. 2 Abb. Forms 230.

E. Notice of Motion of Plaintiff on Death or Disability of Defendant.

(As in IV, P, to the *, continuing):

For an order directing the above entitled action to be continued against C. D. and E. F., as executors of the last will and testament of (or, administrators of the estate of, or, heirs of) Y. Z., defendant above named, deceased, in the place of said deceased defendant; and granting leave to this plaintiff to amend the complaint herein as he shall be advised, and such other relief as may be just. 2 Abb. Forms 230.

S. Affidavit on Motion of Plaintiff on Death or Disability of Defendant.

A. B., being duly sworn, says:

I. That on or about the _____ day of _____, 18____, he commenced an action in this court against the defendant above named for (state the cause of the action, and its condition, as in IV, B).

II. That, as deponent is informed and believes, said defendant died on or about the _____ day of _____ last, having first duly made and published his last will and testament, by which, among other things, he appointed L. M. and N. O. his executors, who have proved said will; and that letters testamentary thereon have been duly issued to them by the surrogate of the county of _____, and they have undertaken the execution thereof.

(For statement as to an administrator or heir, see IV, E.)

III. That said action is still pending and undetermined, and no proceedings to continue it have been taken, to the knowledge of the deponent. 2 Abb. Forms 231.

T. Order of Revivor on Motion of Plaintiff on Death or Disability of Defendant.

On reading and filing the affidavit of M. N. (and proof of due service of notice), and on motion of M. N., after hearing O. P. (or, no one appearing) in opposition:

Ordered, that C. D. and E. F., executors of Y. Z., defendant above named, appear and answer the complaint herein within eighty days from the service of a copy of this order upon them; or that, in default thereof, the plaintiff may apply to the court for an order entering their appearance, and

directing the action to stand revived and continued against them as executors of said Y. Z., and that the answer of said X. Y., be then deemed the answer of said executors (or, if no answer had been put in, and that he then have judgment for failure to answer). 2 Abb. Forms 231.

U. Affidavit on Attachment and Death of Defendant Before Publication Completed.

(Commencement as in other cases, and stating the nature of the cause of action.)

I. That on the _____ day of _____, 18____, he commenced proceedings for the purpose of bringing thereon an action against the defendant Y. Z., by publication of the summons against him, pursuant to the provisions of the statute, the said defendant being a non-resident of the state of New York, and residing in the town of _____, in the state of _____.

II. That during the time of such publication, deponent procured an attachment to be issued in his favor, in said action, against the said Y. Z.; upon which, during the lifetime of the said Y. Z., the sheriff of the county of _____ seized a large quantity of goods, the property of the said Y. Z., of the value of _____ dollars; and after the said goods were so seized by the said sheriff, and before the said publication was completed, the said Y. Z. died, on or about the _____ day of _____, 18____.

(Allege appointment of executor, etc., see IV, E, and conclude as in other cases.) 2 Abb. Forms 232.

V. Order on Attachment and Death of Defendant Before Publication Completed.

(Commencement as in IV, T.)

Ordered that plaintiff have leave to proceed against C. D., the executor of said Y. Z., deceased, by the service of summons and complaint upon him as the defendant herein; and that the proceedings by attachment stand revived and continued in the name of said executor as defendant. 2 Abb. Forms 232.

W. Stipulation in Action Against Corporation, on Expiration of Charter, To Revive in Name of New Corporation.

The act of incorporation by which the defendants, the president, directors

and company of the Bank of A., were incorporated, having expired by its own limitation since this action was commenced, and the Bank of A. having succeeded to the rights and liabilities of the defendants touching the subject-matter of this action, it is therefore stipulated that the action be continued against the Bank of A., without prejudice to the rights of either party on the merits, and that an order of the court may at any time be entered by either party to this effect. 2 Abb. Forms 233.

REWARDS.

- I. Declaration for Reward in Civil Case, 1099
- II. Declaration for Reward in Criminal Case, 1099
- III. Complaint for Reward in Criminal Case, 1100
- I. Declaration for Reward Defendant Advertised He Would Give in Civil Case.

For that whereas, before and at the time of the making the promise and undertaking of the said defendant hereinafter next mentioned, he the said defendant was one of the bailiffs of the sheriff of Middlesex, to-wit, at, etc., and whereas also before the time of the making of the said promise and undertaking, one E. F. had been arrested, and was in custody of the said defendant as such bailiff as aforesaid, for debt, to-wit, at, etc. And whereas also before the time of the making of the said promise and undertaking, the said E. F. had escaped out of the custody of the said defendant, so being such bailiff as aforesaid, and the said defendant was desirous of apprehending and retaking the said E. F., to-wit, at, etc., aforesaid; and thereupon, afterwards, to-wit, on, etc., at, etc., aforesaid, in consideration that any person would apprehend the said E. F. or by any private information, or otherwise, be the means of apprehending or causing him to be apprehended and delivered into the custody of the said defendant, he the said defendant undertook, and then and there faithfully promised, upon such apprehending and delivery of the said E. F. into the custody of him the said defendant, to pay to such person who should apprehend, or cause to be apprehended, the said E. F. a reward of 100*l*. And the said plaintiff

avers, that afterwards, to-wit, on, etc., at, etc., aforesaid, he the said plaintiff took and apprehended the said E. F. and afterwards, to-wit, on, etc., last aforesaid, at, etc., aforesaid, delivered him into the custody of the said defendant, by reason whereof the said defendant then and there became liable to pay, and ought to have paid to the said plaintiff, the aforesaid reward of 100*l*, to-wit, at, etc., aforesaid. (Add other counts according to circumstances.) 2 Chit. Pl. 257.

II. Declaration for Reward Advertising for Discovery of Offender.

For that whereas the said defendant, to-wit, on, etc. (day of publication or about it), at, etc. (venue) printed and published a certain advertisement, stating (here set out the advertisement in the past tense, as thus); that one A. S. had then lately defrauded the said defendant and other people of money, wearing apparel, and table linen and other things of value, to a great amount, and the said defendant did thereby then and there undertake and faithfully promise, that if any person would discover the said A. S. so that she might be brought to justice, such person should receive 20*l*. reward of the said defendant; and the said plaintiff in fact saith, that he, confiding in the said promise and undertaking of the said defendant, afterwards, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, did discover the said A. S. to the said defendant; and the said A. S. afterwards, to-wit, on the day and year aforesaid, at, etc. (venue) was committed to the custody of the keeper of the gaol at (Worcester), to answer for the said offense, whereof the said defendant afterwards, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, had notice, and by reason of the premises the said defendant became liable to pay the said sum of 20*l*. to the said plaintiff, when he the said defendant should be thereto afterwards requested. And whereas also afterwards, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant had before that time caused and procured one A. S. who then and there was charged by the said defendant to have then lately defrauded the said defendant and other

people of money, wearing apparel, table linen, and other things of value, to a great amount, to be taken into custody, to be detained in custody by the said defendant to answer the said last-mentioned charge, he the said defendant afterwards, to-wit, on the same day and year aforesaid, at, etc. (venue) aforesaid, undertook, and to the said plaintiff faithfully promised to pay him the said sum of 20*l.* of lawful money of Great Britain, whenever afterwards he the said defendant should be thereunto requested. (Add counts for work and labor, and journeys, money paid, accounts stated, and breach.) 2 Chit. Pl. 257.

III. Complaint for Reward, Criminal Case.

“William M. Souger, Joseph A. DuBois and Samuel McDavidson, plaintiffs in the above entitled cause of action, complain of James F. Hayden, and say, that on the 15th day of September, 1874, at and in said (county), one Robert Hewey shot at and against said defendant, with a pistol loaded with powder and leaden shot, then and thereby wounding said James F. Hayden; that immediately after said shooting of defendant, by said Hewey, he, the said Hewey, fled and escaped from this county; that thereupon the said defendant offered and promised any person or persons a reward of one hundred dollars, whoever would apprehend and take into custody said Robert Hewey, so that he might be dealt with according to law; that plaintiffs, after hearing of the offer and promise of said reward by said defendant, and plaintiffs relying upon defendant's promise and offer of said reward, immediately procured horses and vehicles, and entered upon search of said Robert Hewey; that on the 17th day of September, 1874, in the county of Montgomery and State of Indiana, plaintiffs arrested and took into custody the said Robert Hewey, and brought him forthwith to this county, and guarded him before and after his preliminary examination before Franklin Dice, justice of the peace of said county, for said shooting; and after said examination, conducted and guarded said Hewey to the town of Covington and delivered him over in (to) the hands of the sheriff of said county, who lodged said Hewey in the jail of said county, where he remains

at the commencement of this action; that after the services performed by the plaintiffs, for defendant, as set forth above, the defendant refused and still refuses, although requested, to pay plaintiffs the one hundred dollars, as defendant promised and agreed to do Wherefore,” etc. *Hayden v. Souger*, 56 Ind. 43.

RIGHT, WRIT OF.

I. Praecipe for Writ, 1100

II. Writ of Right, 1100

III. Count on Seizin of Demandant's Father, 1101

IV. Count on Demandant's Own Seizin, 1101

I. Praecipe for Writ at Suit of Husband and Wife.

Berkshire, to-wit—Command C. D. (the tenant of the freehold), that justly and without delay, she render to A. B. and E. his wife (four messuages, four gardens, and four acres of land), with the appurtenances, in the parish of T. in Berkshire, which they claim to be the right and inheritance of the said E. Returnable on ——— (a general return day). 3 Chit. Pl. 1355.

II. Writ of Right.

William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland, king, defender of the faith, etc., to the sheriff of (Sussex), greeting:

Command C. D. that justly and without delay, he render unto A. B. (one piece of garden ground, containing in length 59 feet, and in breadth 27 feet, and one curtilage), with the appurtenances in the borough of H. which the said A. B. claims to be his right and inheritance, and to hold of us in chief, and whereof he complains that the said C. D. unjustly deforces him, and unless he shall do so; and if the said A. B. shall give you security to prosecute his claim, then summons, by good summoners, the said C. D. that he be before our justices at Westminster, on ——— (a general return day), to show wherefore he hath done it, and have you there the summoners and this writ. Witness ourselves at Westminster, on the ——— day of ———, in the ——— year of our reign. Because C. D. of N. chief lord of that fee, hath thereof remitted to us his court. 3 Chit. Pl. 1355.

III. Count on Seizin of Demandant's Father.

Sussex, to-wit. A. B., esquire, by ———, his attorney, demands against C. D. (one piece of garden ground, containing in length fifty-nine feet, and in breadth twenty-seven feet, and one curtilage), with the appurtenances, in the borough of ———, as his right and inheritance, by the writ of the lord the now king of right, and thereupon the said A. B. says, that E. F., esquire, deceased, the late father of the said A. B. was seized of the piece of garden ground and curtilage aforesaid, with the appurtenances, in his demesne as of fee and right, in the time of peace, in the time of the lord George the Third, late king of Great Britain, to-wit, within sixty years now last past, by taking the esplees thereof to the value, etc., and from the said E. F. the right descended to the said A. B. who now demands the same as son and heir of the said E. F., and that such is his right he offers, etc. 3 Chit. Pl. 1360.

IV. Count in Writ of Right on Demandant's Own Seisin.

———, to-wit. A. B., ——— by ———, his attorney, demands against C. D. (the premises, as in the writ) in the county of ———, which he the said A. B. claims to be the right and inheritance of him the said A. B. by writ of our said lord the king of right, and whereupon he says, that he himself was seized of the tenements aforesaid, with the appurtenances, in his demesne as of fee and right, in the time of peace, in the time of our present sovereign lord the king, to-wit, within thirty years last past, by taking the esplees thereof to the value, etc., and that such is his right he offers, etc. 3 Chit. Pl. 1359.

Note.—For forms of full procedure in writ of right, see 3 Chit. Pl. 1355-1387.

RIOT.

I. Indictment, Obstructing Justice, 1101

II. Indictment, Assault and Battery, 1101

III. Indictment, Pursuing for Purpose of Assaulting, 1102

IV. Indictment for Riot, Making Noise and Tumult, 1102

V. Indictment, Making Noise and Tumult and Destroying Property, 1102

VI. Indictment, Charivari, 1103

I. Indictment for Riot, Obstructing Justice.

"The defendant, together with divers others, to the number of ten, on, at, etc., with force and arms, did unlawfully, riotously, routously and in a violent and tumultuous manner assemble to disturb the peace of the state, and being so then and there assembled, did unlawfully, riotously, routously and in a violent and tumultuous manner then and there disturb, obstruct, hinder and break up a justice's court, then and there held before Joseph Barrett, one of the justices of the peace within and for the county of Somerset aforesaid, to the terror and disturbance of others of the good people of the said state, against the peace of the said state and contrary to the form of the statute in such case made and provided." State v. Boies, 34 Me. 235.

II. Indictment for Riot, With Assault and Beating (a).

"That Sampson L. Russell, of Portsmouth, in the county of Rockingham aforesaid, yeoman, Augustus A. Walden, of Portsmouth, in said county, yeoman, Richards Walden, of Portsmouth, in said county, yeoman, and Richard Smart, of Portsmouth, in said county, yeoman, together with divers other evil disposed persons to the number of ten, to the jurors aforesaid, as yet unknown, on the sixteenth day of July, in the year of our Lord one thousand eight hundred and seventy-three, at Portsmouth, in the county of Rockingham aforesaid, with force and arms, did unlawfully, riotously and routously assemble and gather together, to disturb the peace of said state; and, being then and there so assembled, and gathered together, in and upon one Frank B. Johnson, unlawfully, riotously and routously did make an assault, and him, the said Frank B. Johnson, did then and there unlawfully, riotously and routously beat, wound and ill-treat, so that his life was thereby greatly endangered, and other wrongs then and there unlawfully, riotously and routously did and committed; to the great damage of him the said Frank B. Johnson; to the

great terror of the people; contrary," etc. *State v. Russell*, 45 N. H. 83.

Indictment for Riot, With Assault and Beating (b).

That Luther Berritt, Sylvester Cross, True Spiller, Simeon Gordon and Chase Clifford, all of Bridgewater, in the county of Grafton, in this state, together with divers other evil disposed persons, to the number of ten, whose names are to the jurors unknown, on the fifth day of February, in the year of our Lord one thousand eight hundred and forty-five, at New Hampton, in the county of Belknap, with force and arms, did unlawfully, riotously, and routously assemble and gather together, to disturb the peace of the state; and being then and there so assembled and gathered together, upon the bodies of one John Shaw and Sylvester Shaw, then and there, in the peace of God and said state being, did make an assault, and them, the said John Shaw and Sylvester Shaw, did then and there unlawfully, riotously and routously beat, wound and ill-treat, so that their lives were greatly endangered, and other wrongs and injuries, then and there unlawfully, riotously and routously, to the said John Shaw and Sylvester Shaw, they, the said Luther Berritt, Sylvester Cross, True Spiller, Simeon Gordon and Chase Clifford did, contrary to the form of the statute, etc. *State v. Berritt*, 17 N. H. 268.

III. Indictment for Riot, Pursuing for Purpose of Assaulting.

"Unlawfully, violently, riotously and tumultuously assemble and gathered together to disturb the peace," etc., and being so then and there assembled together, did then and there make great noises, riot, tumult and disturbance, and then and there unlawfully, violently, riotously, tumultuously remained and continued together making such noise," etc., "for the space of a half hour or more, and being so assembled together for the purpose aforesaid, with sticks and stones, did follow and pursue one David Tallent for the purpose of assaulting and beating him the said David Tallent," etc., to his great terror, etc. *State v. York*, 70 N. C. 66.

IV. Indictment for Riot, Making Noise and Tumult.

Middlesex, to-wit: The jurors for our lady the queen upon their oath present, that J. S., late of the parish of

B., in the county of M., laborer, J. W., late of the same, carpenter, E. W., late of the same, yeoman, together with divers other evil-disposed persons, to the number of fifty and more, to the jurors aforesaid unknown, on the third day of August, in the fourth year of the reign of our sovereign lady Victoria, with force and arms, to-wit, with sticks, staves, and other offensive weapons, at the parish aforesaid, unlawfully, riotously, and routously did assemble and gather together to disturb the peace of our said lady the queen, and being so assembled and gathered together, armed as last aforesaid, did then and there unlawfully, riotously, and routously make a great noise, riot, and disturbance, and did then and there remain and continued armed as last aforesaid, making such noise, riot, and disturbance, for the space of an hour and more then next following, to the great disturbance and terror not only of the liege subjects of our said lady the queen there being and residing, but of all other liege subjects of our said lady the queen then passing and repassing in and along the queen's common highway there; in contempt of our said lady the queen and her laws, to the evil example of all others in the like case offending, and against the peace of our lady the queen, her crown and dignity. Archb. Cr. Pl. 592.

V. Indictment for Riot, Making Noise and Tumult and Destroying Property.

The first count charged that the defendants on, etc., at the county of Washington, did unlawfully, riotously, routously, and tumultuously assemble and gather together, to disturb the peace of the United States in the said county; and being so then and there assembled and met together, did then and there make great noises, riot, tumult, and disturbance; and then and there unlawfully, riotously, routously, and tumultuously surround and enter the house of Snow & Walker, and destroy their goods, etc., and remain and continue together making such noises, riots, tumults, and disturbances, for a long space of time, to-wit, for the space of five hours and more, then next following to the great terror and disturbance, not only of the good citizens of the United States in the said county, but of all other good citizens of the United States in the said county there

passing and repassing, in and along the public streets and common highways there, in contempt of the laws and against the peace and government of the United States. *United States v. Fenwick*, 4 Cranch. C. C. 675, 25 Fed. Cas. No. 15,086.

VI. Indictment for Riot, Charivari.

The indictment charged that, on the 30th day of October, 1879, in Grant county, Indiana, the appellees, John H. Brown, David Line and James Snyder, and four other named defendants, "together with other persons whose names are to the grand jurors unknown, did then and there unlawfully, riotously and in a violent and tumultuous manner, assemble and gather themselves together, with force and arms, to-wit, clubs, bells, trumpets, tin pans and cannon, and other weapons, and then and there unlawfully and riotously, and in a violent and tumultuous manner, made a great noise, tumult and disturbance, and then and there continued the same for half an hour or more." *State v. Brown*, 69 Ind. 95.

ROBBERY.

I. Indictments, 1103

- A. *On Highway*, 1103
- B. *In Dwelling House*, 1103
- C. *Assault With Intent*, 1103
- D. *Assault With Weapon*, 1104

CROSS-REFERENCES:

POST-OFFICE:

- Indictment for Robbing Mail;
- Indictment for Assisting in Robbing Mail.

RAILROADS:

- Indictment for Attempted Train Robbery.

I. Indictments.

A. Indictment for Robbery on Highway.

That A. O., late of, etc., on, etc., with force and arms, at, etc., in the king's highway, there, in and upon one A. J. in the peace of God and of our said lord the king then and there being, feloniously did make an assault, and him the said A. J. in bodily fear and danger of his life in the highway aforesaid, then and there feloniously did put, and one gold watch of the value of eighteen pounds of the goods and chattels of him the said A. J. from the person and against the will of the said A. J. in the highway afore-

said, then and there feloniously and violently did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity. 3 Chit. Cr. L. 806.

B. Indictment for Robbery in Dwelling House.

That E. L., late of, etc., and H. T., late of, etc., on, etc., with force and arms, at, etc., aforesaid, in the dwelling house of one J. J., there situate, in and upon A., the wife of the said J. J., in the peace of God and our said lord the king, then and there being, feloniously did make an assault, and her the said A., in bodily fear and danger of her life, in the said dwelling house, then and there feloniously did put, and one linen pocket, of the value of one penny, and three pieces of gold coin of the proper coin of this realm, called guineas, of the value of three pounds and three shillings, of the goods, chattels, and moneys of the said J. J. from the person and against the will of the said A. in the dwelling house aforesaid, then and there violently and feloniously did steal, take, and carry away, against the peace, etc. 3 Chit. Cr. L. 807.

C. Indictment, Assault With Intent To Rob (a).

Middlesex, to-wit: The jurors for our lady the queen upon their oath present, that J. S., late of the parish of B., in the county of M., laborer, on the third day of August, in the ninth year of the reign of our sovereign lady Victoria (or, in the year of our Lord ———), at the parish aforesaid, in the county aforesaid, with force and arms, in and upon one J. N., in the peace of God and of our lady the queen then and there being, feloniously did make an assault, with intent the moneys, goods, and chattels of the said J. N., from the person and against the will of him the said J. N., then and there feloniously and violently to steal, take, and carry away: against the form of the statute in such case made and provided, and against the peace of our lady the queen, her crown and dignity. This form of indictment was held good in *Reg. v. Husby, C. & Mac.* 390; it need not in terms charge an intent to rob the prosecutor. *Arabb Cr. L.* 262.

Indictment, Assault With Intent To Rob (b).

In and upon the said C. D., unlaw-

fully, maliciously, and feloniously, did make assault, and then and there with menaces, and by force, maliciously and feloniously, did demand of the said C. D. two guineas of the lawful gold coin of this realm, of the money of him the said C. D., and of and from the said C. D. with felonious intent, the said money of the said C. D. from the person and against the will of the said C. D. then and there feloniously and violently to steal, take and carry away 3 Chit. Cr. L. 809.

Indictment, Assault With Intent To Rob (c).

That W. F., late of, etc., after the first day of May, in the year of our Lord one thousand seven hundred and thirty-four, to-wit, on, etc., with force and arms, at, etc., in and upon one F. B. K., in the peace of God and our said lord the king then and there being, unlawfully, maliciously, and feloniously did make an assault, and that the said W. F. then and there with menaces and by force, maliciously and feloniously did demand of and from the said F. B. K. two guineas of the lawful gold coin of this realm, of the money of him the said F. B. K. with a felonious intent, the said money of the said F. B. K. from the person and against the will of the said F. B. K. then and there feloniously and violently to steal, take, and carry away, against the form of the statute, etc., and against the peace, etc. 3 Chit. Cr. L. 807, 808.

D. Indictment, Assault With Weapon With Intent To Rob.

With force and arms, at, etc., in and upon C. D. in the peace of God and of our said lord the king, then and there being, unlawfully, maliciously, and feloniously, did make an assault with a certain offensive weapon, to-wit, a pistol, which he the said A. B. in his right hand then and there had and held, with a felonious intent, the moneys of the said C. D. from the person and against the will of the said C. D. feloniously and violently to steal, take, and carry away, against the form, etc., and against the peace, etc. 3 Chit. Cr. L. 809.

SABBATH.—See **SUNDAY AND HOLIDAYS.**

SALE OF LANDS OF MINORS.—See **GUARDIAN AND WARD.**

SALES.

I. Declaration in Assumpsit, With Money Counts, 1105

II. Complaints, 1107

- A. *Against Seller for Not Delivering, 1107*
- B. *Against Seller of Stock for Not Delivering, 1107*
- C. *Against Buyer for Refusing Goods, 1108*
- D. *Against Buyer, Contract Made by Broker, 1108*
- E. *On Contract to Redeliver or Pay, 1108*
- F. *For Deficiency After Resale, 1108*
- G. *Sale and Delivery, 1109*
- H. *Sale and Delivery on Account, 1109*
- I. *Sale and Delivery, Price Agreed on, 1109*
- J. *Sale, Delivery to Third Person, 1109*
- K. *Anticipating Defense of Payment, 1109*
- L. *Anticipating Defense of Unexpired Credit, 1109*
- M. *For Necessities to Defendant's Wife, 1109*
- N. *Against Fraudulent Buyer Seeking Injunction, 1109*

III. Answers, 1110

- A. *Denial of Sale, 1110*
- B. *Denial That Credit Has Expired, 1110*
- C. *Agreed To Take Note, 1110*
- D. *Denial of Plaintiff's Title, 1110*
- E. *Alleging Breach of Quality, 1110*
- F. *Alleging Breach as to Delivery, 1110*
- G. *Not Necessaries, 1110*
- H. *Denial of Necessaries, 1110*

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Declaration for Not Rendering Just Account of Sale of Goods.

ASSIGNMENTS:

Complaint by Assignee for Price of Stock and Fixtures of Store and Good Will Agreed To Be Paid in Instalments.

ASSUMPSIT:

Declaration in Assumpsit for Goods Sold and Delivered;

Declaration, Common Counts for Goods Sold, Work, Labor and Materials, With Money Counts

DECLARATION AND COMPLAINT:

Complaint Against Buyer for Not Delivering Note for Goods.

FRAUD AND DECEIT:

Declaration for False Warranty of Horse;

Declaration for False Warranty of Cable;

Declaration for Deceit in Selling Smaller Quantity of Coal Than Pretended;

Declaration for Misrepresentation as to Quantity of Business;

Complaint for Fraudulently Delivering Smaller Quantity Than Agreed for;

Complaint Against Seller of Chattels for Fraudulently Representing Them To Be His Property;

Complaint for Fraudulently Obtaining Goods on Credit;

Complaint for Fraudulently Obtaining Credit for Another.

FRAUDS, STATUTE OF:

Complaint, Allegation of Part Payment Where No Memorandum;

Answer, Sale of Personal Property.

GUARANTY:

Complaint on Agreement To Be Answerable for Goods Sold to Third Person.

HUSBAND AND WIFE:

Complaint Against Husband and Wife for Goods Sold for Her Separate Estate.

SPECIFIC PERFORMANCE:

Decree on Bill by Vendor To Enforce Contract for Sale.

TROVER AND CONVERSION:

Complaint by Seller Against Fraudulent Buyer of Goods for Damages for Conversion.

VENDOR AND PURCHASER:

Declaration, Common Count for Freehold Sold;

Declaration, Common Count for Leasehold Sold;

Declaration Against Vendor for Not Making Good Title;

Complaint for Consideration Money of a Conveyance;

Complaint for Repayment of Deposit on Contract for Purchase of Real Estate, Unfulfilled;

Complaint for Breach of Contract, Purchaser Against Vendor;

Complaint for Not Conveying and for Redelivery of Securities;

Complaint, Averment of Defendant's Rescission as Excuse for Plaintiff's Non-performance;

Complaint on Land Contract for Not Purchasing;

Complaint Against Purchaser for Deficiency on Resale;

Complaint, Averment of False Representations by Defendant Which Prevented Plaintiff From Fulfilling;

Complaint on Grantee's Covenant To Build;

Complaint on Covenant Against Nuisances, Deed Executed Only by Grantor;

Complaint on Covenant To Maintain Fence;

Complaint by Vendor Against Executor.

WARRANTY:

Declaration on Warranty of Horse; Declaration on False Warranty of Horse;

Complaint on Warranty of Soundness of Horse;

Complaint on Warranty on Genuineness of Note;

Complaint on Warranty of Amount Due on Judgment Assigned;

Complaint for Breach of Contract on Warranty of Title of Chattels Sold;

Answer, Breach of Warranty in Sale;

Answer, Denial of Warranty;

Answer, Denial of Breach.

I. Declaration in Assumpsit, Goods Sold, With Money Counts.

For that whereas the said defendant, heretofore, to-wit, on the — day of —, in the year of our Lord one thousand eight hundred and —, at —, to-wit, at the (city and in the) county of —, aforesaid, was indebted to the said plaintiff in the sum of — dollars, lawful money of the United States of America, for divers goods, wares and merchandise, by the said plaintiff, before that time sold and delivered to the said defendant, and at the special instance and request of the said defendant: And being so indebted, by the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year last aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of (one thousand) dollars, when he the said defendant should be thereunto afterwards requested.

(Quantum valebant for the same.)

And whereas also the defendant, afterwards, to-wit, on the same day and year (last aforesaid), and at the place aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time sold and delivered to the said defendant divers other goods, wares and merchandise of him the said plaintiff, the said defendant undertook, and then and there faithfully promised the said plaintiff, to pay him so much money as the said last mentioned goods, wares and merchandise, at the time of the said sale and delivery thereof, were reasonably worth when the said defendant should be thereunto afterwards requested. And the said plaintiff avers that the said last mentioned goods, wares and merchandise, at the time of the sale and delivery thereof, were reasonably worth the further sum of _____ dollars, of like lawful money as aforesaid, to-wit, at the place aforesaid, whereof the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, had notice.

(Money Counts.)

(Indebitatus assumpsit for money lent and advanced.) And whereas also the said defendant afterwards, to-wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiff in the sum of _____ dollars, like lawful money as aforesaid, for so much money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant. And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

(The like for money paid, etc.) And whereas also the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiff in the further sum of _____ dollars, of like lawful money as aforesaid, for so much money before that time paid, laid out, and expended by

the said plaintiff to and for the use of the said defendant, and at the like special instance and request of the said defendant. And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

(The like for money had and received.) And whereas also the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiff in the further sum of _____ dollars, of like lawful money as aforesaid, for so much money before that time had and received by the said defendant, to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

(Insimul computassent.) And whereas also the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of _____ dollars, of like lawful money as aforesaid. And being so found in arrear, and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when he the said

defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often afterwards requested so to do) hath not as yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff, the said defendant hath hitherto altogether refused, and still doth refuse. To the damage of the said plaintiff of _____ dollars, and therefore the said plaintiff brings suit, etc.

E. F., attorney for plaintiff.

Burr. App. 240, §503; 2 Chit. Pl. 37, 115.

II. Complaints.

A. Complaint Against Seller for Not Delivering.

I. That on the _____ day of _____, 18—, at _____, the plaintiff and the defendant entered into an agreement (in writing, which was subscribed by the defendant, or by the agent of the defendant duly authorized thereto, and thereby it was mutually agreed between them as follows): that the defendant should sell and deliver to the plaintiff at _____, and on or before the _____ day of _____, 18— (or on demand, or within a reasonable time, or otherwise as the case was), fifty barrels of flour, and that the plaintiff should pay the defendant therefor, upon the delivery of said flour, at the rate of _____ dollars for each barrel.

(Where neither time nor place of delivery were fixed):

II. That on the _____ day of _____, 18—, at _____, the plaintiff was ready and willing, and duly offered to receive and pay for said flour, and otherwise has duly performed all the conditions thereof on his part.

(Where both time and place were fixed):

II. That the plaintiff was ready at the time and place appointed to receive said flour, and to pay for the same according to the agreement; and otherwise has duly performed all the conditions thereof on his part.

(Where the particular time of delivery was not appointed):

II. That on the _____ day of _____, 18—, at the place appointed,

the plaintiff was ready to receive said flour, and pay for the same according to the agreement, of which the defendant had due notice; and the plaintiff otherwise has duly performed all the conditions thereof on his part.

(Where tender and demand are necessary to be proved under the agreement):

II. That on the _____ day of _____, 18—, at _____, the plaintiff was ready and duly offered to the defendant to receive and pay for said flour pursuant to the agreement, and requested the defendant to deliver the same; and otherwise has duly performed all the conditions thereof on his part.

III. That the defendant refused to deliver it, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 371.

B. Complaint Against Seller of Stock for Not Delivering.

I. That on the _____ day of _____, 18—, at _____, this plaintiff and the defendant entered into an agreement (in writing, subscribed by the defendant, or by the agent of the defendant, duly authorized thereto, whereby it was mutually agreed between them) that the defendant should sell and deliver to the plaintiff at such time, within _____ days thereafter, as the plaintiff should elect (or that the defendant then sold and would at such time, within _____ days thereafter as the plaintiff should elect, deliver to him) _____ shares of the capital stock of the _____ company, and that the plaintiff should pay him therefor _____ dollars.

II. That the defendant at the time of making such contract was in the actual possession of the certificate of said _____ shares of stock (or was entitled in his own right to sell said _____ shares of stock, or was duly authorized to sell said shares of stock by some person to this plaintiff unknown, who was entitled to the same in his own right).

III. That the plaintiff duly performed all the conditions thereof on his part.

(Or, III. That on the _____ day of _____, 18—, at _____, this plaintiff duly tendered to the defendant said sum of _____ dollars, and demanded of the defendant that he

deliver said _____ shares of stock to the plaintiff.)

IV. That the defendant refused to deliver the same; to the damage of the plaintiff _____ dollars. 1 Abb. Forms 373.

C. Complaint Against Buyer for Refusing To Receive Goods.

I. That on the _____ day of _____, 18—, at _____, the plaintiff and the defendant entered into an agreement in writing (subscribed by the defendant, or by the agent of the defendant, duly authorized thereto), of which the following is a copy (copy of the contract, or allege its effect, as in II, A).

II. That the plaintiff duly performed all the conditions of said contract on his part, and was, on the _____ day of _____, 18— (the day on which delivery was to be made), ready and willing to deliver the (goods) therein mentioned, and on said day, at _____, duly tendered the same to the defendant.

III. That the defendant refused to accept said goods, and to pay for them pursuant to his agreement, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 374.

D. Complaint Against Buyer, Contract Made by Broker.

I. That on the _____ day of _____, 18—, the plaintiffs and the defendants entered into an agreement in writing, by the hand of M. N., a broker duly authorized to make the same, both on behalf of the plaintiffs and of the defendants, of which the following is a copy (copy of bought and sold note).

II. That at the time of making said contract, the defendants paid to the plaintiffs the sum of _____ dollars mentioned therein.

III. That the plaintiffs were, at all times within said _____ days, ready and willing to deliver the (goods) therein mentioned to the defendants, and receive the balance of the price therefor, and in all respects to comply with the terms of said contract on their part, and that within the _____ days mentioned in said contract, to-wit, on the _____ day of _____, 18—, at _____, they duly tendered the said (goods) to the defendants, and demanded payment of the balance of the price thereof.

IV. That the defendants refused to receive said (goods), or pay the balance of the price therefor, to the damage of the plaintiffs _____ dollars. 1 Abb. Forms 375.

E. Complaint on Contract To Redeliver Goods, or To Pay for Them in Reasonable Time.

I. That on the _____ day of _____, 18—, at _____, the plaintiff, at the request of the defendant, delivered to him (briefly describe the goods), of the plaintiff, of the value of _____ dollars, upon the condition and consideration that the defendant would purchase the same for _____ dollars (or at a reasonable price), or return the same to the plaintiff within a reasonable time, which the defendant then and there undertook to do.

II. That the plaintiff duly performed all the conditions of said agreement on his part.

III. That although a reasonable time for the defendant to purchase and pay for said goods, or to return the same to the plaintiff, had elapsed before the commencement of this action, he has not done so, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 376.

F. Complaint Against Buyer for Deficiency, After Resale.

I. That on the _____ day of _____, 18—, at _____, the plaintiff sold to the defendant, by auction (briefly designate the goods), for the sum of _____ dollars, subject to the condition that all goods not paid for, and removed by the buyer within _____ days after the sale, should be resold, by auction, on his account, of which condition the defendant had notice.

II. That the plaintiff was ready and willing to deliver the same to the defendant, on the said day, and for _____ days thereafter, of which the defendant had notice, and the plaintiff has otherwise duly performed all the conditions of said sale, on his part.

III. That more than _____ days after the sale, and on or about the _____ day of _____, 18—, at _____, the defendant not having taken away said goods, nor paid therefor, the plaintiff resold the same by public auction for account of the defendant for _____ dollars, pursuant

to said condition, the expenses of which resale amounted to _____ dollars.

IV. That no part of the deficiency of _____ dollars, thus arising, has been paid. 1 Abb. Forms 376.

G. Complaint, Sale and Delivery.

I. That on the _____ day of _____, 18—, at _____, the plaintiff sold and delivered to the defendant * (here designate the articles, e. g., crockery, gas fixtures, and glassware).

II. That the same were reasonably worth _____ dollars.

III. That no part of the same has been paid (except, etc.). 1 Abb. Forms 187.

H. Complaint, Sale and Delivery Upon an Account.

I. That on the _____ day of _____, 18— (or between two days, naming them), the defendant was indebted to the plaintiff in the sum of _____ dollars, on an account for goods sold and delivered by the plaintiff to the defendant at _____.

II. That the same became payable on the _____ day of _____, but no part thereof has been paid (except the sum of _____). 1 Abb. Forms 188.

I. Complaint, Sale and Delivery Where Price Was Agreed On.

I. (As in preceding form.)

II. That the defendant then promised to pay therefor the sum of _____ dollars (if a credit was given, add: on the _____ day of _____, 18—).

III. That on the _____ day of _____, the plaintiff demanded of the defendant payment of said sum.

IV. That no part thereof has been paid (except the sum of _____). 1 Abb. Forms 188.

J. Complaint, Sale to Defendant, and Delivery to Third Person.

That on the _____ day of _____, 18—, at _____, the plaintiff bargained and sold to the defendant, and delivered to one M. N., at the request of the defendant (continue as in II, G, from the *). 1 Abb. Forms 189.

K. Complaint, Sale and Delivery, Anticipating and Avoiding Defense of Payment.

(Allege sale as in preceding forms.)

III. That on the _____ day of _____, 18—, at _____, the defendant passed to this plaintiff, as in pay-

ment of his indebtedness for said goods, the check of one M. N. upon the bank of O. P., which check the defendant represented to this plaintiff to be good; but that on the contrary, said M. N. then had no funds at the said bank, and his said check was worthless, as the defendant then well knew (or was worthless, and although the same was duly presented for payment on the _____ day of _____, 18—, it has never been paid, of which the defendant had due notice). 1 Abb. Forms 189.

L. Complaint, Sale and Delivery, Anticipating and Avoiding Defense of an Unexpired Credit.

I. (Allege sale on credit, as in preceding forms.)

II. That in order to induce the plaintiff to allow him credit upon such sale, the defendant then falsely and fraudulently represented himself to the plaintiff to be worth a large sum, to-wit, _____, over and above all his just debts and liabilities; whereas, in truth, he was insolvent; and that the only credit given by the plaintiff to the defendant was solely induced by said false and fraudulent representations, and solely on the faith thereof. 1 Abb. Forms 191.

M. Complaint for Necessaries Furnished to Defendant's Wife or Children.

I. That between the _____ day of _____, 18—, and the _____ day of _____, 18—, at _____, the plaintiff found and provided for one Y. Z., then the wife (or infant son, or infant daughter) of the defendant, at the request of said Y. Z., necessities for her use, to-wit, _____, to the value of _____ dollars.

II. That said sum thereupon (or on the _____ day of _____, 18—) became due therefor from the defendant to this plaintiff, but no part thereof has been paid. 1 Abb. Forms 193.

N. Complaint Against Fraudulent Buyer, Seeking Injunctive Restraining Sale Pending Suit.

(Allege sale, etc., as in II, G, or II, I.)

II. That in order to induce the plaintiff to make said sale and delivery, and with intent to defraud him of said goods, the defendant then falsely and fraudulently represented himself to the plaintiff to be worth a large sum,

to wit, ———, over and above all his just debts and liabilities, whereas in truth he was insolvent; and that induced by said false and fraudulent representations, and solely on the faith thereof, the plaintiff made said sale and delivery.

III. That thereafter, and with such intent, said defendant removed said goods to ———, and is about to sell and dispose of the same.

IV. That the defendant is insolvent and, as the plaintiff is informed and believes, a judgment against him will be unavailing and worthless, if he is suffered to sell and dispose of said goods.

Wherefore the plaintiff demands judgment against the defendant for the sum of ———, with interest thereon from the said ——— day of ———, 18—, and that the defendant and his agents be enjoined from selling, disposing of, removing, or in any wise interfering with said goods, or any of them, until such judgment be fully satisfied. 1 Abb. Forms 194.

III. Answers.

A. Answer, Denial of Sale.

That he did not sell the ——— to the plaintiff alleged. 2 Abb. Forms 115.

B. Answer, Denial That Credit Has Expired.

That said sale was upon a credit of ——— months from the ——— day of ———, 18—, which had not expired at the commencement of this action. 2 Abb. Forms 63.

C. Answer, Plaintiff Agreed To Take Note in Part Payment.

I. That the said goods were sold and delivered to the said defendant by the said plaintiff on an express agreement, by and between them, that the said plaintiff should accept in part payment therefor, to the extent of ——— dollars, a promissory note for that sum drawn by this defendant (or by one M. N.), and dated on the ——— day of ———, 18—, and payable on the ——— day of ———, 18— (with an approved indorser); and the residue, ——— dollars, in cash.

II. That on the ——— day of ———, 18—, and before this action, the defendant tendered to the plaintiff such a note as above described (in-

dorsed by one O. P., who was then, and still is, a merchant at ———, in good credit and ability, and an approved indorser), and is still ready and willing to deliver the same.

III. That the defendant refused to receive the same.

IV. As to the residue, ——— dollars, the defendant says (allege payment or tender). 2 Abb. Forms 63.

D. Answer, Denial of Plaintiff's Title to Goods When Sold.

That no part of the goods, wares and merchandise in the complaint mentioned was the property of the plaintiffs when sold to this defendant; but the same then were the property of one M. N., who, and not the plaintiff, sold the same. 2 Abb. Forms 63.

E. Answer Alleging Breach as to Quality.

I. That it was a part of the agreement referred to in the complaint that the (furniture therein mentioned should be made of rosewood).

II. That the said (furniture) was not (made of rosewood).

III. That therefore the defendant, on the ——— day of ———, 18—, and as soon as he discovered the defect, returned the same to the plaintiff (or duly tendered the same back to the plaintiff, and has ever since been, and still is, willing to return them). 2 Abb. Forms 106.

F. Answer, Sales of Personal Property, Alleging Breach as to Delivery.

I. That it was a part of the agreement referred to in the complaint that the plaintiff should deliver the goods sold at ———.

II. That the said goods have not been so delivered, and have not been accepted by defendant. 2 Abb. Forms 106.

G. Answer, Not Necessaries.

That the articles mentioned therein were not furnished to his wife (or child) with the defendant's (knowledge or) consent; and that the same were not necessary for her (or him). 2 Abb. Forms 62.

H. Answer, Denial of Necessaries.

That he always furnished his wife (or child) with all such things as were necessary for her (or him). 2 Abb. Forms 62.

SALVAGE.**CROSS-REFERENCE:****ADMIRALTY:**

Libel by Owner and Master of Saving Vessel for Themselves and Others, Against Saved Vessel and Cargo for Salvage;

Libel In Personam Against Owner of Ship for Salvage;

Claim by Foreign Consul for Unknown Owners in Case of Salvage.

SCHOOLS AND SCHOOL DISTRICTS.**CROSS-REFERENCE:****MANDAMUS:**

Alternative Writ of Mandamus Directing Expenditure of School Money.

Complaint by Teacher To Recover for Services.

"The plaintiff complains of the defendant, and says, that said defendant is a school corporation, duly organized under and pursuant to the laws of the State of Indiana, by the corporate name of The Town of Noblesville. And she further says, that, on the 22d day of December, 1871, at said town of Noblesville, she was employed by Leonard Wild, Eb. M. Morrison and John Stevenson, who were then and there acting as, and who then and there composed, the board of school trustees for said corporation. Which said employment, she avers, was then and there made with her by one James Baldwin, who then and there was the superintendent of the public schools of said corporation, and who then and there was acting as, and was, the agent of said corporation, for the purpose of employing this plaintiff. And the plaintiff avers, that by said Baldwin, the agent of said trustee as aforesaid, she was employed to teach in one of the grades of the school of said town, known as the high school of said town, for the sum of three dollars and twenty-five cents per day; that her agreement and contract with said James Baldwin, as agent of said board of school trustees, was to teach said school from date last aforesaid, to-wit, the 22d day of December, 1871, until the end of the school year in which they were then engaged, which, as she was informed by said Baldwin, would end, and which, in fact, did end, on

the 27th day of June, 1872; and that the employment of the plaintiff by said Baldwin was, at the time, ratified and confirmed by said board of trustees.

"And the plaintiff avers, that, at the time she was employed by the said board of school trustees of said town as aforesaid, she was, by profession and occupation, a school-teacher, and had, at the time, the necessary license and certificate from the examiner of said Hamilton county, Indiana; that, in pursuance of said agreement and contract so made with said board of school trustees as aforesaid, she immediately entered upon her duties as teacher in said high school, in which position she continued until the 25th day of March, 1872, when she was informed by said board of trustees that her services were not longer wanted in said high school, and that she would not be permitted to teach in said school any further. And she avers, that said board of trustees brought against her no charge or accusation of any failure or wrong upon her part, but, without any cause whatever, unlawfully violated said contract and agreement, as aforesaid.

"And she further avers, that the date upon which she was dismissed from said school, as aforesaid, was at a season of the year when she could not obtain employment in her said profession elsewhere, and that she was compelled to, and did, lose from her said business all of the time from the date of her discharge as aforesaid, until the end of said school year, as aforesaid; and that, notwithstanding the foregoing contract of said board of trustees in dismissing her, as aforesaid, she continued to hold herself in readiness to teach, as directed by the board of school trustees, so far as they were in consonance with the terms of her said contract, and was ever in such readiness until the expiration of the school year for which she was employed; that she has received for her services the sum of one hundred and fifty dollars, leaving due and unpaid the sum of two hundred dollars, with the interest thereon since the date of said term as aforesaid, which sum she has demanded of the defendant, and which sum defendant refuses to pay." Town of Noblesville v. McFarland, 57 Ind. 335.

SCIRE FACIAS.

I. Writs, 1112

- A. *To Revive Judgment in Assumpsit*, 1112
- B. *To Revive Judgment in Debt*, 1112
- C. *Revival Against Terre Tenants*, 1113
- D. *To Revive Judgment in Covenant*, 1113
- E. *In Replevin*, 1113
- F. *In Trespass*, 1113
- G. *After Former Revival*, 1113
- H. *By Executor After Interlocutory Judgment*, 1114
- I. *By Executor After Final Judgment*, 1114
- J. *By Administrator*, 1115
- K. *To Revive Judgment in Case*, 1115
- L. *To Have Execution on Future Breaches*, 1115

II. Returns, 1116

- A. *Served on Defendant*, 1116
- B. *Cannot Be Found*, 1116

III. Notice To Plead, 1116

IV. Order for Default, 1116

V. Plea, 1117

VI. Judgment Records, 1117

- A. *On Default*, 1117
- B. *On Demurrer*, 1117
- C. *On an Issue of Fact*, 1118

CROSS-REFERENCES:

JUDGMENTS:

Judgment in Action in Nature of Scire Facias.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

- Fieri Facias After Scire Facias by Default;
- Fieri Facias on Scire Facias;
- Capias Ad Satisfaciendum on Scire Facias on Judgment in Debt.

RECOGNIZANCES:

Writ of Scire Facias, Revival Against Special Bail.

TIME TO PLEAD:

Notice To Plea to Scire Facias.

I. Writs.

- A. *Scire Facias To Revive a Judgment in Assumpsit*.

(The people of the) state of _____, to the sheriff of the (city and) county of _____, greeting:

Whereas A. B., lately in our _____ court of _____, before our justices thereof, at the _____ in the city of _____, by the judgment of the said court, recovered against C. D.,

_____ dollars,* for his damages which he had sustained as well on occasion of the not performing certain promises and undertakings then lately made by the said C. D., to the said A. B., as for his costs and charges, by him about his suit in that behalf expended,* whereof the said C. D. is convicted, as appears to us of record: And now on the behalf of the said A. B., in our said court, before our aforesaid justices thereof, we have been informed that although judgment be thereupon given, yet execution of the damages aforesaid still remains to be made to him; wherefore the said A. B. has besought us to provide him a proper remedy in this behalf; and we being willing that those things which are just and right should have a due execution, do therefore command you, that you make known to (or summon) the said C. D., that he be before our said justices of our said _____ court of _____, at the _____ in the city of _____, on the _____ Monday of _____, next, to show, if he has or knows of any cause, why the said A. B. ought not to have his execution against him, of the damages aforesaid, according to the force, form and effect of the said recovery, if he shall think it expedient for him so to do; and further to do and receive what our said court, before our said (justices) thereof, shall then and there consider of him, in this behalf; and have you then and there this writ. Witness, _____, esquire, our chief justice, at the _____ in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred _____.

_____, clerks.

E. F., attorney.

Burr. App. 470, §957; Till. Forms 39.

B. *Scire Facias To Revive Judgment in Debt*.

(The people of) the state of _____, to the sheriff of the county of _____, greeting:

Whereas A. B., lately in our _____ court of _____, before our (justices) thereof, at the _____ in the city of _____, by the judgment of the same court, recovered against C. D., a certain debt of _____ dollars, and also _____ dollars, which in the same court were adjudged to the said A. B., for his damages which he had sustained, as well by reason of detaining

the said debt as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, as appears to us of record; and now, on behalf of the said A. B., in our said court, before our aforesaid (justices) thereof, we have been informed that although judgment be thereupon given, yet execution as well of the debt aforesaid as of the damages aforesaid still remains to be made to him: Wherefore the said A. B. has besought us, etc. (as in last form to the end, substituting debt and damages for damages). Burr. App. 470, §958.

C. Revival of Judgment Against Terre Tenants.
(The people), etc., to the sheriff, etc., greeting:

Whereas A. B., lately in our _____ court of _____, before our (justices) thereof, at, etc., by the judgment of the same court recovered against C. D., etc. (here state the recovery): Whereof the said C. D. was convicted, as appears to us of record: And although judgment be thereupon given, yet execution of the damages (or debt and damages) aforesaid still remains to be made to the said A. B.; and the said C. D. is since dead, as by the information of the said A. B. in our said court, before our said justices thereof, we have been given to understand: Wherefore the said A. B. hath humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done, command you that you summon the tenants of all the lands and tenements in your bailiwick, to-wit (here describe by boundaries, etc., the land you mean to charge), of which the said C. D., or any person or persons in trust for him, was or were seized on the _____ day of _____, in the year, etc., on which day the judgment aforesaid was given, or at any time after, that they be before our said (justices) of our _____ court of _____ aforesaid, at, etc., on, etc., to show, if they have or know of anything to say for themselves, why the damages (or debt and damages) aforesaid ought not to be made of those lands and tenements, and rendered to the said A. B., according to the force, form and effect of the said recovery, if it shall seem expedient for him so to do; and further to do and receive,

etc. (as in ordinary forms). Burr. App. 472, §959a.

D. Scire Facias To Revive Judgment in Covenant.

(As in I, A, substituting for the part between the asterisks, the following): for his damages which he had sustained as well on occasion of the breach of a certain covenant made between the said A. B. and the said C. D., as for his costs and charges by him about his suit in that behalf expended. Burr. App. 472, §960.

E. Scire Facias To Revive a Judgment in Replevin.

(As in I, A, substituting for the part between the asterisks, the following): for his damages which he had sustained, as well on occasion of the taking (and unjustly detaining) of the (cattle), goods and chattels of the said A. B., as for his costs and charges by him about his suit in that behalf expended. Burr. App. 473, §961.

F. Scire Facias in Trespass.

(As in I, A, substituting for the part between the asterisks, the following): for his damages which he had sustained, as well on occasion of certain trespasses then lately committed by the said C. D., as for his costs and charges by him about his suit in that behalf expended. Burr. App. 473, §962.

G. Scire Facias After Former Revival.

(The people of) the state of New York, to the sheriff of the _____ county of _____, greeting:

Whereas A. B., lately in our _____ court of _____, before our (justices) thereof, at the _____ in the city of _____, by the judgment of the same court, recovered, etc. (stating the judgment), whereof the said C. D. is convicted, as appears to us of record; and whereupon it was afterwards considered in our said court, before our said justices thereof, that the said A. B. should have his execution against the said C. D., of the damages (or debt and damages) aforesaid, according to the force, form and effect of the said recovery, as also appears to us of record; And now, on the behalf of the said A. B. in our said court, before our aforesaid justices thereof, we have been informed that although judgment be thereupon given, and execution awarded in form aforesaid, yet execution of the damages (or debt and damages)

aforesaid still remains to be made to him; wherefore the said A. B. hath besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done, command you, that you summon the said C. D., that he be before our said (justices) of our _____ court of _____ aforesaid, at the _____ in the _____ of _____, on the _____ Monday of _____ next, to show if he has or knows of anything to say for himself, why the said A. B. ought not to have his execution against him of the damages (or debt and damages) aforesaid, according to the force, form and effect of the said recovery and award of execution, if it shall seem expedient for him so to do; and further to do and receive, etc. (as in I, A, to the end). Burr. App. 474, §965; Till. Forms 41.

II. Scire Facias by Executor of Sole Plaintiff After Interlocutory Judgment and Before Inquiry.

(The people of) the state of _____, to the sheriff of the _____ county of _____, greeting:

Whereas A. B., lately in our _____ court of _____, before our (justices) thereof, at the _____ in the city of _____, to-wit, in (January term last past), (or in the year of our Lord one thousand eight hundred and _____), impeaded C. D. (being in custody, etc.) of a plea of trespass on the case, etc. (or as the action is), declaring in the same plea against him, for that whereas, etc. (here recite the declaration), to the damage of the said A. B. of _____ dollars, as he said, and therefore he brought his suit, etc.; and such proceedings were thereupon had in our said court, before our said (justices) of our _____ court of _____ aforesaid, that afterwards, to-wit, in that same term (or in _____ term) last past (or in the year aforesaid), it was considered by our said court before our aforesaid justices thereof, that the said A. B. ought to recover his damages, on the occasion of the premises; and afterwards, and before the issuing of a writ of inquiry for assessing the said damages, the said A. B. died, having first duly made and published his last will and testament in writing, and thereby constituted and appointed E. F. executor thereof; after whose death the said E. F. duly proved said last will and testament of the said

A. B., and took upon himself the execution thereof, as by the information of the said E. F., executor as aforesaid, in our said court, before our justices thereof, we have been given to understand (and whereas by the letters testamentary of the said A. B., deceased, by the said E. F., brought into the said court, it fully appears to the said court that the said E. F. is executor of the said A. B., deceased, and hath the execution thereof): Wherefore the said E. F., executor as aforesaid, hath humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done, command you that you summon the said C. D., that he be before our (justices) of our _____ court of _____ aforesaid, at the _____ in the city of _____, on the _____ Monday of _____ next, to show if he has or knows of anything to say for himself, why the damages in the said action should not be assessed and recovered by the said E. F., executor as aforesaid, according to the form of the statute in such case made and provided, if it shall seem expedient for him so to do; and further to receive what our said court, before our said (justices) thereof, shall then and there consider of him in this behalf. And have you then and there this writ. Witness, etc. (teste and signature as in I, A). Burr. App. 475, §967; Till. Forms 42.

I. Scire Facias by Executor of Sole Plaintiff After Final Judgment.

(The people of) the state of _____, to the sheriff of the county of _____, greeting:

Whereas A. B., lately in our _____ court of _____, before our (justices) thereof, by the judgment of the same court, recovered against C. D. _____ dollars, for his damages which he had sustained, as well on occasion of the non-performance of certain promises and undertakings then lately made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. is convicted, as appears to us of record,* and afterwards, to-wit, on the _____ day of _____, in the year one thousand eight hundred and _____, at (the place of the death), the said A. B. died, having first duly made and published his last

will and testament in writing, and thereby constituted and appointed E. F. executor thereof; after whose death the said E. F. duly proved the said last will and testament of the said A. B., and took upon himself the execution thereof; as by the information of the said E. F., in our said _____ court, before our (justices) thereof, we have been given to understand: (And whereas, by the letters testamentary of the said A. B., deceased, by the said E. F. brought into the said court, it fully appears to the said court that the said E. F. is executor of the said last will and testament of the said A. B., deceased, and hath the execution thereof). And now, on the behalf of the said E. F., executor as aforesaid, in our said supreme court, before our said (justices) thereof, we have been informed that although judgment be thereupon given, yet execution of the damages aforesaid still remains to be made to him: Wherefore the said E. F., executor as aforesaid, hath besought us to provide him a proper remedy in this behalf: And we being willing that those things which are just and right should have a due execution, do therefore command you that you summon the said C. D., that he be before our said (justices) of our said _____ court of _____, at the _____ in the city of _____, on the _____ Monday of _____ next, to show, if he has or knows of any cause why the said E. F., executor as aforesaid, ought not to have his execution against him of the damages aforesaid, according to the force, form and effect of the said recovery, if he shall think it expedient for him so to do; and further to do and receive what our said court, for our said justices thereof, shall then and there consider of him in this behalf; and have you then there this writ. Witness, _____, esquire, our (chief justice), at the _____ in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred _____, _____, clerks.

I. J., attorney.

Burr. App. 476, §968; Till. Forms 46.

J. *Scire Facias by Administrator After Final Judgment in Assumpsit.*

(The people of) the state of _____,

to the sheriff of the county of _____, greeting:

Whereas A. B., lately in our _____ court of _____, before our (justices) thereof, by the judgment of the same court, recovered against C. D. _____ dollars, for his damages which he had sustained, as well on occasion of the non-performance of certain promises and undertakings then lately made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. is convicted, as appears to us of record; and afterwards, to-wit, on the _____ day of _____, etc., at, etc., the said A. B. died intestate; after whose death administration of all and singular the goods, chattels and credits, which were of the said A. B. at the time of his death, in due form of law was granted to E. F., as by the information of the said E. F. in our said _____ court, before our (justices) thereof, we have been given to understand (and whereas by the letters of administration of all and singular the goods, chattels and credits which were of the said A. B. at the time of his death, granted to the said E. F. on the _____ day of _____ by R. S. (surrogate) of the county of _____, and by the said E. F. brought into the said court, it fully appears to the said court that the said E. F. is administrator as aforesaid): And now, on the behalf of the said E. F., administrator as aforesaid, in our said _____ court, before our aforesaid (justices) thereof, we have been informed that although judgment, etc. (as in last form to the end, substituting "administrator" for "executor"). Burr. App. 477, §969.

K. *Scire Facias To Remove Judgment in Case.*

(As in I. A, substituting for the part between the asterisks, the following): for his damages which he had sustained as well on occasion of a certain grievance then lately committed by the said C. D., as for his costs and charges by him about his suit in that behalf expended. Burr. App. 473, §963.

L. *Scire Facias To Have Execution on Future Breaches.*

The people of the state of New York, to the sheriff of the county of _____, greeting:

Whereas A. B., heretofore, to-wit, in _____ term of the year of our Lord one

thousand eight hundred and ——— in our supreme court of judicature, before our justices thereof, by the judgment of the same court, recovered against C. D., a certain debt of ——— dollars, and also ——— dollars, which in the same court were adjudged to the said A. B. for his damages which he had sustained, as well on occasion of the detaining of that debt, as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. is convicted, as by the record and proceedings thereof, remaining in our said court, before the aforesaid justices thereof, manifestly appears; which said judgment so recovered against the said C. D. as aforesaid, was had and obtained upon a certain writing obligatory, bearing date the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, and sealed with the seal of the said C. D., whereby the said C. D. became held and firmly bound to the said A. B., in the said sum of ——— dollars, to be paid to the said plaintiff when the said defendant should be thereunto afterwards requested, with and under a certain condition to the said writing obligatory subscribed, whereby after reciting, etc. (here state the recitals), it was declared, that if, etc. (here state the condition of the bond), then the said obligation was to be void, otherwise to remain in full force and virtue. And whereas the said A. B. in his declaration exhibited by him in the said action in which the said judgment was so obtained as aforesaid, assigned a certain breach (or breaches) of the said condition of the said writing obligatory according to the form of the statute in such case made and provided, and damages were thereupon assessed for and by reason of the breaches so assigned. And whereas it hath been, and is duly suggested by the said A. B., in our said court before the aforesaid justices thereof, as other and further breaches of the said condition of the said writing obligatory then the said breaches so assigned as aforesaid, that (here suggest the further breaches). For which said last mentioned breaches of the aforesaid condition of the said writing obligatory, the said A. B. hath besought us to provide him a proper remedy: And we, being willing that what is just in this

behalf should be done, do, according to the form of the statute in such case made and provided, command you that you make known to (or, summon), the said C. D., that he be before our justices of our said supreme court of judicature of ——— to show cause why execution should not be had and awarded against him upon the said judgment so obtained as aforesaid, for the damages to be assessed by reason of the said last mentioned breaches of the said condition of the said writing obligatory, if it shall seem expedient for him so to do; and further to do and receive what our said court, before our said justices thereof, shall then and there consider of him in this behalf. And have you then and there this writ. Witness, etc. Burr. App. 474; 3 Chit. Pl. 1290.

II. Returns.

A. Return to Scire Facias, Served on Defendant.

By virtue of this writ to me directed, I have summoned the within named defendant, by delivering to him a copy of this writ, and of the notice hereon endorsed, duly certified by me.

S. T., sheriff.

Burr. App. 443, §858.

B. Return on Scire Facias, Defendant Cannot Be Found.

The within named defendant cannot be found in my county, and has no dwelling house therein.

S. T., sheriff.

Burr. App. 443, §858a.

III. Notice To Plead To Scire Facias.

Sir: Please to take notice that you are hereby required to plead to the writ of scire facias issued in this cause, of which the within is a copy, within twenty days after the return day mentioned in said writ, being the ——— day of ——— next; on which day the said writ will be filed in the office of the clerk of this court at the ——— in the city of ———, or that your default will be entered. Dated, etc.

Yours, etc.,

E. F., attorney for plff.

To C. D., the above named defendant.

Burr. App. 538, §1064a.

IV. Order for Default on Scire Facias.

The writ of scire facias in this cause, with notice to plead endorsed thereon, having been returned by the sheriff of the county of ———, duly served

upon the defendant, on filing the same, and on motion of E. F., attorney for the plaintiff, ordered that the defendant's default for not pleading thereto be, and the same is hereby entered accordingly. Burr. App. 450, §886a.

V. Plea To Scire Facias, Writ of Error Pending.

And the said defendant, by G. H., his attorney, comes and prays judgment of the writ of scire facias aforesaid, because he says that after the rendition of the judgment aforesaid, in the said writ of scire facias specified, to-wit, on, etc., at, etc., he the said defendant, for the reversing, annulling and revoking the said judgment in the said writ of scire facias mentioned, prosecuted out of the court (state the court whence the writ of error issued), a certain writ of (the people of) the state of ———, to correct certain errors in the judgment aforesaid, specified in the said writ, and which said writ was duly allowed, directed to (the court below), and returnable the (return day), then next following in the said court of (the court above), before the (justices), at, etc., which said writ, after the issuing and before the return thereof, to-wit, on, etc., at, etc., was delivered in due form of law to (the court below), to be executed; which said writ of error hath not as yet been returned, but is still pending undetermined. And this he is ready to verify. Wherefore he prays judgment if the said defendant ought to be compelled to answer the said writ of scire facias, pending the said writ of error undetermined, etc.

G. H., atty. for defendant.

Burr. App. 417, §778; Lill. Entries 3.

VI. Judgment Records.

A. Judgment Record on Default, Scire Facias To Revive Judgment.

Supreme court. (Placita of the term or day at which the scire facias was returnable.)

(City and) county of ———, ss.: (The people of) the state of New York, sent to their sheriff of the (city and) county of ———, their writ close in these words, that is to say: (The people of) the state of New York, to the sheriff of, etc. (copy the scire facias to the end, and then proceed as follows):

At which day, before the said justices of the ——— court of ———

aforesaid, at the ——— in the city of ———, comes the said A. B., by E. F., his attorney; and the sheriff, to-wit (William Jones), esquire, sheriff of the said (city and) county of ———, now here returns that he had duly summoned the said G. H. to be and appear before the justices aforesaid, at the day and place in the said writ mentioned, to show cause, as by the said writ he is required; and as the said sheriff is therein commanded.* And the said C. D., although on the same day solemnly demanded, comes not, but makes default.

Therefore it is considered that the said A. B. have his execution against the said C. D. of the damages (or debt and damages) aforesaid, according to the force, form and effect of the said recovery, by the default of the said C. D. (If costs are given, add: And it is further considered that the said A. B. do recover against the said C. D. ——— dollars, for his costs and charges by him laid out, in and about the prosecution of the said writ of scire facias, for having execution upon the said judgment, by the court now here adjudged to the said plaintiff, according to the form of the statute in such case made and provided, etc.

(If judgment be not entered at the same term with the return of the scire facias, insert a continuance to the term of the judgment, and then proceed thus): At which day, before the justices aforesaid, at the (courthouse in the city of ———), comes the said A. B., by his attorney aforesaid, and the said C. D., although on the same day solemnly demanded, comes not, but again makes default. And hereupon the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had:

It is considered that, etc. (judgment as above). Burr. App. 189, §345.

B. Judgment Record on Demurrer in Scire Facias.

(As in last form to the *, and then as follows): And the said C. D., being solemnly demanded, comes by G. H., his attorney; and hereupon the said A. B. prays that execution may be adjudged to him against the said C. D. of the damages (or debt and damages) aforesaid, according to the force, form and effect of the said recovery, etc.

And the said C. D. comes and defends the wrong and injury when, etc., and

says, etc. (here copy demurrer and joinder, add continuance to the term of giving judgment, and conclude with judgment as in ordinary cases of demurrer. If the demurrer be sustained, the judgment will be nil capiat; otherwise it will be the same as in last form.) Burr. App. 190, §345a.

C. Judgment Record on Issue of Fact in Scire Facias.

(As in last form, substituting for the demurrer and joinder the plea and subsequent proceedings to issue, after which enter order for trial, then the postea and finding of the jury, and conclude with judgment as in last form.) Burr. App. 190, §345b; see Yates' Forms 756.

SEAMEN.

CROSS-REFERENCE:

ADMIRALTY:

- Libel In Rem for Seaman's Wages, Vessel Left Port, or About To Leave;
- Affidavit To Obtain Summons, Seaman's Wages;
- Preliminary Summons for Seaman's Wages;
- Affidavit of Service of Summons;
- Certificate of Magistrate, Summons for Seaman's Wages;
- Libel for Seaman's Wages After Preliminary Summons.

SEARCH WARRANTS.

I. Complaint for Search Warrant, 1118

II. Search Warrant, 1118

III. Returns, 1118

- A. *Goods Found, Arrest Made*, 1118
- B. *Goods Found*, 1119
- C. *Goods Not Found*, 1119

I. Complaint for Search Warrant.

"To the justices of the police court within and for the city of Boston, Jonathan F. Pulsifer of the city of Boston, in the county of Suffolk, Trader, on oath informs the said justices, that the following goods, to-wit: he has reason to believe and does believe that lottery tickets and materials for a lottery unlawfully made, provided and procured for the purpose of drawing a lottery are concealed in the following places, to-wit: Office of Elisha W. Dana, No. 2 Devonshire Street, rear of 23 State Street. (Seven other places and persons were

also mentioned in this complaint)—and prays a warrant to search there for the same.

"Jonathan Pulsifer.

"Received and sworn to, before said court, this fourth day of January in the year of our Lord one thousand eight hundred and forty-one.

Thomas Power, clerk.

Com. v. Dana, 2 Mete. (Mass.) 329.

II. Search Warrant.

"Suffolk to-wit: Commonwealth of Massachusetts. To the sheriff of our county of Suffolk, his deputies, and the constables of our city of Boston, greeting.

We command you and each of you, forthwith, with necessary and proper assistants, to enter, in the day time, into the places mentioned in the above information, and there search for the tickets and materials there named, and if the same, or any part thereof, shall be found on such search, that you bring the tickets and materials so found, together with the body of the person or persons in whose possession found, if they may be found in our said city, before said court, to be disposed of and dealt with as to law and justice shall appertain.

"You are also commanded, in like manner, to notify the informant to appear and give evidence touching the matter contained in the above complaint, when and where you have the said goods and person, or either of them.

"Witness, William Simmons, Esquire, at Boston, this fourth day of January, in the year of our Lord one thousand eight hundred and forty-one.

"Thomas Power, clerk.

Com. v. Dana, 2 Mete. (Mass.) 329.

Note.—Search warrants are usually issued to search for stolen goods.

III. Returns.

A. *Return to Search Warrant, Goods Found, Arrest Made.*

"Suffolk, ss. City of Boston, January 4, 1841.

I have made diligent search in the within named shops, and found in the office of E. W. Dana, George E. Dana and Benjamin Eaton, a large lot of lottery tickets, books, etc., and I arrested the bodies of E. W. Dana, George E. Dana and Benjamin Eaton, in whose possession I found said tickets, etc.,

and this 5th day of January I have of them before the court as directed.

Jacob C. Tallant, Constable."

Com. v. Dana, 2 Mete. (Mass.) 239.

B. Return to Search Warrant for Stolen Goods When Goods Are Found.

I have executed the within search warrant, as I am within commanded, and have found the said goods in the place designated, and have them now here, as I am within commanded. Dated, _____ 18 ____.

A. B., sheriff of _____ county.

Crocker on Sheriffs 517.

C. Return to Search Warrant for Stolen Goods, Not Found.

I have executed the within search warrant as I am within commanded, by making diligent search in the place designated in the said warrant for the goods therein described; but cannot find the said goods, or any part thereof. Dated, _____ 18 ____.

A. B., sheriff of _____ county.

Crocker on Sheriffs 516.

SEARCH AND SEIZURE.

Petition To Return Private Papers, Books, and Other Property Unlawfully Seized.

Now comes defendant and states he is a citizen and resident of Kansas City, Missouri, and that he resides, owns, and occupies a home at 1834 Penn street in said city;

That on the 21st day of December, 1911, while plaintiff was absent at his daily vocation, certain officers of the government whose names are to plaintiff unknown, unlawfully and without warrant or authority so to do, broke open the door to plaintiff's said home and seized all of his books, letters, money, papers, notes, evidences of indebtedness, stock, certificates, insurance policies, deeds, abstracts, and other muniments of title, bonds, candies, clothes, and other property in said home, and this in violation of §§ 11 and 23 to the Constitution of Missouri, and of the 14th and 5th Amendments to the Constitution of the United States;

That the district attorney, marshal, and clerk of the United States court for the western district of Missouri took the above described property so seized into their possession, and have

failed and refused to return to defendant portion of same, to-wit:

One (1) leather grip, value about \$7; one (1) tin box valued at \$3; one (1) Pettis county, Missouri, bond, value \$500; three (3) mining stock certificates, which defendant is unable to more particularly describe, valued at \$12,000; and certain stock certificates in addition thereto, issued by the San Domingo Mining, Loan & Investment Company; about \$75 in currency; one (1) newspaper published about 1790, an heirloom; and certain other property which plaintiff is now unable to describe.

That said property is being unlawfully and improperly held by said district attorney, marshal, and clerk, in violation of defendant's rights under the Constitution of the United States and the State of Missouri.

That said district attorney purposes to use said books, letters, papers, certificates of stock, etc., at the trial of the above entitled cause, and that by reason thereof and of the facts above set forth defendant's rights under the amendments aforesaid to the Constitution of Missouri and the United States have been and will be violated unless the court order the return prayed for;

Wherefore, defendant prays that said district attorney, marshal, and clerk be notified, and that the court direct and order said district attorney, marshal, and clerk, to return said property to said defendant. Weeks & United States, U. S. Adv. Ops. 341.

SECURITY FOR COSTS.

I. Affidavit To Obtain Security, 1120

A. From Non resident, 1120

B. Plaintiff Having Remained, 1120

C. Insolvency of Plaintiff, 1120

II. Notice of Motion To File, 1120

III. Order To File Security, 1120

A. Alternative Order, 1120

B. Peremptory Order, 1120

IV. Notice of Filing Security, 1121

V. Bonds for Costs, 1121

A. Defendant's Costs, 1121

B. Foreign Corporation, 1121

C. On Attachment Against Foreign Corporation, 1121

VI. Notice of Exception to Security, 1121

VII. Notice of Justification of Sureties, 1122

CROSS-REFERENCES:

ADMIRALTY:

Stipulations for Costs and Damages;

Stipulation for Costs;

Stipulation for Costs To Be Given by the Libelants on Filing Libel for Salvage.

ARREST IN CIVIL CASES:

Undertaking on Arrest.

BONDS:

Complaint on Bond of Security for Costs.

DECLARATION AND COMPLAINT:

Complaint on Undertaking for Costs and Damages on Attachment;

Complaint on Undertaking for Costs and Damages on Arrest.

I. Affidavits.

A. *Affidavit To Obtain Security for Costs from Non-Resident Plaintiff.*

Y. Z. of said city, and defendant herein, being duly sworn, says:

I. That the above action was commenced in ———, 18——, and (here state condition of the cause, *e. g.*, thus): is at issue, and that on the ——— day of ———, 18——, said issues were referred, by consent, to R. F.*

II. That the plaintiff is a non-resident of the (city, county), and state of New York, and is a resident of (France) and has been a non-resident before and ever since the said action has been in progress.

(Where there has been delay in moving, state excuse, *e. g.*, thus):

III. That defendant is not personally acquainted with the plaintiff, and was not aware of the fact of his being such non-resident until the ——— day of ———, 18——, when such fact and the fact that plaintiff was a non-resident at the commencement of this action and ever since, and now is such non-resident, appeared in evidence on the trial of this cause before such referee. 2 Abb. Forms 662.

B. *Affidavit To Obtain Security for Costs, Having Removed Pending Suit.*

(As in preceding form to the *, continuing:)

II. That since the commencement of this action, and in or about the month of ——— last, the said plaintiff removed from this state to the state

of ———, and hereafter intends residing there, and is no longer a resident of this state, and is not within the jurisdiction of this court. 2 Abb. Forms 662.

C. *Affidavit To Obtain Security for Costs, Insolvency of Plaintiff.*

(As in I, A to the *, continuing:)

II. That the plaintiff A. B. is insolvent (or that since the commencement of this action, the plaintiff A. B. became insolvent), and he was on or about the ——— day of ———, 18——, discharged from his debts, on account thereof, pursuant to the statute (or, and his person has been exonerated from imprisonment, pursuant to the statute), and this action was heretofore commenced for, or in the name of him, the said A. B., for the collection of a debt, contracted before the assignment of his estate. 2 Abb. Forms 663.

II. Notice of Motion To File Security for Costs.

Sir: Please to take notice, that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the ——— in the city of ———, on the first Tuesday of ——— next, for a rule or order that the plaintiff file security for costs in twenty days, and that all proceedings on the part of the said plaintiff be stayed, until such security be filed; or for such other rule, etc. Burr. App. 206, §402a.

III. Order To File Security.

A. *Alternative Order To File Security for Costs.*

Ordered, that the plaintiff in this cause file security for costs within twenty days after service of a copy of this order, and of the affidavit on which it is founded, or show cause on the first day of the next special term, why the same is not done, and that, in the meantime, all the proceedings on the part of the plaintiff be stayed. Burr. App. 227, §471; Yates' Forms 9.

B. *Peremptory Order of the Court To File Security for Costs (After Alternative).*

It appearing by the affidavit of (the defendant's attorney in this cause) that a copy of the order to show cause this day, why the plaintiff in this cause should not file security for costs, according to the revised statutes, has been regularly served, and no cause

having been shown why the same should not be done, let all proceedings in this cause be stayed until such security be filed, and the sureties justify, if excepted to. Burr. App. 227, §472; Yates' Forms 10.

IV. Notice of Filing Security for Costs.

Please to take notice, that I. N., of ———, merchant, and I. S., of ———, farmer, have become sureties for costs in this cause, and that the bond, of which the within is a copy, has been duly filed in this cause, in the office of the clerk of this court, at the city of ———. Burr. App. 197, §368.

V. Bonds for Costs.

A. Bond for Defendant's Costs.

Know all men by these presents, that we (A. B., of ———), I. N., of ———, merchant, and I. S., of ———, farmer, are held and firmly bound unto C. D., in the sum of two hundred and fifty dollars, of lawful money of the state of New York, to be paid to the said C. D., his executors, administrators or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this (fourth day of October, 1845).

Whereas (the said) A. B., has commenced a certain suit in the (supreme court of judicature of the people of the state of New York), against the said C. D.; now the condition of the above obligation is such, that if the above bounden (A. B.) I. N., and I. S., shall pay on demand all costs that may be awarded to the defendant in the said suit, then the above obligation to be void; otherwise, to remain in full force and virtue.

Sealed and delivered in the presence of O. P.

A. B. (L. S.)
I. N. (L. S.)
I. S. (L. S.)

Burr. App. 40, §77.

B. Bond for Costs by Foreign Corporation.

Know all men by these presents, that we (names and residences of obligors) are held and firmly bound unto C. D., in the sum of two hundred and fifty dollars, lawful money of the United

States, to be paid to the said C. D., etc. (penal part in the usual form).

The condition of this obligation is such, that if the above bounden (the obligors), shall well and truly pay to the said C. D., on demand all such costs as may be awarded against the (name the corporation), in favor of the said C. D., in a suit (to be) brought by the said (corporation), in the supreme court of this state, against the said C. D., in a plea of trespass on the case upon promises for (here briefly state the nature of the demand), then this obligation to be void; otherwise to remain in full force and virtue.

(Signatures and seals of obligors.)

Sealed and delivered in presence of witnesses.

Burr. App. 510, §1026.

C. Bond for Costs on Attachment Against Foreign Corporation.

Know all men by these presents, that we, A. B., of ———, I. S., of ———, and I. N., of ———, are held and firmly bound unto the (name of the corporation) in the sum of two hundred and fifty dollars, to be paid to the said, the (name as before) their successors or assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the ——— day of ———, in the year, etc.

Whereas, a suit has been commenced by the said A. B., in the supreme court of judicature of the people of the state of New York, by attachment against the said (the corporation). Now the condition of this obligation is such, that if the said A. B. shall pay on demand all costs that may be awarded against him in the said suit, then this obligation to be void, otherwise to remain in full force and virtue.

(Signatures and seals of obligors.)

Sealed and delivered in presence of (witnesses' names.)

(Endorsed.)

Approved this ——— day of ———, 1846.

J. W. E., circuit judge.

Burr. App. 510, §1027.

VI. Notice of Exception to Security for Costs.

Please to take notice, that I have this day excepted, and do hereby except to the sufficiency of the security for costs filed in this cause. Burr. App. 196, §358.

VII. Notice of Justification of Sureties for Costs.

Sir: Please to take notice, that the sureties for costs in this cause have duly justified, and that the affidavit of justification (whereof a copy is hereto annexed) has been duly filed with the clerk of this court at (state the place). Barr. App. 195, §359.

SEDUCTION.

I. Indictment, 1122

II. Complaint, 1122

III. Indictment for Seduction Under Promise of Marriage, 1122

CROSS-REFERENCES:

ARREST IN CIVIL CASES:

Capias, Debauching Daughter.

PARENT AND CHILD:

Declaration in Trespass for Debauching Daughter and Servant;

Declaration in Case for Debauching Daughter;

Complaint for Seduction of Plaintiff's Daughter or Servant.

I. Indictment for Seduction.

"That Oscar B. Lingle, late of the county aforesaid, on the 1st day of August, 1893, a person to whose care and protection one Clara F. Wheatley, a female under the age of 18 years, to-wit of the age of 16 years, had been and was then and there confided, her, the said Clara F. Wheatley, unlawfully and feloniously did defile, by then and there unlawfully and feloniously carnally knowing her, and having carnal knowledge of her body, while she, the said Clara F. Wheatley, was then and there in the care, custody, and employment of him, the said Oscar B. Lingle, against," etc. *State v. Lingle*, 17 Cr. L. Mag. 430, 431.

II. Complaint for Seduction.

I. That on the ——— day of ———, 18——, at ——— (while the plaintiff was employed as a servant in the family of the defendant), the defendant, with force and arms, ill-treated the plaintiff, and made an indecent assault upon her, and then and there forcibly debauched and carnally knew her, whereby she became pregnant and sick with child, and so remained and continued for the space of ——— months; at the expiration of which time, on the ——— day of ———, 18——, she was delivered of a child,

of which she was pregnant as aforesaid.

II. That in consequence of said indecent assault made by the defendant on the plaintiff, she has suffered greatly in her health, and became sick and disordered, and so continued for the space of ——— months, during all of which time she suffered great pain, and was prevented from transacting her necessary business and affairs, and has been greatly disturbed in her peace of mind, and has been otherwise greatly injured, to her damage ——— dollars. 1 Abb. Forms, 505.

Note.—Under statutes only.

III. Indictment for Seduction Under Promise of Marriage.

"The grand jury for the state of Missouri, summoned from the body of Ralls county, impaneled, charged and sworn, upon their oaths present and charge that Charles O'Keefe, late of the county of Ralls, on the ——— day of ———, 1892, at the said county of Ralls in the state of Missouri, did then and there, under and by promise of marriage made to one Annie Elizabeth Hightower by him, the said Charles O'Keefe, unlawfully and feloniously seduced and debauched her, the said Annie Elizabeth Hightower, she, the said Annie Elizabeth Hightower, being then and there an unmarried female of good repute and under eighteen year of age, against the peace and dignity of the State." *State v. O'Keefe*, 141 Mo. 271, 42 S. W. 725.

SEQUESTRATION.

I. Orders, 1123

- A. *For Sequestration*, 1123
- B. *On Return of Attachment*, 1123
- C. *Corporation*, 1123
- D. *Not Answering*, 1123

II. Writs, 1124

- A. *Of Sequestration*, 1124
- B. *To Compel Appearance of Corporation*, 1124

III. Proceedings To Execute, 1124

- A. *Order for Examination of Claimant*, 1124
- B. *Notice to Tenants To Attorn*, 1125
- C. *Affidavit for Order To Attorn*, 1125
- D. *Order Directing Tenants To Attorn*, 1125

I. Orders.**A. Order for Sequestration.**

The defendant C. D., being in contempt for not appearing to the bill of complaint in this cause, and a warrant having been issued to the sheriff of the county of Albany, attending this court at its present (or last January) term, and as such, executing all the duties of a sergeant-at-arms, requiring him forthwith to go and take the said C. D. into his custody and bring him into this court to answer for his contempt, in pursuance of an order of this court dated the _____ day of _____; and the said sheriff, acting as sergeant-at-arms, having returned that he had made diligent search and inquiry after the said C. D., but that he did so abscond and secrete himself that he could not be found to be apprehended, as by the said warrant and the return thereto appears; on motion of Mr. N., of counsel for the complainant, it is ordered that a commission of sequestration do issue, against the said C. D., directed to G. Y., N. M., J. B. and R. L., commissioners, directing them to sequester the said defendant's personal estate, and the rents, issues and profits of his real estate, until the said defendant shall appear to the bill of complaint in this cause, clear his contempt, and this court shall make an order to the contrary. 2 Barb. Ch. Pr. 381.

B. Order for Sequestration on Return of Attachment (English).

Whereas by the decree (or order) dated, etc., it was ordered (recite so much of the decree or order as is required to be performed); now, upon motion by counsel, etc., who alleged that an attachment issued against the defendant A., for his contempt in not, etc. (state the default in respect of which the attachment issued), directed to the sheriff of _____, and that the said sheriff hath returned that the said defendant is a prisoner in his custody (or non est inventus thereof); and upon reading the said decree (or order), writ and return thereon. This court doth order that a sequestration do issue, directed to certain commissioners to be therein named, to sequester the said defendant A.'s personal estate, and the rents, profits and issues of his real estate, until the said defendant shall (state the act required to be done) clear his contempt, and this court doth make other order to the contrary. 3

Dan. Ch. Pl. & Pr. (Perkins' ed.) 2357; 2 Seton Dec. (Eng. ed., 1862) 1214.

C. Order for Sequestration; Corporation.

Whereas by the decree (or order) dated, etc., it was ordered, etc. (recite so much of the decree or order as is required to be performed, or if for non-payment of costs, recite direction as to costs and certificate of taxation); now, upon motion, etc., by counsel, etc., who alleged that a distringas (if so, add: and an alias and pluries distringas), issued against the defendants (the corporation by their corporate name), directed to the sheriff of _____, for not, etc. (state the default in respect of which the process issues); that pursuant to the said decree (or order) the said sheriff hath returned nulla bona thereon (or if the sheriff returns issues, say: the sheriff hath returned _____ issues thereon; and upon reading the said decree (or order) and certificates of taxation, and the said (corporation) still persisting in their said contempt, this court doth order that a commission of sequestration do issue, etc., until they shall (state what they are required to do) clear their contempt, and this court make other order to the contrary; unless the said, etc., shall, etc., on notice, etc., show cause to the contrary. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2358; 2 Seton Dec. (Eng. ed., 1862) 1229.

D. Order for Sequestration for Not Answering.

The defendant C. D. having, by an order of this court made on the _____ day of _____, been committed to the common jail of the county of _____, for his contempt in not putting in his answer to the bill of complaint in this cause as directed by a previous order of this court; and it now appearing by the certificate of the sheriff of said county of _____ that the said C. D. is still held by him in his custody by virtue of such commitment for his contempt, and it being shown by due proof by affidavit that the said C. D. hath not yet obeyed the order of this court directing him to put in his answer, but still persists in his contempt; on motion of Mr. N., of counsel for the complainant, ordered that a commission of sequestration do issue, directed to _____ commissioners, to sequester the personal estate, and the rents, issues and profits of the real estate of

the said C. D., until he shall put in his answer to the bill of complaint in this cause, clear his contempt, and this court shall make an order to the contrary. 2 Barb. Ch. Pr. 394.

II. Writs.

A. Writ of Sequestration.

(The people of) the state of _____, to G. Y., N. M., J. B., and R. L., greeting:

Whereas A. B., lately exhibited his bill of complaint in our court of chancery against C. D. And whereas the said C. D. being duly served with a writ of subpoena issuing out of said court, commanding him under a certain penalty to appear to and answer the said bill, hath refused so to do, and thereupon all process of contempt hath regularly issued against him unto a sergeant-at-arms. And whereas the said C. D. hath of late absconded, and so concealed himself that the sheriff of the county of _____ attending this court at the present (or last January) term thereof, and executing the powers and duties of a sergeant-at-arms, hath not been able to find him, so that he could be apprehended, as by the certificate and return of the said sheriff appears: Know ye, therefore, that we, in confidence * of your prudence and fidelity, have given, and by these presents do give, to you or any three of you, full power and authority to enter upon all the messuages, lands, tenements and real estate whatsoever of the said C. D., and to take, collect, receive and sequester into your hands not only all the rents and profits of the said messuages, lands, tenements and real estate, but also all his goods, chattels, and personal estate whatsoever; and therefore we command you, or any three of you, that you do, at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements and real estate of the said C. D., and that you do collect, take and get into your hands not only the rents and profits of all his said real estates, but also all his goods, chattels and personal estate, and detain and keep the same under sequestration in your hands, or pay the same in such manner and to such persons as the said court shall appoint, until the said C. D. shall appear to (or fully answer) the said complainant's bill clear his contempts, and our said court shall make an order to the contrary. Witness,

_____, chancellor of our said state, at the _____ of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred _____.

J. M. Davison, register.
(or clerk).

2 Barb. Ch. Pr. 382.

B. Writ of Sequestration To Compel Appearance of Corporation.

(The people of) the state of _____, to A. H., I. F., W. G., E. B., and C. E., greeting:

Whereas A. B., lately exhibited his bill of complaint in our court of chancery against the Commercial Bank of Albany, and caused a subpoena in said cause to be issued out of and under the seal of this court, and duly served upon the said Commercial Bank of Albany, which subpoena was tested on the _____ day of _____, and returnable on the _____ day of _____; and whereas the said Commercial Bank of Albany having neglected and refused to enter their appearance in said cause, a writ of distringas was thereupon issued against the said Commercial Bank of Albany, directed to the sheriff of the county of Albany, requiring him to make a distress upon the lands and tenements, goods and chattels of the said corporation within his bailiwick, so that neither the said corporation nor any other person or persons for them might possess them until the court of chancery should make order to the contrary; and whereas further process of contempt has issued against the said corporation to compel its appearance in said cause, without effect, unto a pluries distringas, as appears by the said process and the returns thereto; know ye, therefore, that we, in confidence (conclude as in II, A, from the *). 2 Barb. Ch. Pr. 387.

III. Proceedings To Execute.

A. Order for Examination of Claimant Pro Interesse Suo.

A commission of sequestration having heretofore issued in this cause, directed to G. Y., N. M., J. B., and R. L., as commissioners, directing them to sequester the personal estate of the defendant C. D., and the rents, issues and profits of his real estate, until the said C. D. should appear to the bill of complaint in this cause, clear his contempt, and the court should make an order to

the contrary; under and by virtue of which commission the said commissioners have taken possession of a certain farm or lot of land, with the appurtenances, situate, lying and being in the town of Saratoga Springs, in the county of Saratoga, called the Baker lot, as part of the real estate of the said C. D., and then being in his actual possession, as appears by the return of the said commissioners to the said commission of sequestration; and it now appearing by the affidavit of John Doe, that he claims title to the said farm or lot of land, under and by virtue of a certain deed or conveyance there- of alleged by him to have been executed by the said C. D. to him the said John Doe, and dated the _____ day of _____, and the said John Doe, now applying for leave to be examined pro interesse suo before a master of this court touching his interest and title in the farm or lot of land so claimed by him; thereupon, on reading and filing the return of the said commissioners to the said commission of sequestration, and the affidavit of the said John Doe, and on motion of Mr. R., of counsel for the said John Doe, it is ordered that it be referred to one of the masters of this court, residing in the county of Saratoga, to take the examination of the said John Doe pro interesse suo, and that within three days from the service of a copy of this order, the complainant in this cause exhibit before said master interrogatories for that purpose; that the master settle such interrogatories; that the said John Doe put in his examination thereto within twenty-four hours after such interrogatories are settled; and that if a replication to such examination is filed, the master may examine any other persons as witnesses touching such claim. And it is further ordered that the said master do certify whether the said John Doe hath made out a title to the said premises so claimed by him, or any part thereof; and that the said John Doe procure and file such report within ten days from the date of this order, to the end that such further order may be made in the premises as shall be just. 2 Barb. Ch. Pr. 384.

B. Notice To Tenants To Attorn To Sequestrators.

By virtue of a writ of sequestration issued out of and under the seal of the court of chancery of the state of New

York, in a certain suit pending in said court between A. B., complainant, and C. D., defendant, to us directed and delivered as commissioners to execute the same, and which writ under the seal of said court is now shown to you (or with a copy of which writ you are herewith served), you are hereby notified and required to attorn to us in future as your landlords of the premises in your occupation belonging to the said C. D., and you are also notified and required to pay to us the arrears of rent now due from you respectively, as tenants of the said C. D.; and also to pay to us the rents which shall hereafter grow due from you, and each of you, on account of the said premises, from time to time as the same shall become due, until the further order of said court of chancery.

Dated this _____ day of _____, 1843.

G. Y., N. M., etc., commissioners.
To M. P., J. K., etc., tenants of C. D.
2 Barb. Ch. Pr. 383.

C. Affidavit To Obtain Order for Tenants To Attorn.

That on the _____ day of _____ instant this deponent personally served upon Timothy Noakes, a tenant occupying a portion of the premises belonging to the defendant C. D., as his tenant, a notice, of which a copy is hereunto annexed, by delivering the same to him, and at the same time showing to him the writ of sequestration therein mentioned, issued out of and under the seal of this court; and further that the said Timothy Noakes has not as yet attorned or paid the rent due from him as such tenant, according to the requirements of such notice, to this deponent, nor to either of the other commissioners, to the knowledge or belief of this deponent. 2 Barb. Ch. Pr. 383.

D. Order Directing Tenants To Attorn, etc., to Commissioners.

A commission of sequestration having heretofore issued in this cause, directed to G. Y., N. M., J. K., and R. L., as commissioners, directing them to sequester the personal estate of the defendant C. D., and the rents, issues and profits of his real estate, until the said C. D. should appear to the bill of complaint in this cause, clear his contempt, and the court should make an order to the contrary; and on reading and filing the affidavit of G. Y., one of the said commissioners, proving the service upon

Timothy Noakes, one of the tenants of said C. D., of a notice requiring him to attorn to the said commissioners and to pay to them the rent then due or thereafter to grow due from the said Timothy Noakes on account of the said premises; and showing that the said Noakes had not complied with such notice; on motion of Mr. N., of counsel for the complainant, it is ordered that the said Timothy Noakes do attorn to the said commissioners, and do pay to them the arrears of rent now due, and the rents which shall hereafter grow due from him on account of the said premises, from time to time as the same shall become due, until the further order of the court. 2 Barb. Ch. Pr. 384.

SERVICE OF PROCESS AND PAPERS.

I. Affidavits of Service, 1127

- A. *On Party*, 1127
- B. *On Attorney*, 1127
- C. *On Party at Residence*, 1127
- D. *By Mail*, 1127
- E. *As Foundation for Contempt*, 1128
- F. *Of Declaration on Attorney*, 1128
- G. *Of Declaration on Party*, 1128
- H. *Of Demurrer or Other Pleading*, 1128
- I. *Of Notice*, 1128
- J. *Of Judge's Order*, 1128
- K. *Of Notice of Motion*, 1129
- L. *Of Personal Service of Bill*, 1129

II. Orders, 1129

- A. *Service of Bill Out of Jurisdiction*, 1129
- B. *Substituted Service of Decree or Order*, 1129

III. Admission of Service, 1129

IV. Affidavits for Publication, 1129

- A. *Where Defendant Is Foreign Corporation*, 1129
- B. *Where Defendant Is Non-resident*, 1130
- C. *Where Defendant Is Proper Party Respecting Specific Property*, 1130
- D. *In Action for Divorce*, 1130
- E. *In Case of Unknown Owners*, 1130
- F. *For Appearance of Resident, Residence Cannot Be Ascertained*, 1131
- G. *Where Defendant Keeps Himself Concealed*, 1131

H. *Where Defendant Has Departed From State To Defraud Creditors*, 1131

I. *To Obtain Order Where Defendant Non-resident*, 1131

J. *To Obtain Order Where Defendant Resides in State*, 1132

K. *To Obtain Order Where Defendant's Last Known Residence Was in State*, 1132

V. Orders for Publication, 1132

- A. *Defendant Foreign Corporation*, 1132
- B. *Where Defendant Has Departed or Concealed Himself*, 1132
- C. *Where Defendant Is Non-resident*, 1133
- D. *Where Action Relates to Specific Property*, 1133
- E. *Where Action Is for Divorce*, 1133
- F. *Where Residence of a Resident Cannot Be Ascertained*, 1133
- G. *In Case of Unknown Owner*, 1133
- H. *For Absent, Concealed or Non-resident Defendant*, 1133
- I. *Of Notice of Attachment Against Non-resident*, 1134
- J. *Of Notice of Attachment Against Absconding Debtor*, 1134

VI. Notices for Publication, 1134

- A. *To Be Appended to Summons*, 1134
- B. *Of Attachment Against Non-resident*, 1134
- C. *Attachment Against Absconding Debtor*, 1135

VII. Proof of Publication, 1135

- A. *Printer's Affidavit*, 1135
- B. *Affidavit of Publication of Notice*, 1135
- C. *Affidavit of Mailing*, 1135

VIII. Proceedings on Expiration of Time for Appearance After Publication, 1135

- A. *Petition for Appointment of Guardian Ad Litem*, 1135
- B. *Affidavit of Non-appearance*, 1135
- C. *Order Taking Bill as Confessed and Ordering Reference*, 1136

CROSS-REFERENCES:

ADMIRALTY:

Notice for Publication Containing Substance of Libel;
Affidavit of Service of Citation and Appeal.

BILLS OF PARTICULARS:

Proof of Service of Alternative Order and Default.

DEFAULT:

Affidavit of No Answer;
 Affidavit Preliminary to Proceedings
 for Judgment or Reference;
 Affidavit in Case of Publication;
 Affidavit of Service of Subpoena to
 Answer.

EJECTMENT:

Affidavit of Personal Service of Dec-
 laration in Ejectment;
 Affidavit of Service of Declaration
 in Ejectment at Residence.

EQUITY JURISDICTION AND PROCEDURE:

Affidavit of Non-delivery of Bill.

GARNISHMENT:

Judgment Condemning Fund, Serv-
 ice on Defendant by Publication.

GUARDIAN AD LITEM:

Petition for Guardian Ad Litem in
 Case of Publication;
 Order Appointing Guardian Ad Lit-
 em in Case of Publication.

GUARDIAN AND WARD:

Notice of Application To Sell Real
 Estate of Minor.

OBSTRUCTING JUSTICE:

Indictment for Impeding Officer in
 Execution of Civil Process;
 Indictment, Resisting Officer Serv-
 ing Process.

REFERENCES:

Order of Reference To Take Proof
 of Cause of Action, and Payments,
 Where Summons Was Served by
 Publication.

RETURNS:

Return Personally Served;
 Sheriff's Certificate of Service on
 Defendant Personally;
 Sheriff's Certificate, Service at Res-
 idence;
 Certificate of Sheriff of Service of
 Declaration.

And see Returns.

SUPPLEMENTARY PROCEEDINGS:

Affidavit of Service of Order for Ex-
 amination of Judgment Debtor.

TRIAL:

Notice of Motion To Strike Cause
 From Calendar for Not Serving
 Papers.

I. Affidavits of Service.*A. Affidavit of Service on a Party.*

M. N., being duly sworn, says that
 he is (clerk in the office of the plain-
 tiff's attorney herein), and that on the
 _____ day of _____, at _____,
 he served the (designating paper) here-
 to annexed (or a copy of which is here-
 to annexed) on Y. Z., known to him

to be one of the (defendants) herein,
 by delivering the same (or a copy there-
 of) to him personally, and leaving the
 same with him. 2 Abb. Forms 689.

B. Affidavit of Service on Attorney.
 (As in I, A, to the *, continuing):
 the attorney for the (defendant) here-
 in, by delivering the same to him per-
 sonally, at No. _____ street,
 in _____, and leaving the same with
 him.

(Or, if by leaving at residence, say):
 by leaving the same at the residence
 of the said O. P., at No. _____
 _____ street, in the city of _____,
 with a person of suitable age and dis-
 cretion, this deponent having immedi-
 ately theretofore called at the office
 of the said O. P., at No. _____
 _____ street, in the said city, in
 order to serve the same, and such office
 not being then open so as to admit
 of such service.

(Or, if on a clerk or person having
 charge, say): by delivering the same
 to a clerk of the said O. P., at his office
 (or to a person having charge of his
 office), at No. _____ street,
 in _____, and leaving the same with
 him, the said O. P. being absent at the
 time.

(Or, if left in a conspicuous place in
 the office, say): by leaving the same in
 a conspicuous place in the office of the
 said O. P., at No. _____
 _____ street, in _____, between the hours
 of six in the morning and nine in the
 evening, to-wit, at or about the hour
 of _____ in the _____ noon of the
 day aforesaid, there being no person
 in said office at the time of such serv-
 ice. 2 Abb. Forms 690.

C. Affidavit of Service on a Party.
Where the Paper is Left at
Residence.

(As in I, A, to the *, continuing):
 by leaving the said paper at his resi-
 dence, No. _____ street,
 between the hours of six in the morn-
 ing and nine in the evening, to-wit, at
 about _____ o'clock, with a person
 of suitable age and discretion, namely
 (a woman who represented herself to
 be the wife of the defendant). 2 Abb.
 Forms 689.

D. Affidavit of Service by Mail.

(As in I, F, to the *, and then as
 follows): And deponent further says
 that such service was made by care-
 fully enclosing the said declaration and

notice in a wrapper, and putting the same into the postoffice in the town (or city, etc.) of _____, directed to the said G. H., esquire, attorney for the said defendant, at _____, in the county of _____, that being the residence of the said attorney, and paying the postage thereon. (Conclude as in I. F.) Burr. App. 10, §19.

E. Affidavit, Where the Service is the Foundation for Proceeding for Contempt.

(Add to I. A, if the paper served was a judge's order): and at the same time deponent exhibited to him the original of said order, with the signature of Mr. Justice _____, affixed thereto. (Or, if the paper was an order of court, say: a true copy of said order, duly certified at the foot thereof by C. L., clerk of this court, or of the county of _____, in whose office said order has been duly entered.) 2 Abb. Forms 690.

F. Affidavit of Service of Declaration on Attorney.

E. F., attorney for the plaintiff in this cause (or I. J., of _____, student at law, or clerk to E. F., etc.), being duly sworn, deposes and says that on the _____ day of _____ last (or instant) he served G. H., esquire, the attorney for the defendant in this cause, with a copy of the declaration filed in this cause, together with a notice thereon endorsed, directed to the said attorney, requiring the said defendant to plead to the said declaration in twenty days after service of a copy thereof, and of said notice, or judgment.* And this deponent further says that he served the said copy and notice by delivering the same to the said G. H. in person (or by delivering the same to a clerk of the said G. H. in the office of the said G. H.; or by leaving the same in a conspicuous place in the office of the said G. H. during office hours, no person being present therein). And further says not. Burr. App. 10, §18.

G. Affidavit of Service of Declaration on Party.

E. F., attorney for the plaintiff in this cause (or as in I. F.), being duly sworn, deposes and says that on, etc. (as in I. F.), he served C. D., the defendant in this cause (or C. D. and I. J., the defendants in this cause), with a copy of the declaration filed therein, together with a notice thereon

endorsed, directed to the said defendant (or defendants), requiring the said defendant (or defendants) to plead to the said declaration in twenty days after service of a copy thereof, and of said notice, or judgment. And this deponent further says that he served the said copy of said declaration, and the said notice, by delivering the same to the said defendant (or to each of the said defendants) in person. And further says not. Burr. App. 11, §21.

H. Affidavit of Service of Demurrer, Plea, Replication or Other Pleading.

I. J., of _____, student at law (or as the party may be), being duly sworn, deposes and says that on the _____ day of _____ last (or instant) he served upon _____, esquire, attorney for the defendant (or plaintiff) in this cause, a copy of the demurrer (or plea, or replication, or whatever the pleading may be), filed in this cause, with a notice thereon endorsed, requiring the said defendant (or plaintiff) to join in said demurrer (or to reply to said plea, or to rejoin to said replication, or otherwise, according to the notice) in twenty days after service of a copy thereof, and of said notice, or judgment. And that such service was made by delivering the said copy and notice to the said _____ personally (or whatever the mode of service may have been, as in _____). And further says not. Burr. App. 11, §22.

I. Affidavit of Service of Notice.

I. J., student at law (or otherwise, as the case may be), being duly sworn, says that on the _____ day of _____ last (or instant) he served upon _____, esquire, attorney for the defendant (or plaintiff) in this cause, a notice in writing, whereof the annexed (or the within) is a true copy (or if no copy has been preserved, recite the notice according to its tenor), by delivering the same to the said _____ personally (or to a clerk in the office of the said _____, or otherwise, according to the mode of service as in _____). If any other papers were served with the notice, the affidavit should refer to them). Burr. App. 12, §25.

J. Affidavit of Service of Judge's Order.

E. F., attorney for the plaintiff (or

defendant) in this cause (or as the case may be), being duly sworn, says that on the _____ day of _____ instant, he served a copy of the original order hereto annexed upon (the party served), by delivering a true copy thereof to the said _____, and at the same time showing the original order. And further says not. Burr. App. 12, §23.

K. *Affidavit of Service of Notice of Motion.*

I, Henry Walker, of _____, clerk to _____, solicitors for the above named plaintiff, make oath and say that I did on the _____ day of _____ instant, serve Mr. _____, who is solicitor of the above named defendants (or Mr. _____ and Mr. _____, who are solicitors respectively for the above named defendants, _____ and _____), with a notice in writing, purporting that this honorable court would be moved before his honor _____, on the _____ day of _____, then next, or so soon after as counsel could be heard, that, etc. (here set forth the notice), by delivering to and leaving with a clerk of the said Mr. _____, at his office in _____, a true copy of such notice (or in case there should be more than one solicitor, then add: and also by delivering and leaving with a clerk of the said Mr. _____, at his office in _____, a true copy of such notice). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2176.

L. *Affidavit of Personal Service of Bill.*

On, etc., I personally served the above named defendant _____ with a printed bill of complaint, filed in the above cause, at the _____ office, on, etc., having an indorsement thereon in the form prescribed by _____, by delivering to and leaving with the said defendant _____, at _____, in the county of _____, a printed copy of such bill with such indorsement thereon as aforesaid, which said printed copy was stamped with the proper stamp of _____ office, indicating the filing of such bill and the date of the filing thereof. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2177.

II. Orders.

A. *Order for Service of Bill on Defendant Out of Jurisdiction.*

Upon motion this day made unto this court by _____, counsel for the

plaintiff, it was alleged that the plaintiff has exhibited his bill in this court, against the defendants A. B., etc., and that they reside at Naples, and that the defendant C. D. resides at Pesth; it was therefore prayed that the plaintiff may be at liberty to serve a copy of the (printed) bill filed in this cause, and the indorsement thereon, on the defendants A. B., etc., at Naples or elsewhere, and on the defendant at Pesth or elsewhere in Hungary; and the time within which the said defendants A. B., etc., are to appear to the said bill is to be fourteen days after such service, and the time within which the said last mentioned defendant C. D. is to appear to the said bill is to be eighteen days after such service. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2363; Tripp's Forms 117.

B. *Order for Substituted Service of Decree or Order.*

Whereas by the decree (or order) dated, etc., it was ordered (recite so much of the decree or order as is required to be performed): Now, upon motion, etc., who alleged (state from affidavit to the effect), that the plaintiff hath been unable to serve the defendant A. with the said decree (or order), although due diligence hath been used for that purpose, as by the affidavit of B., filed, etc., appears; and upon reading the said decree (or order), and affidavit, this court doth order that service of the said decree (or order) dated, etc., upon _____, at _____ (or upon A. B., C. D., and E. F., members of the firm of Messrs. B., D. & F., of _____, or one of them), be deemed good service on the defendant A. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2357; 2 Seton Dec. (Eng. ed., 1862) 1212.

III. Admission of Service.

I admit (due and) personal service of the within _____ upon me, made this _____ day of _____, 18—. 2 Abb. Forms 691.

IV. Affidavits for Publication.

A. *Affidavit Where Defendant is a Foreign Corporation.*

A. B., plaintiff above named, being duly sworn, says:

I. That a cause of action exists in his favor against the defendants above named, the grounds of which are as follows (here briefly state grounds of action; or, where the application is

made on complaint, say: the grounds of which appear by the sworn complaint in this action, hereto annexed, the statements contained in which are true, to the knowledge of the deponent).*

II. That the defendants are a foreign corporation, created under the laws of the state of _____, having their place of business in _____, in that state; and no officer (or agent) of said defendant upon whom service of summons can by law be made can after due diligence be found within this state, although the deponent has made inquiry (stating what).

III. That the president of said corporation (or other officer proposed to be served by mail) is M. N., who resides at _____.

IV. That the defendants have property within this state, at _____, consisting of (describe property).

V. That the cause of action against said defendants arose in this state, as appears by the foregoing statements (or the annexed complaint). 1 Abb. Forms 85.

Note.—Test every affidavit herein set out by the latest statute of the state where used.

B. Affidavit Where Defendant is a Non-Resident.

(As in I, A, to the *.)

II. That the defendant is not a resident of this state, but resides in the city of _____, in the state of _____, as deponent is informed by O. P., the agent and business correspondent in this city of said defendant; and that said defendant cannot after due diligence be found within this state, he now being at _____ (or otherwise state grounds of belief).

III. That the said defendant has property in this state, as this deponent is informed and believes, to-wit, a farm in _____, occupied by one M. N., who has informed this deponent that he paid rent therefor to the said Y. Z., who was the owner; and the said defendant has recently purchased goods in the city of _____, as this deponent is informed by said M. N., which goods are in the hands of one E. F., as the agent of the said defendant, and said E. F. is engaged in selling the same as the property of the said defendant. 1 Abb. Forms 90.

C. Affidavit Where Defendant is a Proper Party to an Action Respecting Specific Property.

A. B., plaintiff above named, being duly sworn, says:

I. That this action is brought to foreclose a mortgage made on the _____ day of _____, by the above named defendant W. X., to this plaintiff to secure his bond of even date, conditioned for the payment of _____ dollars on certain real property in this state, consisting of a farm of about twenty acres, more or less, in the town of Rye, Westchester county. That the defendant Y. Z. has, or claims to have, some lien on or interest in said farm which accrued subsequent to said mortgage, and that a part of the relief which this plaintiff demands in this action is to exclude said defendant from any lien or interest in said property, and that said defendant Y. Z. is therefore, as he is advised, a proper party to this action.

II. That said Y. Z. cannot after due diligence be found within this state. (Here allege what efforts have been made to find him, and, if he is a non-resident, state that fact. See other forms.) 1 Abb. Forms 92.

D. Affidavit Where Action is for Divorce.

A. B., plaintiff above named, being duly sworn, says:

I. That this action is brought for divorce in one of the cases prescribed by law, and that a cause of action therefor exists in her favor against the defendant above named, the grounds of which appear by the sworn complaint in this action hereto annexed, the statements contained in which are true (or the grounds of which are as follows: here state grounds of action showing that the case is within the statute of divorces).

II. That the defendant cannot be found within this state, although diligent effort to find him and serve upon him the summons herein has been made. (State what effort, and if he is a resident of another state, allege such residence.)

III. (State his residence, if not before stated, or plaintiff's ignorance of it, as in I, B.) 1 Abb. Forms 93.

E. Affidavit in Case of Unknown Owners.

A. B., the plaintiff in the above en-

titled action, being duly sworn, says, that this action is brought for the partition of certain real property situated in the state of ———, in the county of ———, in which county the place of trial is laid, and of which real estate the plaintiff and defendant (except the defendant M. N., who has only a life estate in an undivided part thereof) are seized in fee simple as tenants in common.* That U. V., who was also a tenant in common, died, as this deponent is informed and believes, in the year 18—. That the names and residences of his widow and heirs-at-law are unknown to the plaintiff, and cannot, although he has made diligent inquiries for that purpose (state what), be ascertained. That their interest in the premises is an undivided ——— part, being the share to which the defendant U. V. if living would have been entitled. 1 Abb. Forms 94.

F. Affidavit for Order for Appearance of a Resident Whose Place of Residence Cannot Be Ascertained.

(As in I, E, to the *.)

That the last known place of residence of W. X., one of the above named defendants, was within this state, to-wit, at ———; but that he removed thence on or about ———, and his residence at this time cannot, on due inquiry, be ascertained by the plaintiff or his attorney, although they have diligently made such inquiry (here state briefly what inquiry has been made, e. g., as follows: Although they have made inquiries of his former neighbors and acquaintances at ———, his last known place of residence, and of his father, who resides at ———, and his brother, who resides at ———). 1 Abb. Forms 95.

G. Affidavit Where Defendant Keeps Himself Concealed.

(As in I, A, to the *.)

II. That the defendant is a resident of this state, to-wit, of ———, but cannot after due diligence be found within the state. That a summons in this action has been made out, a copy whereof is hereto annexed, and due diligence has been used to effect its service (here state what, or annex proof). That as this deponent believes the defendant keeps himself concealed

within this state, with intent to defraud his creditors (or with intent to avoid the service of summons, or both); and that the grounds of his belief are as follows (setting them out in detail). 1 Abb. Forms 89.

H. Affidavit Where Defendant Has Departed From State To Defraud Creditors, or to Avoid Service.

(As in I, A, to the *.)

II. That the defendant is a resident of this state, to-wit, of ———, but cannot after due diligence be found within the state. That a summons in this action has been made out, a copy whereof is hereto annexed, and due diligence has been used to effect its service (here state what effort has been made; or annex and refer to return of officer or affidavit of other person attempting to make service). That as this deponent believes the defendant has departed from this state to ———, in the state of ———, with intent to defraud his creditors (or with intent to avoid the service of summons, or both), and the grounds of his belief are as follows (here set out in detail the facts and circumstances which show that the defendant has done so). 1 Abb. Forms 88.

I. Affidavit To Obtain Order of Publication Where Defendant is a Non-Resident.

G. B., of Saratoga Springs, in said county, being duly sworn, saith, that he is a clerk in the office of (or that he is) the complainant's solicitor in this cause; that a subpoena to appear and answer has been duly issued out of and under the seal of this court, directed to the defendant C. D., but the same could not be served upon the said defendant by reason of * his absence from this state; and that this deponent has been informed by S. T., of ———, in the county of ———, that the said defendant C. D. is a non-resident of this state, and that he resides in the state of Illinois; and that the said C. D. never was a resident of this state (or that the said defendant's last place of residence in this state was at ——— in the county of ———); which information this deponent believes to be true. 2 Barb. Ch. Pr. 396.

J. Affidavit To Obtain an Order of Publication Where Defendant Resides in This State But is Absent Therefrom, or From His Place of Residence, or is Concealed.

G. B., of Saratoga Springs, in said county, being duly sworn, saith that he is a clerk in the office of (or that he is) the complainant's solicitor in this cause; that a subpoena to appear and answer has been duly issued out of and under the seal of this court, directed to the defendant C. D., but that the same could not be served upon the said defendant by reason of the absence of the said C. D. from (or the concealment of the said C. D. within) this state (or the continued absence of the said C. D. from his place of residence). And this deponent further says that the said defendant is an actual resident of this state, and that he resides at Troy, in the county of Rensselaer, where he has a family (or where he boards with C. M.). And that (this deponent is informed by T. F., of Troy aforesaid, and believes that) the said C. D. left his said residence about the 1st of July last, to go to Washington, and has not yet returned, and is not expected to return until about the 1st day of June next. 2 Barb. Ch. Pr. 396.

K. Affidavit To Obtain Order of Publication Where Defendant's Last Known Place of Residence Was in This State, But His Present Place of Residence Cannot Be Ascertained.

(As in I, I, to the *) this deponent's not being able to ascertain, on diligent inquiry, the present place of residence of the said defendant. And this deponent further saith that the last known place of residence of the said C. D. was in this state, to-wit, in the city of Albany, which place he left about _____ years ago, since which time this deponent has not been able to obtain any information as to his residence, although he has made inquiries of the former neighbors and acquaintances of the said C. D. and such of his known relatives as would be likely to be knowing to his present place of residence. 2 Barb. Ch. Pr. 397.

V. Orders for Publication.

A. Order of the Court for the Publication of the Summons Where the Defendant Is a Foreign Corporation.

It appearing to the satisfaction of the court by the annexed affidavit (and complaint) that * the defendants are a foreign corporation, and that a cause of action exists against them in favor of the above named plaintiff; that the defendants have property within this state (or that the cause of action arose within this state, and that no officer (or agent) of the defendants can with due diligence be found within the state, on whom service of process can be made according to law; and that the president (or other officer, etc.) of said corporation is M. N., and resides at _____;† on motion of Q. R., plaintiff's counsel,

Ordered that the summons herein, a copy whereof is hereto annexed, be served by publication of the same in two newspapers as follows: in the _____, published in _____, and in the _____, published in _____, once in each week for (six) weeks; and that a copy of the summons and complaint be forthwith deposited in the postoffice, directed to the president of the defendants at his said place of residence, and the postage paid thereon. 1 Abb. Forms 87.

B. Order Where Defendant Has Departed or Conceals Himself.

(As in II, A, to the *); that a cause of action exists against the defendant Y. Z., in favor of the above named plaintiff; but that the said defendant cannot after due diligence be found within this state, he having departed therefrom (or he keeping himself concealed within this state), with intent to defraud his creditors (or with intent to avoid the service of summons, or both), and that the defendant's residence is at _____ (or is unknown, and cannot with due diligence be ascertained);‡ on motion of Q. R., plaintiff's counsel,

Ordered that the summons herein, a copy whereof is hereto annexed, be served by publication of the same in two newspapers as follows: in the _____, published in _____, and in the _____, published in _____, once in each week for (six) weeks § (and where the residence is known,

add): and that a copy of the summons and complaint be forthwith deposited in the postoffice, directed to said defendant at his said place of residence, and the postage paid. 1 Abb. Forms 89.

C. Order for Publication Where Defendant is Non-Resident.

(As in II, A, to the *, and then continue): a cause of action exists against the defendant Y. Z., in favor of the above named plaintiff, and that the defendant is not a resident of this state, but resides in ———, in the state of ——— (or and that his residence is not known and cannot with due diligence be ascertained), and that defendant cannot after due diligence be found within this state, but that he has property within this state (continue as in II, B, from the †). 1 Abb. Forms 91.

D. Order Where Action Relates to Specific Property.

(As in II, A, to the *, and continue): that the defendant Y. Z. cannot after due diligence be found within this state, and that he resides at ———, in the state of ——— (or that his residence is not known, and cannot with reasonable diligence be ascertained by the plaintiff), that he is a proper party to this action, which relates to real property within this state, in which real property the said defendant Y. Z. has (or claims) an interest (or lien), and that the relief demanded by the plaintiff consists partly in excluding the said defendant from any lien on (or interest in) said property. (Continue as in II, B, from the †.) 1 Abb. Forms 93.

E. Order Where Action Is for Divorce.

(As in II, A, to the *, and continue): that this action is brought for a divorce in one of the cases prescribed by law, and that the defendant cannot be found within this state after due diligence, and that he resides at ———, in the state of ——— (or that his residence is not known, and cannot with reasonable diligence be ascertained by the plaintiff). (Continue as in II, B, from the †.) 1 Abb. Forms 94.

F. Order for Publication Where Residence of a Resident Cannot Be Ascertained.

(As in II, A, to the *.)

That the last known place of resi-

dence of the defendant Y. Z. was in this state; but that his residence at this time cannot, on due inquiry, be ascertained; on motion of Q. R., counsel for the plaintiff,

Ordered (continue as in II, B, from the † to the §, directing the publication, however, to be for [three] months.) 1 Abb. Forms 95.

G. Order in Case of Unknown Owners.

(As in II, A, to the *, and continue): that this action is brought for the partition of real estate, situate in ———. And that there are certain persons, to-wit, the widow and heirs-at-law of U. V., deceased, who have an interest as tenants in common in said premises, and whose names and residences are unknown, and cannot with diligence be ascertained; on motion of Q. R., plaintiff's counsel, ordered that the summons herein, a copy whereof is hereto annexed, be served on such unknown owners by publication for (six) weeks, once in each week successively, in the state paper, to-wit, the ———, published at ———, and also in the ———, a newspaper printed in the county of (that in which the land lies). 1 Abb. Forms 95.

H. Order of Publication for Absent, Concealed or Non-Resident Defendant.

It satisfactorily appearing to this court that the defendant C. D. is a non-resident of this state (or is a resident of this state, but is now absent therefrom; or from his place of residence; or is concealed within the same for the purpose of avoiding the service of process; or that the last known place of residence of the defendant C. D. was in this state, but that his present place of residence cannot be ascertained), on motion of Mr. N., of counsel for complainant, it is ordered that the said defendant C. D. cause his appearance in this cause to be entered within ——— months from the date of this order; and that in case of his appearance he cause his answer to the complainant's bill to be filed, and a copy thereof to be served on the complainant's solicitor, within (forty) days after service of a copy of said bill and notice of this order, and in default thereof, that the said bill be taken as confessed by the said defendant C. D. And it is further ordered

that within twenty days, the said complainant cause a notice of this order to be published in the state paper and in the *Saratoga Sentinel*; and that the said publication be continued in each of the said papers at least once in each week, for (three) weeks in succession; or that he cause a copy of this order to be personally served on the said defendant C. D., at least twenty days before the time above prescribed for his appearance. 2 Barb. Ch. l'r. 398.

I. Order for Publication of Notice of Attachment Against a Non-Resident Debtor.

Before (the officer issuing the attachment).

In the matter of the attachment against the estate of C. D., a non-resident debtor.

Ordered that notice according to the provisions of the statute against absconding, concealed and non-resident debtors, be published once a week for nine months in the state paper, and in the newspaper printed in the county of _____, entitled the (name of the newspaper), that an attachment has issued against the estate of C. D., a non-resident debtor; and that the same will be sold for the payment of his debts, unless he appear and discharge such attachment according to law, within (nine months) from the first publication of such notice; and that the payment of any debts due to him by residents of this state, and the delivery to him, or for his use, of any property within this state, belonging to him, and the transfer of any such property by him, are forbidden by law and are void. Dated, etc. Burr. App. 543, §1072a.

J. Order for Publication of Notice of Attachment Against Absconding Debtor.

Before (the officer issuing the attachment). In the matter of the attachment against the estate, real and personal, of C. D., an absconding or concealed debtor.

Ordered that notice, according to the provisions of the statute authorizing attachments against absconding, concealed and non-resident debtors, be published once a week for three months in the state paper and in the newspaper printed in the county of _____, entitled the (name of the newspaper),

that an attachment has issued against the estate of C. D., now or late a resident of _____, an absconding or concealed debtor, and that the same will be sold for the payment of his debts, unless he appear and discharge such attachment according to law, within (three months) from the first publication of such notice; and that the payment of any debts due to him, and the delivery to him or for his use of any property belonging to him, and the transfer of any property by him, for any purpose whatever, are forbidden by law and are void. Dated this _____ day of _____, 1846.
(Officer's signature.)

Burr. App. 543, §1072.

VI. Notices for Publication.

A. Notice To Be Appended To Summons When Published.

To the defendant Y. Z.

Take notice that the complaint in this action (together with the summons, of which the foregoing is a copy) was filed in the office of the clerk of the _____ court, at _____, in the county of _____, in the state of _____, on the _____ day of _____.

(Signature and address of attorney.)

1 Abb. Forms 81.

Note.—In some jurisdictions a brief statement of the object of the action must be contained in the summons.

B. Notice for Publication of Attachment Against Non-Resident Debtor.

By order of (the officer issuing the attachment).

Notice is hereby given, pursuant to the provisions of the statute authorizing attachments against absconding, concealed and non-resident debtors, that an attachment has issued against the estate of C. D. as a non-resident debtor, and that the same will be sold for the payment of his debts, unless he appear and discharge such attachment, according to law, within nine months from the first publication of this notice; and that the payment of any debts due to him by residents of this state, and the delivery to him or for his use of any property within this state belonging to him, and the transfer of any such property by him, are forbidden by law, and are void.

Dated the _____ day of _____, 1846.

E. F., attorney for attaching creditor.
Burr. App. 537, §1062a.

C. Notice for Publication of Attachment Against Absconding Debtor.

By order of (the officer issuing the attachment).

Notice is hereby given, pursuant to the provisions of the statute authorizing attachments against absconding, concealed and non-resident debtors, that an attachment has issued against the estate of C. D., now or late a resident of ———, an absconding or concealed debtor, and that the same will be sold for the payment of his debts, unless he appear and discharge such attachment, according to law, within three months from the first publication of this notice; and that the payment of any debts due to him, and the delivery to him or for his use of any property belonging to him, and the transfer of any property by him, for any purpose whatever, are forbidden by law, and are void.

Dated the ——— day of ———, 1846.

E. F., attorney for attaching creditor.
Burr. App. 536, §1062.

VII. Proof of Publication.

A. Printer's Affidavit.

M. N., being duly sworn, says that he is the printer (or the foreman of the printer, or the principal clerk of the printer, or the only clerk of the printer) of the ———, a newspaper published in ———, and that the summons in this action, with the notice thereto appended, copies whereof are hereto annexed, were published in said paper once in each week for six successive weeks (or other time, according to the statute), the first publication being on Monday, the ——— day of ———, 18—, and the last upon Monday, the ——— day of ———, 18—. 1 Abb. Forms 101.

B. Affidavit of Publication of Notice of Order To Appear.

J. J., of ———, in said county, being duly sworn, deposes and says: That he is the printer (or foreman, or principal clerk, in the office of the printer), of the Saratoga Sentinel. That a notice, of which the annexed is a copy, has been published in said paper once at least in each week, for three weeks in succession, commencing

on the ——— day of ——— last.
2 Barb. Ch. Pr. 329.

C. Affidavit of Mailing.

M. N., being duly sworn, says that he is managing clerk in the office of the attorney for the plaintiff in this action; that on the ——— day of ———, 18—, he deposited a copy of the annexed summons and complaint in this action in the postoffice at ———, directed to Y. Z., one of the defendants above named, (or who is the president of W. X. company, defendants above named), at ———, his place of residence, and prepaid the postage thereon. 1 Abb. Forms 105.

VIII. Proceedings on Expiration of Time for Appearance After Publication.

A. Petition for Appointment of Guardian ad Litem for an Infant After Publication of an Order To Appear.

To the chancellor of the state of ———:

The petition of C. D., of ———, the defendant in this suit, respectfully sheweth that on the ——— day of ——— last, an order was made in this cause requiring the defendant C. D., who is an infant under the age of twenty-one years, to appear and answer the bill of complaint in this cause, within ——— months from the date of said order.

And your petitioner further shows that said order has been duly published as directed therein (as will appear from the affidavits hereto annexed); but that the said C. D. has not appeared, nor caused a guardian ad litem to be appointed to defend this suit; nor hath any application for that purpose been made by or on behalf of said C. D., to the knowledge or belief of your petitioner.

Your petitioner therefore prays that ———, at ———, a solicitor of this court, may be appointed the guardian ad litem of the said infant defendant, to appear and defend the interests of said infant in this suit. 2 Barb. Ch. Pr. 328.

B. Affidavit of Defendant's Non-Appearance.

J. E., solicitor for the complainant, being duly sworn, deposes and saith that he has not received any notice that an appearance has been entered in this cause by or on behalf of the

defendant C. D., nor has the appearance of the said C. D. been entered to the knowledge or belief of this deponent. 2 Barb. Ch. Pr. 399.

C. Order Taking Bill as Confessed, and Directing a Reference, After Publication of Notice of Order To Appear.

In chancery. Before the chancellor, or before the vice chancellor, of the _____ circuit. State of New York, Saratoga county, ss.: A. B. v. C. D. and E. F.

On filing due proof of publication of notice of the order requiring the defendant C. D. to appear and answer the bill in this cause (or on filing due proof of service of the order requiring the defendant C. D. to appear and answer the bill in this cause), and the time limited in said order having expired, and on reading and filing due proof that said defendant C. D. has not appeared; on motion of J. E., solicitor for complainant, it is ordered that the bill of complaint, which is filed in this cause, be and the same is hereby taken as confessed by said defendant C. D. And it is further ordered that it be referred to one of the masters of this court residing in the county of Saratoga, to take proof of the facts and circumstances stated in said bill. And that the said master do examine the complainant on oath as to any payments that may have been made to him, or to any person for his use, on account of the demand mentioned in the bill in this cause, and which ought to be credited on such demand. And that the said master compute and ascertain the amount actually due to the complainant from the said defendant, including interest thereon to the date of his report. And that the said master report such proofs to the court; and also that he report upon the other matters hereby referred to him, with all convenient speed. 2 Barb. Ch. Pr. 399.

SET-OFF, COUNTERCLAIM AND RECOUPMENT.

I. Pleas of Set-Off, 1136

- A. *In Assumpsit, General Form*, 1136
- B. *For Work and Labor*, 1137
- C. *On Judgment*, 1137
- D. *For Rent on Lease*, 1137

II. Replication to Plea of Set-Off, 1138

III. Answers of Set-Off, 1138

- A. *General Form*, 1138
- B. *By Executor*, 1138
- C. *In Action by Executor*, 1138

IV. Counterclaims, 1138

- A. *Against Carrier for Negligence*, 1138
- B. *Defenses and Counterclaims Together*, 1138
- C. *Statement Admitting Counterclaim*, 1139
- D. *Judgment on Statement Admitting Counterclaim*, 1139

V. Answer, Recoupment for Breach of Warranty, 1139

CROSS-REFERENCES:

BILLS OF PARTICULARS:

- Affidavit on the Part of Plaintiff To Obtain Particulars of Defendant's Counterclaim or Set-Off;
- Alternative Order for Defendant To Furnish Bill of Particulars;
- Peremptory Order That Defendant Serve Bill of Particulars.

DEMURRER:

- Demurder to Answer of New Matter or Counterclaim.

DIVORCE:

- Counterclaim for Divorce for Plaintiff's Adultery.

GENERAL ISSUE AND GENERAL DENIAL:

- Notice of Set-Off With Plea of General Issue.

LIMITATION OF ACTIONS:

- Replication of Statute of Limitations to Set-Off.

REPLICATION AND REPLY:

- General Form of Reply;
- General Form of Reply, Both Denial and New Matter;
- Reply of Statute of Limitations.

STIPULATIONS:

- Stipulations Striking Out Counterclaim.

VERDICT:

- Verdict in Favor of Defendant on Counterclaim.

I. Pleas of Set-Off.

- A. *Plea of Set-Off in Assumpsit, General Form.*

(First plea, general issue; second plea thus): Because he says, that the said plaintiff, before and at the time of the commencement of this suit, to-wit, at, etc., aforesaid, was and still is indebted to him, the said defendant, in a large sum of money, to-wit, the sum of _____ dollars, of lawful

money of the United States of America, * for (here state the subject-matter of the set-off according to the fact), * which said sum (or, sums), of money so due and owing from the said plaintiff to the said defendant as aforesaid, exceeds (or, exceed), the damages sustained by the said plaintiff by reason of the non-performance by him, the said defendant, of the said several supposed promises and undertakings, in the said declaration mentioned, and out of which said sum (or, sums), of money, so due and owing from the said plaintiff to the said defendant, he, the said defendant, is ready and willing, and hereby offers to set-off and allow to the said plaintiff, the full amount of the said damages, according to the form of the statute in such case made and provided. And this he, the said defendant, is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 356, §647; 3 Chit. Pl. 931.

B. Plea of Set-Off for Work and Labor.

(As in I, A, to first *.)

For the work and labor, care, diligence and attendance of the said defendant by the said defendant and his servants before that time done, performed and bestowed, in and about the business of the said plaintiff, and for the said plaintiff, and at his request, and for divers materials and other necessary things by the said defendant before that time found and provided, and used and applied in and about the said work and labor for the said plaintiff, and at his like request, and for divers goods, wares and merchandises sold and delivered by the said defendant to the said plaintiff, and at his like request, and for money by the said defendant before that time lent and advanced to, and paid, laid out and expended for the said plaintiff, and at his like request, and for money by the said plaintiff before that time had and received, to and for the use of the said defendant, and for money due and owing from the said plaintiff to the said defendant, for interest upon, and for the forbearance of divers large sums of money due and owing from the said plaintiff to the said defendant, and by the said defendant forbore to the said plaintiff, for divers long

spaces of time before then elapsed, and for money due and owing from the said plaintiff to the said defendant upon an account stated between them.

(Conclude as in I, A, from second *.) 3 Chit. Pl. 931.

C. Plea, Set-Off on Judgment.

(As in I, A, to first *.)

Upon and by virtue of a certain judgment which he the said defendant heretofore, to-wit, in _____ term, in the _____ year of the reign of our said lord the king, before the king himself (or, if in C. P., say, "before his majesty's justices of the bench at Westminster, in the county of Middlesex"), recovered against the said plaintiff in a certain plea of trespass on the case upon promises, whereby it was considered and adjudged that the said defendant should recover against the said plaintiff the said sum of £_____, for his damages which he had sustained, as well by reason of the not performing of certain promises and undertakings, before then made by the said plaintiff to the said defendant, as for his costs and charges by him about his suit in that behalf expended, whereof the said plaintiff was convicted, as by the record and proceedings thereof remaining in the said court of our said lord the king, before the king himself (or, in C. P., "in the said court of our lord the king of the bench aforesaid"), more fully appears, which said judgment still remains in full force and effect, not reversed, annulled, discharged, satisfied or made void, and which he the said defendant is ready to verify by the said record. (Conclude as in I, A, from second *.) 3 Chit. Pl. 934.

D. Plea, Set-Off for Rent Due on Lease.

(As in I, A, to first *.)

Upon and by virtue of a certain indenture of lease, made heretofore, to-wit, etc. (date of lease), at, etc. (venue), aforesaid, between the said defendant of one part, and the said plaintiff of the other part (the counterpart of which said indenture, sealed with the seal of the said plaintiff, the said defendant now brings here into court, the date whereof is the day and year last aforesaid), whereby the said defendant demised certain premises and tenements, with the appurtenances therein mentioned, to the said plaintiff

for a certain term of years therein mentioned, to-wit, for the term of _____ years, from, etc., yielding and paying during the said term the yearly rent or sum of £_____ on certain days therein mentioned, to-wit, on, etc., and in and by which said indenture he the said plaintiff covenanted with the said defendant to pay him the said rent of £_____ on the days aforesaid, of which said rent afterwards, to-wit, on, etc., a large sum of money, to-wit, the said sum of £_____ for _____ years of the said term then elapsed, became and was, and still is in arrear and unpaid from the said plaintiff to the said defendant, to-wit, at, etc. (venue), aforesaid. (Conclude as in I, A, from second *.) 3 Chit. Pl. 936.

II. Replication by Way of Traverse. Nil Debet, to Plea of Set-Off.

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that he the said plaintiff was not, nor is indebted to the said defendant, in manner and form, as the said defendant hath above in his said (last) plea, in that behalf alleged. And this he prays may be inquired of by the country, etc. Burr. App. 377, §687; 3 Chit. Pl. 1158.

III. Answers of Set-Off.

A. Answer, Set-Off, General.

I. That before, and at the time of the commencement of this action, the plaintiff was, and still is, indebted to the defendant in the sum of _____ for the following cause:* (Here state the cause of action relied on as a set-off), out of which said sum of money, so due to the defendant, he hereby offers to set off to the plaintiff so much as will be sufficient to satisfy the plaintiff's damages, if any, in respect to the alleged matters complained of (or if the cause of action in the complaint is admitted, say: sufficient to satisfy the sum so due to the plaintiff). 2 Abb. Forms 60.

B. Answer, Set-Off by Executors.

I. That the plaintiff before, and at the time of the death of the said M. (the defendant's testator), was in-

debted to the said M. (or was at and before the commencement of this action indebted to the estate of the said M.), and still is so indebted to the estate of the said M., in the sum of _____ dollars for the following cause (here state the cause of action relied on as a set-off; and conclude as in the preceding form). 2 Abb. Forms 60.

C. Answer, Set-Off in Action by Executors.

I. That the said M. (the plaintiff's testator), before and at the time of his death, was indebted to the defendant (or, if the executors-plaintiff were indebted in their representative capacity, before and at the time of the commencement of this action, the plaintiffs, as the executors of M., were, and still are, indebted to the defendant) in the sum of _____, for the following cause (continue as above). 2 Abb. Forms 61.

IV. Counterclaims.

A. Answer, Counterclaim Against Carriers for Negligence.

The defendant A. B., by M. N., his attorney, answering the complaint herein, alleges for a counterclaim thereto:

That the transportation of the goods mentioned in the complaint was conducted so badly and negligently, and with so little care, that by the mere carelessness, negligence and improper conduct of the said plaintiff and his servants in that behalf, a part of the said goods, of the value of at least _____ dollars, were wholly lost to the defendant; and a part thereof, of the value of _____ dollars, were damaged in the sum of _____ dollars; which said loss and damages, amounting to the sum of _____ dollars, the defendant claims the right to counterclaim, recoup and set off against the plaintiff's demand to the extent thereof; and demands judgment against said plaintiff for the said sum of _____ dollars, or so much thereof as he may be entitled to over and above the plaintiff's claim. 2 Abb. Forms 66.

B. Answer, Defenses and Counterclaims, Pleaded Together.

The defendant (naming him if he is one of several, answering separately), by M. N., his attorney, answering the complaint herein:

First. For a first defense thereto, says, etc., etc.

Second. For a second defense, said defendant says, etc., etc.

Third. For a counterclaim thereto, said defendant says (here set forth cause of action as in a complaint).

Fourth. For a second counterclaim thereto, said defendant says, etc.

Wherefore, etc. 2 Abb. Forms 172.

C. Statment Admitting Counterclaim.

The plaintiff in this action hereby admits the counterclaim in the defendant's answer, and consents that the same, amounting to (here state amount, with interest, if any), be deducted from the amount demanded in the complaint. 2 Abb. Forms 512.

D. Judgment on Statment Admitting Counterclaim.

The plaintiff having filed with the clerk a statement, admitting the counterclaim contained in the answer of the defendant (or defendants, naming them), now, on motion of _____, counsel for the plaintiff,

It is adjudged, that the plaintiff recover of the defendant (or defendants, naming them) _____ dollars, being the excess of the plaintiff's claim over the said counterclaim, with _____ dollars costs of the action, making together _____ dollars. 2 Abb. Forms 512.

V. Answer; Recoupment for Breach of Warranty, (a).

That the said goods were sold and delivered in the piece or package, and without an opportunity for these defendants to examine the same; and at the time of the sale of the same it was represented and agreed by the said (seller) that the same were and should be free from any defect or injury, and should be marketable; whereas, in fact, a portion of the said goods, being dry-goods and hosiery, were unmarketable, defective, and injured, and the colors of the same were destroyed and changed, which was unknown to these defendants at the time of the sale and delivery. Whereby the defendants sustained damage _____ dollars, being the amount of the price of the goods so injured or defective; which said last-mentioned amount these defendants claim shall be deducted from the amount that may be proved against them on the trial of this action. 2 Abb. Forms 64.

Answer, Recoupment, for Breach of Warranty (b).

I. That the said note was not, before it became due, transferred and delivered to the plaintiff for value.

II. That the said note was made and delivered by the defendant to one M. N., who was at that time an agent or servant of the plaintiff, and acting as such on behalf of the plaintiff in that transaction, in exchange for a quantity of segars; which was sold by sample to the defendant at that time, by said M. N., as such agent.

III. That when said segars were delivered to this defendant, they did not correspond with the samples, and were not worth more than _____ dollars.

IV. That as soon as the defendant learned the character of said segars, he offered to said M. N., as such agent, to return them, which he is still ready and willing to do. Whereupon the defendant claims to recoup _____, his damage in their behalf, from the amount of the said note. 2 Abb. Forms 79.

SEVERAL COUNTS.

CROSS REFERENCE:

DEFINITION:

Notice of Motion To Compel Election Between Several Counts for Same Cause of Action.

SHERIFFS AND CONTABLES.

I. Declarations, 1140

- A. *For Neglecting To Levy*, 1140
- B. *For False Return*, 1141
- C. *Escape Under Capias Ad Satis facendum*, 1142
- D. *For Money Collected by Sheriff*, 1143

II. Complaints, 1143

- A. *Neglecting To Return Executions*, 1143
- B. *Neglecting To Levy*, 1144
- C. *Neglecting To Pay Over Money*, 1144
- D. *False Return*, 1144
- E. *Escape on Order of Arrest*, 1145
- F. *By Mortgagee of Chattels Against Sheriff*, 1145

III. Summary Proceedings Against Sheriff, 1146

A. Notice To Return Process, 1146

1. *Capias Ad Respondendum*, 1146
2. *Capias Ad Satisfaciendum*, 1146
3. *Fieri Facias*, 1146
4. *Affidavit of Service of Notice*, 1146

B. Order on Sheriff's Default for Not Returning, 1146

C. Order on Appearance on Attachment, 1146

D. Interrogatories on Attachment, 1147

1. *For Not Returning Capias*, 1147
2. *For Not Returning Fieri Facias*, 1147

E. Order Imposing Fine on Sheriff, 1147

F. Notice of Motion To Stay Proceedings Against Sheriff, 1147

G. Setting Aside Attachment, 1148

1. *Notice of Motion*, 1148
2. *Order*, 1148

H. Order on Default of Sheriff To Appear on Attachment, 1148

I. Attachment Against Sheriff, 1148

IV. Bond of Indemnity to Sheriff, 1148

CROSS-REFERENCES:

ARREST IN CIVIL CASES:

Capias at Suit of Sheriff;
Capias Against Sheriff in Trespass;
Capias Against Sheriff in Case;
 Sheriff's Return, Property Concealed, etc.;

Return to *Capias*, Out on Bail;

Return to *Capias* in Custody;

Return to *Capias*, Non Est Inventus;

Return to *Capias* *Cepi Corpus* as to One, Non Est Inventus as to Other;

Return to *Capias*, Discharge on Supersedeas;

Return to Order of Arrest, Defendant Arrested;

Return to Order of Arrest, Not Found;

Return, Arrest and Imprisonment for Want of Bail;

Return, One Arrested, the Other Not Found;

Return That Defendant Has Made Deposit in Lieu of Bail;

Return, Arrest and Rescue;

Sheriff's Certificate That Bail Has Been Given Instead of Deposit;

Sheriff's Assignment of Undertaking; Assignment of Bail Bond by Sheriff.

ASSIGNMENT FOR THE BENEFIT OF CREDITORS:

Answer, Averment of Fraudulent Assignment in Action Against Sheriff.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Sheriff's Certificate of Sale of Real Estate.

OFFICERS:

Complaint Assignment of Breach in Sheriff's Bond for Neglect To Levy;

Complaint, Assignment of Breach in Sheriff's Bond, Neglect To Sell;

Complaint, Assignment of Breach in Sheriff's Bond, Neglect To Return;

Complaint, Allegation of Judgment Against Sheriff.

RETURNS:

Return Personally Served;

Sheriff's Certificate of Service on Defendant Personally;

Sheriff's Certificate, Service at Residence;

Certificate of Sheriff of Service of Declaration;

Return of Summons Against Corporation;

Return to Writ of Inquiry;

Return, *Fieri Facias*;

Return to *Fieri Facias*, *Nulla Bona*;

Return, *Fieri Facias* to Part *Nulla Bona* to Part;

Return to *Fieri Facias*, Special;

Return to *Fieri Facias*, Unsold for Want of Buyer;

Return of Rescue and Resistance to an Execution;

Return, *Cepi Corpus* in Custody;

Return to *Capias Ad Satisfaciendum*, Non Est Inventus;

Return to Warrant on Arrest;

Return, Some Arrested and Others Not Found;

Return of Arrest and Commitment to Jail;

Return, Arrest for Larceny Where Property Is Found;

Return Where Magistrate Issuing Warrant Is Absent;

Return of Rescue and Resistance to Criminal Process.

STAY OF PROCEEDINGS:

Return to *Capias Ad Respondendum*, Stay of Proceedings.

I. Declarations.

A. *Declaration Against a Sheriff for Neglecting to Levy and Return a Fieri Facias.*

(As in a declaration for a false return [next form], to the words, "to

be executed in due form of law," and then as follows): And although there were then and afterwards, and before the return of the said writ, divers goods and chattels of the said J. K., within the bailiwick of the said defendant, as such sheriff as aforesaid, whereof the said defendant could and might and ought to have levied the moneys so indorsed on the said writ, and directed to be levied as aforesaid, to-wit, at, etc., aforesaid, whereof the said defendant so being sheriff as aforesaid, there had notice; yet the said defendant, so being sheriff of the said county of _____ as aforesaid, not regarding the duty of his office as such sheriff, but contriving, and wrongfully and unjustly intending to injure, prejudice and aggrieve the said plaintiff in this behalf; and to deprive him of the moneys so endorsed on the said writ, and directed to be levied as aforesaid; and of the means of obtaining the same,* did not, nor would at any time before the return of said writ, levy the said moneys, or any part thereof, but wholly neglected and refused so to do, and therein failed and made default; by means of which said premises the said plaintiff hath been and is greatly injured and deprived of the means of obtaining the said moneys so endorsed on the said writ, and directed to be levied as aforesaid, and which are still wholly unpaid as aforesaid; and is likely to lose the same, to-wit, at, etc., aforesaid.

And whereas also (set forth the same matter as in the first count, to the words, "to be executed in due form of law," and then proceed thus): Yet the said defendant, so being sheriff as aforesaid, not regarding the statute in such case made and provided, nor the duty of his office, etc. (as in first count to the *, and then as follows): did not nor would return the said writ, at the return day therein specified, nor had he then the same before the justices of the said supreme court according to the exigency of the said writ, and the form of the said statute, nor hath he since returned the said writ, but wholly neglected and refused so to do, and therein failed and made default; by means of which said premises, etc. (as in first count to the end, and then add the usual conclusion: "To the damage," etc.). Burr. App. 317, §586.

B. Declaration Against a Sheriff for a False Return.

(Title and commencement; then state the judgment to the end of the reference to the record, as in next form, and then proceed as follows): And the said plaintiff further saith that the said judgment being in full force, and the said damages (or debt and damages) remaining unpaid and unsatisfied, he the said plaintiff, on, etc. (the teste of the writ), in the year of our Lord, etc., for the obtaining satisfaction thereof, sued and prosecuted out of the said court of the said people, before the aforesaid justices thereof, at the _____ in the _____ of _____, a certain writ of the said people, called a fieri facias, directed to the sheriff of _____, by which said writ the said people commanded the said sheriff that (here recite the fi. fa. fully). Which said writ afterwards, and before the delivery thereof to the said sheriff, as hereinafter mentioned, was duly endorsed with a direction for him the said sheriff to levy (one thousand seven hundred) dollars, besides sheriff's poundage, officers' fees, and all other incidental expenses; and which said writ so endorsed, afterwards, and before the said return thereof, to-wit, on, etc., at, etc., was delivered to the said defendant, who then and from thence until and at and after the return of said writ, was sheriff of the said county of (Oneida), to be executed in due form of law. By virtue of which said writ, the said defendant, so being sheriff of the said county of (Oneida) as aforesaid, afterwards, and before the said return of the said writ, to-wit, on, etc., at, etc., and within his bailiwick, as such sheriff as aforesaid, seized and took in execution divers goods and chattels of the said J. K., of great value, to-wit, of the value of the moneys so endorsed on the said writ, and directed to be levied as aforesaid, and then and there levied the same thereout. Yet the said defendant, so being such sheriff of the said county of (Oneida) as aforesaid, not regarding his duty as such sheriff, but contriving, and wrongfully and unjustly intending to injure, prejudice and aggrieve the said plaintiff in that behalf, and to deprive him of the said moneys so endorsed on the said writ, and directed to be levied as aforesaid, and of the means of obtaining the same, had not

the said moneys so levied as aforesaid, or any part thereof, before the said justices of the supreme court of judicature aforesaid, at the return of the said writ, according to the exigency thereof, and of the said endorsement so made thereon as aforesaid, but therein wholly failed and made default; nor hath he paid the said sum of (one thousand seven hundred) dollars, or any part thereof, to the said plaintiff; and at the return of the said writ, to-wit, on, etc., the said defendant falsely and deceitfully returned to the said court of the said people, upon the said writ, that the said J. K. had not any goods or chattels in his bailiwick (follow the return), as by the said writ and the return thereof remaining of record in the said court of the said people, before the aforesaid justices thereof, to-wit, at, etc., fully appears; by means of which said premises the said plaintiff hath been, and is greatly injured and deprived of the means of obtaining the said moneys so endorsed on the said writ, and directed to be levied as aforesaid, and which are still wholly unpaid as aforesaid; and is likely to lose the same, to-wit, at, etc. (A count for not levying and false return may be added.) Burr. App. 318, §587; Till. Forms 431; Yates' Forms 368.

C. Declaration Against Sheriff for Escape Under Capias ad Satisfaciendum.

A. B., plaintiff in this suit, by C. and S., his attorneys, complains of W. J., esquire, sheriff of the (city and) county of _____, defendant in this suit, being in custody, etc., of a plea that the said defendant render unto the said plaintiff the sum of _____ dollars (amount of the judgment) of debt which he owes to, and unjustly detains from him: For that whereas the said plaintiff heretofore, to-wit, in the term of _____, in the year of our Lord one thousand eight hundred and _____ (the term of the judgment), in the _____ court of _____ (of the people) of the state of _____, before the justices thereof, at the courthouse in the city of _____, by the consideration and judgment of the said court recovered against one C. D. _____ dollars, which were adjudged to the said plaintiff, in and by the said court, for the damages which he

had sustained, as well on occasion of the not performing certain promises and undertakings before then made by the said C. D. to the said plaintiff, as for his costs and charges by the said plaintiff, about his suit in that behalf expended (if the original act were in debt, the statement of the judgment should be varied accordingly), whereof the said C. D. was convicted, as by the record and proceedings thereof, still remaining in the said court, more fully and at large appears. And the said plaintiff in fact says that the said plaintiff for having execution of the said judgment, afterwards, to-wit, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____ (the teste of the ca. sa.), sued and prosecuted out of the said court a certain writ (of the people of) the state of _____, called a *capias ad satisfaciendum*, upon the said judgment, directed to the sheriff of the (city and) county of _____, by which said writ the said people commanded the said sheriff that he should take the said C. D. if he should be found in his bailiwick, and him safely keep, so that the said sheriff might have his body before the justices of the said _____ court of _____, at the _____ in the city of _____, on the _____ Monday of _____, then next, to satisfy the said plaintiff the damages (if in debt, "the debt and damages") aforesaid, in form aforesaid recovered, and that the said sheriff should have then there that writ (the writ should be recited verbatim), which said writ afterwards, and before the delivery thereof to the said sheriff, to be executed as is hereinafter mentioned, was duly endorsed with a direction to the said sheriff, requiring him to levy the sum of _____ dollars, with interest from the _____ day of _____, one thousand eight hundred and _____, besides his fees, poundage, etc. (this must correspond with the endorsement of the ca. sa.), which said writ, so endorsed as aforesaid, afterwards, and before the said return thereof, to-wit, on the _____ day of _____, in the year one thousand eight hundred _____ (any day about the time the writ was delivered to the sheriff), at the (city and in the) county aforesaid, was delivered to the said W. J., who then and from thenceforth until, and at, and

after the return of the said writ, was sheriff of the (city and) county aforesaid, to be executed in due form of law. By virtue of which said writ, and of the said endorsement so made thereon as aforesaid, the said W. J., so being sheriff as aforesaid, afterwards, and before the said return of the said writ, to-wit, on the (day and year last aforesaid), and within the bailiwick of him the said sheriff, to-wit, at the place aforesaid, took and arrested the said C. D. by his body, and then and there, by virtue of the said writ and of the said endorsement, so made thereon, as aforesaid, had and detained him in his custody, in execution for the said sum of money so mentioned in, and endorsed on the said writ as aforesaid, besides the interest, poundage and sheriff's fees thereon, and kept and detained him in custody, from thence until the said defendant, so being sheriff as aforesaid, afterwards, to-wit, on the (day and year last aforesaid), and at the place aforesaid, without the leave or license, and against the will of the said plaintiff, suffered and permitted the said C. D. to escape and go at large, and the said C. D. did then and there escape and go at large, whithersoever he would, out of the custody of the said defendant, he the said defendant, so then being sheriff as aforesaid; and the said sum of money so endorsed on the said writ as aforesaid, together with the interest, poundage and sheriff's fees, being then and still wholly unpaid and unsatisfied to the said plaintiff, to-wit, at the place aforesaid: whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of money above demanded: Yet the said defendant, although often requested so to do, hath not as yet paid the sum of money above demanded, or any part thereof, to the said plaintiff, but so to do he hath hitherto wholly refused, and still doth refuse; to the damage of the said plaintiff of one hundred dollars, and thereof he brings suit, etc. Burr. App. 286, §555; 2 Chit. Pl. 416; Till. Forms 383; Yates' Forms 457.

D. Declaration for Money Collected by Sheriff.

For that whereas the said defendant, heretofore, to-wit, on the _____ day of _____, in the year of our Lord

one thousand eight hundred and _____, at _____, to-wit, at (the city and) in the county of _____ aforesaid, was indebted to the said plaintiff in the sum of _____ dollars, lawful money of the United States of America, for so much money by the said defendant, before that time, had collected and received on and by virtue of a writ of fieri facias, issued out of the _____ court of _____ (of the people) of the state of New York, and directed to, and received by, the said defendant, as sheriff of the said (city and) county of _____, at the suit of the said plaintiff, against the goods and chattels, lands and tenements of C. D., for the (amount endorsed on the writ): And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of _____ dollars, when the said defendant should be thereunto afterwards requested. (Add a count for money had and received generally, and the other money counts.)

Nevertheless, etc. Burr. App. 254, §515a; Yates' Forms 254.

II. Complaints.

A. Complaint Against Sheriff for Neglecting to Return Execution.

I. That at the time of the issuing of the execution hereinafter mentioned, the defendant was the sheriff of the county of _____, in this state.

II. That on the _____ day of _____, 18____, in an action in the supreme court of this state, in the county of _____ (or in the county court of the county of _____, in this state, or other court, or before K. L., a justice of the peace in and for the town of _____, in the county of _____, in this state), wherein this plaintiff was plaintiff, and one M. N. was defendant (or otherwise), the plaintiff recovered a judgment duly given by said court against the said M. N., for _____ dollars (or, where the judgment was in a justice's court, duly given by said justice against said M. N. for _____ dollars, which judgment was thereafter duly docketed in the office of the clerk of the county of _____).

III. That on the _____ day or

—, 18—, an execution against the property of said M. N. was duly issued by this plaintiff on said judgment, and directed and then delivered to the defendant, as sheriff of the county of —, of which execution the following is a copy (copy of the execution and indorsement), (or state its substance, e. g., thus: whereby said defendant was directed to satisfy said judgment out of the personal property of said M. N. in said — county, or if sufficient personal property could not be found, out of the real property belonging to him on the day when said judgment was docketed in said — county, or at any time thereafter, and return said execution to — with- in sixty days after the receipt thereof by him).

IV. That although (more than) sixty days elapsed after delivery of said execution to the defendant, and before the commencement of this action, yet he has, in violation of his duty as such sheriff, failed to return the same, to the damage of the plaintiff — dollars. 1 Abb. Forms 421.

B. Complaint Against Sheriff for Neglecting to Levy.

I, II, and III (as in preceding form).

IV. That although at the time of the said delivery of the execution to the defendant, there was within said county (personal) property belonging to the defendant, to-wit (designate it briefly), out of which the defendant might have satisfied the execution (of which property he then and there had notice); nevertheless, in violation of his duty as such sheriff, he failed to levy the moneys or any part thereof, as by said execution he was required to do, to the damage of the plaintiff — dollars. 1 Abb. Forms 422.

C. Complaint Against Sheriff for Neglecting to Pay Over Moneys Collected on Execution.

I. That the times hereinafter mentioned, the defendant was the sheriff of the county of —, in this state.

II. That on the — day of —, 18—, at —, an execution, then duly issued, in form and effect as required by law, against the property (or the person) of one M. N., and in favor of the plaintiff, upon a judgment for the sum of — dollars theretofore duly given in favor of the plaintiff against said M. N., in the

court of —, was by the plaintiff directed and delivered to the defendant as such sheriff.

III. That the defendant thereafter, as such sheriff, collected and received upon said execution, to the use of the plaintiff, the sum of — dollars, besides his lawful fees and poundage.

IV. That although (more than) sixty days elapsed after the delivery of said execution to the defendant before this action, yet he has, in violation of his duty as such sheriff, failed to pay over to the plaintiff the amount so collected. 1 Abb. Forms 423.

D. Complaint Against Sheriff for False Return.

I. That at the time of the issuing and return of the execution hereinafter mentioned, the defendant was the sheriff of the county of —, in this state.

II. That on the — day of —, 18—, this plaintiff recovered a judgment duly given by the supreme court in and for the county of — (or other court) against one M. N., for — dollars (or as in II, A).

III. That on the — day of —, 18—, an execution against the property of said M. N. (or, if the judgment was against several joint debtors on service of part only, say: against the joint property of M. N. and O. P., and against the separate property of O. P.), was duly issued upon said judgment by the plaintiff, and directed and then delivered to the defendant as such sheriff, of which execution and the indorsement thereon the following is a copy (or whereby the defendant was required, etc., stating effect as in II, A).

IV. That the defendant, as such sheriff, did, within sixty days thereafter, by virtue of said execution, levy on certain personal property of said M. N., within said county, of the value sufficient to satisfy said judgment (or said judgment in part, to-wit, to the amount of — dollars), together with the defendants' fees and poundage.

V. That notwithstanding the premises, and in violation of his duty as sheriff, he did not satisfy said judgment, or any part thereof; but has falsely returned upon said execution to the clerk of the county of —, that said M. N. had not any goods or

chattels within said county, whereby he could cause to be levied the amount of said judgment, or any part thereof, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 424.

E. Complaint Against Sheriff for Escape on Order of Arrest.

I. That at the time of the issuing of the execution and of the escape hereinafter mentioned, the defendant was the sheriff of the county of _____, in this state.

II. That on the _____ day of _____, 18—, in an action brought in the supreme court of this state, in the county of _____ (or other court), by this plaintiff against one M. N., for wrongfully converting property (or other case authorizing arrest), an order was duly made by _____, one of the justices of said court, whereby the defendant, as such sheriff, was required to arrest the said M. N., and hold him to bail in the sum of _____ dollars.

III. That thereafter and on the _____ day of _____, 18—, said order was duly delivered to the defendant, as said sheriff, to be executed.

IV. That thereafter the defendant, as such sheriff, arrested said M. N., and committed him to jail, pursuant to said order; but in violation of his duty as such sheriff, has since, to-wit, on the _____ day of _____, 18—, without the consent of this plaintiff, permitted said M. N. to escape (or, but since then, to-wit, on the _____ day of _____, 18—, said M. N. went and was at large without the limits and boundaries of the liberties of said jail without the assent of the plaintiff), to the damage of the plaintiff _____ dollars. 1 Abb. Forms 426.

F. Complaint by Mortgagee of Chattels Against Sheriff for Selling on Execution Against Third Person.

I. That on or about the _____ day of _____, 18—, one M. N. executed and delivered to the plaintiff a chattel mortgage (of which a copy is annexed as a part of this complaint); that the property mentioned and described in said mortgage and the schedule annexed consisted of a lithographic press, of the value of _____ dollars, or thereabouts; that said mortgage was made in good faith, and without intent to defraud creditors or purchasers, and

was given to secure the payment to plaintiff of _____ dollars, with interest from the date of said mortgage, which sum was theretofore loaned by the plaintiff to said M. N., and which he then owed the plaintiff.

II. That the said M. N. is by trade or occupation a lithographer, and was, at the date of said mortgage, actively engaged in business as a lithographer, and was dependent upon said business or occupation for support and a livelihood; and that the said property so mortgaged was used by the said M. N. in the course of his said business or occupation, and was essential and requisite to him in his said business or occupation; and that said property was left and remained with the said M. N., to enable him to prosecute his said business.

III. That on or about the _____ day of _____, 18—, a true copy of said mortgage was filed in the office of _____, in which said county, at the date of said mortgage, the said M. N. resided.

IV. That on the _____ day of _____, 18—, and before the levy and sale hereinafter mentioned, said sum of _____, with interest, became due, pursuant to the terms of the mortgage (or, if on demand, the said sum of _____, with interest, was duly demanded from the said M. N. by the plaintiff, but said M. N. failed to pay the same; and thereupon, pursuant to said mortgage, the plaintiff became the owner of said property, and entitled to the immediate possession and control of the same.

V. That thereafter, and on or about the _____ day of _____, 18—, the defendant W. X. issued to the defendant Y. Z., sheriff of the city and county of New York, an execution against the property of the said M. N.; and on the _____ day of _____, 18—, the plaintiff caused a notice to be served upon said sheriff, informing him of said mortgage, and of the default in the payment thereof, and that the plaintiff claimed the property therein mentioned.

VI. That on or about the _____ day of _____, 18—, regardless of said mortgage, the said sheriff wrongfully sold said (mortgaged property); and thereafter returned said execution satisfied.

VII. That the said W. X. directed

said sheriff to make such levy and sale without regard to said mortgage, and agreed to indemnify him against any and all damage that might arise from said levy and sale; and that after said sale he received the proceeds, or a portion thereof, to his own use and benefit.

VIII. That since said sale the plaintiff has demanded of said sheriff the mortgaged goods, but he refused to deliver the same; and that thereupon plaintiff demanded of the said sheriff the proceeds, or value thereof, of said property, but he refused to pay over any part thereof.

IX. That by reason of the premises the plaintiff has been injured to his damage _____ dollars. 1 Abb. Forms 463.

III. Summary Proceedings.

A. Notice To Return Process.

1. Notice To Return Capias ad Respondendum.

Sir: Please to take notice that you are hereby required to return the writ of capias ad respondendum, issued in this cause, and to you directed and delivered therein, within twenty days after service of this notice. Dated, etc.

Yours, etc.,

E. F., plaintiff's attorney.

To J. V. D., esq.,

Sheriff of the county of (Kings).

Burr. App. 191, §347.

2. Notice To Return Capias ad Satisfaciendum.

Sir: Please to take notice that you are hereby required to return the writ of capias ad satisfaciendum, issued in this cause and to you directed and delivered therein, within twenty days after service of this notice. Dated, etc.

Yours, etc.,

E. F., atty. for plff.

To P. Y., esq., sheriff of the county of _____.

Burr. App. 202, §391.

3. Notice To Return Fieri Facias.

Sir: Please to take notice that you are hereby required to return the writ of fieri facias, issued in this cause and to you directed and delivered therein, within twenty days after service of this notice. Dated, etc.

Yours, etc.,

E. F., atty. for plff.

To P. Y., esq., sheriff of the county of _____.

Burr. App. 202, §390.

4. Affidavit of Service of Notice That Sheriff Return Capias or Execution.

E. F., the attorney for the plaintiff in this cause (or O. P., of _____, student at law), being duly sworn, deposes and says, that on the _____ day of _____ last (or instant), he delivered to J. A., esquire, sheriff of the (city and) county of _____, a writ of capias ad respondendum (or fieri facias, etc.), issued in this cause, directed to the said sheriff, and returnable on the _____ day of _____, by leaving the same with K. L., undersheriff of the said county, in the office of the said sheriff, during office hours (or otherwise, according to the mode of delivery). And deponent further says that on the _____ day of _____ last (or instant), he personally served the said sheriff with a true copy of the annexed notice, by delivering the same to the said sheriff personally (or by delivering the same during office hours to L. K., one of the deputies of the said sheriff, in the office of the said sheriff, or otherwise, according to the mode of service). And deponent further says that he has this day searched in the office of the clerk of this court in the city of _____, for the return of the said writ of capias ad respondendum (or fieri facias), but that no such writ was then filed there. And further says not. Burr. App. 5, §8.

B. Order on Sheriff's Default for Not Returning.

On reading and filing an affidavit of the delivery of the writ of capias ad respondendum (or fieri facias) issued in this cause to J. K., esquire, sheriff of the (city and) county of _____, and also of due service upon the said sheriff of a notice to return the said writ within twenty days after service of said notice, and that, on due search the said writ was not returned, on motion of E. F., attorney for the plaintiff, ordered that the default of the said sheriff in not returning the said writ be, and it is hereby entered accordingly. Burr. App. 443, §860.

C. Order on Appearance on Attachment.

The sheriff of the county of _____ having been this day called, and this being the second call, appeared by K. L., his counsel. On motion of E. F.,

attorney for the relator, ordered that the said sheriff answer on oath the interrogatories filed by the attorney for the relator in this cause, pursuant to the rules and practice of this court. Burr. App. 454, §900.

D. Interrogatories on Attachment.

1. Interrogatories on Attachment Against Sheriff for Not Returning Capias.

Interrogatories to be administered to J. K., esquire, sheriff of the (city and) county of _____, touching a contempt alleged against him, in not returning a certain writ of capias ad respondendum, issued out of this court, in favor of A. B., plaintiff, against C. D., defendant.

First interrogatory. Did you or not, at any and what time, receive for service a certain writ of capias ad respondendum, to you directed, as sheriff of the (city and) county of _____, between A. B., plaintiff, and C. D., defendant, tested the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, and returnable at the courthouse in the city of _____, on the _____ Monday of _____ then next? Declare fully.

Second interrogatory. Did you or not serve the said writ of capias ad respondendum? If yea, in what manner, and at what time in particular? If nay, why did you not serve the same? Declare.

Third interrogatory. Did you or not receive from (E. F.), the attorney for the (plaintiff) in the said suit of A. B. against C. D., a notice in writing, requiring you to return the said writ? If yea, what was the purport of that notice, and when did you receive it? Declare.

Fourth interrogatory. Have you or not returned the said writ of capias ad respondendum? If yea, when, where and how in particular? If nay, why have you not returned the same? Declare fully and particularly.

Dated, etc.

E. F., attorney for (plaintiff).

Burr. App. 129, §255; Yates' Forms 16.

2. Interrogatories on Attachment Against Sheriff for Not Returning Fieri Facias.

_____ court. Interrogatories to be administered to W. J., esquire, sheriff

of the (city and) county of _____, touching a contempt alleged against him in not returning a certain writ of fieri facias, issued out of this court, in favor of A. B., plaintiff, against C. D., defendant (or vice versa).

First interrogatory. Did you or not, at any and what time, receive for service a certain writ of fieri facias, to you directed, as sheriff of the (city and) county of _____, between A. B., plaintiff, and C. D., defendant, tested the _____ day of _____, in the year of our Lord one thousand eight hundred _____, and returnable before the justices of this court in sixty days from the receipt thereof by you? Declare fully.

Second interrogatory. Did you or not execute the said writ of fieri facias? If yea, in what manner, and at what time in particular. If nay, why did you not execute the same? Declare.

Third interrogatory. (As in last form.)

Fourth interrogatory. (As in last form, substituting fieri facias for capias ad respondendum.)

(Dated and signed as in last form.) Burr. App. 130, §256.

E. Order of the Court Imposing Fine on Sheriff for Contempt.

E. F., attorney for relator.

I. J., of counsel.

The people ex rel. A. B. v. M. B. H., sheriff of the (city and) county of _____.

The respondent not having answered the interrogatories filed and served in this cause, on motion of I. J., of counsel for the relator, the said M. B. H. is adjudged guilty of a contempt of this court; and it is ordered that he be, and hereby is, adjudged to pay a fine of (five hundred) dollars, and fifteen dollars costs of this motion, and that he stand committed until the same be paid. Burr. App. 454, §902.

F. Notice of Motion To Stay Proceedings Against Sheriff.

Sir: Please to take notice that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the _____ in the city of _____, on the first Tuesday of _____ next, that the proceedings against the sheriff in this cause be

stayed on such terms as the said court shall direct. Burr. App. 206, §401.

G. Setting Aside Attachment.

1. *Notice of Motion To Set Aside Attachment Proceeding Against Sheriff as Irregular.*
Supreme Court. C. D., I. N., and I. S., ads. A. B., assignee of J. K., esquire, sheriff of the county of _____.

Sir: Please to take notice, that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the capitol in the city of _____, on the first Tuesday of _____ next, that the attachment issued against the sheriff of the county of _____ in this cause, and all the proceedings thereon, be set aside for irregularity, with costs (or for such order or relief as the defendant may be entitled to). Burr. App. 205, §400.

2. *Order Discharging Attachment Against Sheriff for Contempt.*
J. A., sheriff of the (city and) county of _____, ads. The People, ex rel. A. B.

G. H., attorney.
K. L., of counsel.

On reading and filing the answer of the respondent to the interrogatories filed against him in this cause, and on motion Mr. K. L., of counsel for respondent, ordered, that the attachment in this matter be, and the same is hereby discharged. Burr. App. 454, §901.

H. Order on Default of the Sheriff To Appear on Attachment.

E. F., attorney.
I. J., of counsel.

The People ex rel. A. B. v. J. A., sheriff of the (city and) county of _____.
Second call.

The default of the defendant for not appearing on the return of the attachment herein, having been heretofore duly entered, and said defendant being now again called, and failing to appear, and on motion of Mr. I. J., of counsel for the relator, ordered, that the default of the said defendant in not appearing be, and the same hereby is entered, and that the bond returnable with the attachment be delivered to the relator or his attorney to be prosecuted (or that an alias attachment issue). Burr. App. 454, §899.

I. Attachment Against Sheriff for Contempt.

The (people of the) state of _____,

to the coroner (or coroners), of the (city and) county of _____, greeting:

We command you that you attach J. K., esquire, sheriff of our said (city and) county, so that you may have before our _____ of our _____ court of _____, at the _____ in the city of _____, on the _____ Monday of _____ next, to answer to our said _____ for certain trespasses and contempts, done and committed in our court before our _____ aforesaid; and have you then there this writ. Witness, _____, esquire, our _____, at the _____ in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred and _____. _____, clerks.

E. F., attorney.

(Endorsed.)

_____ court. The (people of the) state of _____ ex rel., A. B. v. J. K., sheriff of the county of _____. Attachment, returnable first Monday of January, 1846. E. F., attorney. Issued for not returning a writ of capias ad respondendum between A. B., plaintiff, and C. D., defendant. Let the defendant be held to bail in the sum of \$_____, Nov. 24th, 18____.

_____, circuit judge.

Burr. App. 37, §72; 21 Wend. 57.

IV. Bond of Indemnity to Sheriff, Title of Property in Dispute.

Know all men by these presents, that we, etc. (penal part of the bond in the usual form; the amount and sureties are matters for arrangement between the officer and the plaintiff).

Whereas, the above-named J. H., as sheriff of the (city and) county of _____ has received for service a certain writ of fieri facias (or as the writ may be) in favor of A. B. against C. D., whereby the said J. H., as such sheriff, is directed to levy and collect the sum of _____ besides his fees. And whereas the said J. H., as such sheriff has been requested, on behalf of the plaintiff named in the said execution, to levy, by virtue thereof, on (state the property particularly), and because such property is claimed to belong to one B. V., and because the said sheriff doth not know whether such claim be well founded or not;

now, therefore, the condition of this obligation is such, that if the above bounden (here name the obligors) shall well and truly save harmless and indemnify him the said J. H., sheriff as aforesaid, his under-sheriff and deputies, and every of them, of, from and against all damages, costs and charges which the said sheriff or his under-sheriff, or deputies, or either of them, may sustain or be put to, for or by reason of levying on, taking away, removing or selling the aforesaid described property, or any part thereof, of and upon the said execution, then this obligation to be void, otherwise to remain in full force and effect.

(Signatures and seals.)

Sealed and delivered in the presence of O. P., D. R.

Burr. App. 41, §79; Yates' Forms 812.

SHIPS AND SHIPPING.

I. Declarations, 1150

- A. *On Charter Party for Failure To Furnish Cargo*, 1150
- B. *On Charter Party for Freight and Demurrage*, 1151
- C. *Against Steamboat for Negligence*, 1152
- D. *Against Owner of Vessel for Negligence in Navigation*, 1153

II. Complaints, 1154

- A. *By Shipowner for Not Loading*, 1154
- B. *By Shipowner for Demurrage*, 1154
- C. *By Shipowner for Freight*, 1155
- D. *For Freight Against Consignor*, 1155
- E. *For Freight Against Consignee*, 1155
- F. *By Shipowner Against Assignee of Cargo*, 1155
- G. *Against Carrier for Not Regarding Notice To Keep Dry*, 1155
- H. *Accrual of Loss in Unloading*, 1156
- I. *For Negligence in Loading*, 1156
- J. *For Not Properly Stowing, Freight Diminished*, 1156
- K. *Against Owner for Abandoning Voyage*, 1156

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Decree for Account of Freight and Earnings of Ship.

ADMIRALTY:

- Libel by Owner and Master of Saving Vessel, for Themselves and Others, Against Saved Vessel and Cargo, for Salvage;
- Libel in Rem for Seaman's Wages; Vessel Left Port, or About To Leave;
- Libel for Seaman's Wages After Preliminary Summons;
- Libel Against Owners for Pilotage;
- Libel In Personam Against Owner of Ship for Salvage;
- Libel In Personam Against Owner for Supplies Ordered by Master in Foreign Port;
- Libel In Personam, Seaman Against Master and Mate for Assault and Battery;
- Libel In Rem for Collision;
- Libel In Rem by the Owners of a Vessel To Obtain Possession of Her;
- Libel In Rem by Minority Owner for Security for Return or Sale of Vessel;
- Libel In Rem by Part Owner for Sale of Vessel;
- Libel Against a Vessel and Cargo as Prize;
- Libel for Restitution of Captured Ship and Cargo;
- Libel of Information;
- Claim by Owner;
- Claim by Foreign Consul for Unknown Owners in Case of Salvage;
- Answer (in Admiralty);
- Interlocutory Order for Sale of Ship.

BILLS AND ANSWERS:

Answer by Common Carrier That Goods Were Lost by Risk Excluded by Contract.

BONDS:

Complaint on Bond To Discharge Attachment Against Vessel.

CONTRIBUTION:

Bill for Contribution on General Average.

FRAUD AND DECEIT:

Declaration for False Warranty of Cable.

INJURIES TO PERSONS:

Declaration, Collision Between Row Boat and Tug.

INSURANCE:

Declaration on Marine Policy of Insurance;

Complaint on Valued Policy on Ship or Cargo;

Complaint on Open Marine Policy;

Complaint on Marine Policy on Freight;

Complaint on Marine Policy for Partial Loss and Contribution to General Average;

Complaint, Averment of Loss by Collision;

Averment of Waiver of Condition of Marine Policy.

PASSENGERS:

Complaint Against Common Carrier of Passengers, by Steamboat for Injuries.

TRESPASS:

Complaint for Seizing Vessel.

I. Declaration.

A. Declaration on Charter Party for Failure To Furnish Cargo.

For that whereas heretofore, to-wit, on, etc. (date of charter party), to-wit, at, etc. (venue) by a certain charter-party of affreightment, then and there made between the said plaintiffs, by the name and description of Messrs. A. B. and E. F., therein described as the owners of the good ship or vessel called the _____ (whereof G. H. was then master), of the burden of _____ tons or thereabouts, then on the river Hudson, of the one part and the said defendant, therein described as the freighter of the said ship, of the other part (one part of which said charter-party, sealed with the seal of the said defendant, the said plaintiffs now bring here into court, the date whereof is a certain day and year therein named, to-wit, the same day and year aforesaid), the said plaintiffs (here set out the charter-party in the past tense, thus): let the said ship to freight for one voyage, from the Island of St. Michael's to the ports of, etc., optional to the affreighter or his agent, with liberty to take on board a cargo of coals and goods, and deliver them in her way to _____, and the said defendant hired the same in manner and form therein mentioned, to-wit, that the said ship then was, and should, during the said intended voyage, be at the expense of the said plaintiffs, the said owners, kept staunch, tight and strong, well manned, victualled, tackled and provided, in every respect fit for merchant's service, and particularly for performing such intended voyage (the dangers and perils of the seas, restraints of princes and rulers, fire and enemies, during the

same always excepted); and also that the said G. H., with the said ship, after she delivered her cargo of coals and goods, should, with the first opportunity of wind and weather, proceed directly for _____, and, on her arrival there, to receive on board a full and complete cargo of fruit, in common sized boxes, at such convenient place or places where the said ship and cargo might safely come; and also that the said ship should, for her loading at _____ and delivering at _____ lay the full space of twenty working days, if required, and so to end the said intended voyage; in consideration of which, the said defendant did agree, not only to load and put on board the said ship the said cargo of fruits as aforesaid, and to receive or cause the same to be received from on board her, at _____, or _____, at the option of the said defendant, and that within the days and time limited for her loading and discharging as aforesaid, but also should and would pay, or cause to be paid, unto the said plaintiffs or their assigns, on the safe delivery of her cargo at _____, or _____, optional to the said defendant or his agent, half cash, and the remainder by an approved bill on London, at four months' date, in full for the freight and hire of the said ship for the said voyage, at and after the rate of _____ dollars per ton, of twenty common sized boxes of fruit, and in proportion for any less quantity than a ton. It was understood, in the stowing of the cargo, a well hole of two feet square was to be kept open from the keels on to the deck, opposite each hatchway, for the purpose of airing the fruit, and that the boxes must be stowed on their bottoms, and not their ends, nor edge-ways, together with the sum of eighteen dollars per day, to be paid day by day as the same should grow due, for every day of the ship's detention over and above the days and time limited for her loading and discharging as aforesaid; as also ten dollars per cent. on the amount of the above specified freight, in lieu of all port charges and pilotage; and for the true performance thereof, each of the said parties bound himself, his executors, administrators and assigns, reciprocally unto the other, especially the said plaintiffs, bound their said ship, her freight and appurtenances; and the

said defendant the goods to be loaded on board her, each to the other, in the penal sum of five thousand dollars, firmly by the said charter party of affreightment, as by the said charter party, reference being thereunto had, will more fully appear; and the said plaintiffs in fact say, that the said G. H., with the said ship or vessel in the said charter party mentioned, afterwards, to-wit, on, etc., proceeded to ——— according to the meaning and effect of the said charter party, and afterwards, to-wit, on, etc., aforesaid, arrived at ——— aforesaid, and was, to-wit, on, etc., last aforesaid, ready and willing to receive on board the said ship or vessel a cargo of fruit, and would have proceeded therewith, to, etc., according to the meaning and effect of the said charter party; and the said ship or vessel was then fit and ready to receive on board a cargo of fruit, according to the meaning and effect of the said charter party; and the said plaintiffs were ready and willing that the said charter party should be performed in all things on their part, according to the meaning and effect of the said charter party, of which said premises, the said defendant afterwards, to-wit, on, etc., aforesaid, at, etc. (venue) aforesaid, had notice; yet the said defendant did not nor would load or put on board the said ship or vessel a cargo, according to the meaning and effect of the said charter party, or any cargo or part of a cargo whatever, but therein wholly failed and made default, contrary to the form and effect of the said charter party, and the covenant of the said defendant so made in that behalf as aforesaid; and the said defendant hath not paid the said plaintiffs any freight for the said voyage, or any port charges or pilotage in respect thereof; by reason of which premises, the said plaintiffs have lost and been deprived of the freight and reward, and the port charges and pilotage, and of great gains, profits, and emoluments which might and otherwise would have become due and payable to them under and by virtue of the said charter party, amounting in the whole to a large sum of money, to-wit, the sum of ——— dollars, to-wit, at, etc. (venue) by reason of which said premises an action hath accrued to the said plaintiffs to demand and have of and from the defendant, the sum of ——— dollars,

mentioned in the said charter party, parcel of the said sum of money above demanded. (Add counts for freight and for the use and hire of the ship, and the money counts and account stated). Burr. App. 282, §551; 2 Chit. Pl. 426.

B. Declaration on Charter Party for Freight and Demurrage.

For that whereas heretofore, to-wit, on, etc., at, etc. (venue) by a certain charter party of affreightment, then and there indented, made, and concluded between the said plaintiff, by the name and description of, etc., master of the good brig or vessel called, etc., of the burthen of ——— tons per register, or thereabouts, then riding in the river Hudson, of the one part, and the said defendant, by the name and addition of, etc., merchant and freighter of the said vessel, of the other part (one part of which said charter party, sealed with the seal of the said defendant, the said plaintiff now brings here into court, the date whereof is the same day and year aforesaid) it was witnessed that the said plaintiff, for the consideration thereafter mentioned, did thereby covenant, promise and agree, to and with the said defendant, his executors, administrators and assigns, that the said vessel being tight, staunch, and strong, etc. (here set out the charter party, verbatim in the proper tense), as by the said charter party, reference being thereunto had, will amongst other things, more fully and at large appear, to-wit, at, etc. (venue). And the said plaintiff in fact saith, that afterwards, to-wit, on, etc., the said vessel being then and there tight, staunch, and strong, and every way properly fitted and manned for the voyage in the said charter party mentioned, the said master did then and there take, load, and receive, on board of the said vessel, a full and complete cargo of lawful goods, which, having received, and being despatched, did then and there, wind and weather permitting, immediately set sail and proceed to the island of Heligoland, where, being afterwards, to-wit, on, etc., arrived, did then and there make a right and true delivery of the whole of the said cargo to the agents or consignees of the said freighter, agreeably to bills of lading that were signed for the same,

to-wit, at, etc. (venue), which cargo being then and there so delivered, the said master of the said vessel did afterwards, to-wit, on, etc., take on board the said vessel another full and complete cargo of lawful goods, not exceeding what she could reasonably carry and stow, and being so laden and despatched as last aforesaid, the said vessel did afterwards, to-wit, on, etc., set sail and proceed direct from thence to New York, where, being afterwards, to-wit, on, etc., arrived, she did then and there make a right and true delivery of the whole of the said homeward cargo to the said defendants or his agents, agreeably to bills of lading that were signed for the same, and so ended the said voyage, according to the form and effect of the aforesaid charter party, to-wit, at, etc. (venue), of which said several premises the said defendant then and there had notice. And the said plaintiff in fact saith, that the said defendant did not nor would send, or cause to be sent, alongside of the said vessel in the river Hudson, such goods as he thought proper to ship, and receive the same from alongside of her at Heligoland, and send alongside of her at Heligoland such goods as he thought fit, and receive the same from alongside of her at New York, within the time limited for those purposes, and days of demurrage in the said charter party mentioned, but wholly refused and neglected so to do, and on the contrary thereof, kept and detained the said vessel for a much longer space of time, to-wit, the space of ten days, over and above the time limited for the purpose last aforesaid, and the days of demurrage as aforesaid, contrary to the form and effect of the said charter party, and of the covenant of the said defendant so made as aforesaid, to-wit, at, etc. (venue). And the said plaintiff further saith, that on the delivery of the said homeward cargo at New York as aforesaid, to-wit, on, etc., at, etc. (venue) aforesaid, a large sum of money, to-wit, as well the sum of _____ dollars, in the said charter party mentioned, as another sum of money, to-wit, the sum of _____ dollars, being five per centum on the amount of the freight aforesaid, in lieu of port charges, and _____ dollars hat money to the master, amounting in the whole to a large sum of money,

to-wit, the sum of _____ dollars, became and was due and payable from the said defendant to the said plaintiff, according to the form and effect of the said charter party, and of the said covenant of the said defendant, so by him made as aforesaid, yet the said defendant did not nor would (although often requested so to do), pay to the said plaintiff the said sum of money last mentioned in manner directed by the said charter party, to-wit, the sum of _____ dollars, being one-half in money, or any part thereof, on the delivery of the homeward-bound cargo at New York as aforesaid, or before or since, nor did nor would pay the other half, or any part thereof, by the said defendant's accepted bill, payable in New York aforesaid, at two months after the date of the said delivery of the said homeward cargo, or otherwise, however, but wholly refused and neglected so to do, contrary to the form and effect of the said charter party, and of the said covenant of the said defendant, so made as aforesaid, and the said sum of _____ dollars is still in arrear and unpaid. And the said plaintiff further saith, that the said defendant did keep the said vessel on demurrage during divers, to-wit, _____ days, over and above the said lay days in the said charter party mentioned; yet the said defendant did not nor would (although often requested), pay for the said _____ days to the said plaintiff, the said sum of _____ dollars per day, day by day, as the same became due and payable, according to the tenor and effect of the said charter party, but wholly refused so to do; and the sum of _____ dollars for the said last mentioned _____ days, at and after the rate aforesaid, became and was due and owing from the said defendant to the said plaintiff, and still is in arrear and unpaid, contrary to the form and effect of the said charter party, and of the said covenant of the said defendant, so by him made as aforesaid, to-wit, at, etc., aforesaid. (Common conclusion in covenant.) Burr. App. 294, §560; Yates' Forms 441.

C. Declaration Against Owner of Steamboat for Negligence.

For that whereas the said defendants, before and at the time of committing the grievances next herein-

after mentioned, were owners and proprietors of a certain steamboat, moved and propelled by steam, called the (Advocate), by them used and employed in carrying and conveying passengers, and goods, wares and merchandises (on the waters of the Hudson river, from Albany to Stuyvesant, in the county of Columbia, and to divers other places on and adjacent to the said river) and being such owners and proprietors of the said steamboat, the said defendants on the (fourth day of May), in the year of our Lord one thousand eight hundred and (thirty-five), at (Albany, to-wit, at the city and in the county of Albany), received into the said steamboat (Maria, the wife, and Mary Ann, Janett, Lydia Maria, Emeline, and Edward, the children and servants of the said plaintiff), as passengers therein, from (Albany) aforesaid to (Stuyvesant) aforesaid, for certain fare and reward, and by reason thereof, the said defendants ought carefully to have conveyed the said wife and children of the said plaintiff in the said last mentioned steamboat, from (Albany) aforesaid, to (Stuyvesant) aforesaid; yet the said defendants not regarding their duty in this behalf, conducted themselves so carelessly, negligently and unskilfully in this behalf, that by and through the carelessness, negligence, unskilfulness, and default of themselves and their servants, in generating the steam for propelling the said steamboat, and in managing, regulating, and securing the same, and for want of due care and attention to their duty in that behalf afterwards, and whilst the said last mentioned steamboat was carrying and conveying the wife and children aforesaid, of the said plaintiff, as aforesaid, and before the arrival thereof at (Stuyvesant) aforesaid, to-wit, on the day and year last aforesaid, at (Coeymans), to-wit, at the city and in the county of (Albany), divers large quantities of steam escaped from the boiler and apparatus wherein the same was generated connected with the said boat, and drove into and fell upon the said wife and children of the said plaintiff, by means whereof the said wife and children of the said plaintiff, were respectively greatly hurt and injured, burned and scalded, and thereby then and there became and were very sick, sore, weak, and distempered. And the said wife

of the said plaintiff, and the said (Mary Ann and Emeline), have each remained and continued so sick, weak and distempered, for a long space of time, to-wit, from thenceforth hitherto at (Coeymans), to-wit, at the city and in the county of Albany aforesaid during all which last mentioned time the said plaintiff hath lost and been deprived of the aid and assistance of his said wife, and of the said (Mary Ann and Emeline), in the management of his domestic affairs and business, and hath been forced and obliged to lay out and expend, and did actually lay out and expend, divers sums of money, in the whole amounting to a large sum of money, to-wit, the sum of (five hundred) dollars, in and about the attempting the cure of his said wife and his said several children, and the procuring necessary medicines, attendances, means of cure and assistance for them, during their said several sicknesses, weaknesses and disorders, which ensued as aforesaid from the burning and scalding, hurts and injuries, occasioned by the escape and driving of the said steam into and upon them, and each of them, as aforesaid; and the said plaintiff was thereby prevented from pursuing and prosecuting his necessary affairs and business for a long space of time thereafter, to-wit, for the space of (six weeks) thence next ensuing, and was otherwise greatly damnified and injured, to-wit, at the city and county of Albany aforesaid. (Add other counts if necessary.) Burr. App. 311, §580; Yates' Forms 383.

D. Declaration Against Owner of Vessel for Negligence in Navigation.

For that whereas the said plaintiff, before and at the time of the committing of the grievance by said defendant as hereinafter next mentioned, was lawfully possessed of a certain (barge or vessel) of great value, to-wit, of the value of ten thousand dollars, then lawfully being in the river (Hudson), to-wit, at, etc. (venue) and the said defendant was also then possessed of a certain other (barge or vessel) in the river aforesaid, to-wit, at, etc. (venue), and then and there had the care, direction and management of the same; yet the said defendant not regarding his duty on that behalf, whilst the said barge or ves-

sol of the said plaintiff so was in the said river, to-wit, on, at, etc. (venue), took so little and such bad care of his said (barge or vessel), in the direction and management of the same, that the same, by and through the carelessness, misdirection, and mismanagement of the said defendant (or if he were not on board, "by his servants in that behalf"), then and there, with great force and violence, ran foul of and struck against the said (barge or vessel) of the said plaintiff, and thereby then and there, greatly broke, damaged, and injured the same, and thereby * divers goods and chattels, to-wit, etc. (specify them according to the exact description, or as in trover), of the said plaintiff of great value, to-wit, of the value of one thousand dollars, then being on board of the said (barge or vessel) of the said plaintiff, then and there became and were greatly wetted, damaged and spoiled; and also by reason of the premises, the said plaintiff hath been forced and obliged to pay, lay out, and expend, and hath necessarily paid, laid out and expended, a large sum of money, to-wit, the sum of one thousand dollars, in and about the repairing the said damage so done to the said (barge or vessel) as aforesaid, and also by means of the premises, the said plaintiff lost and was deprived of the use of the said (barge or vessel) of the said plaintiff for a long space of time, to-wit, for the space of _____ and thereby lost and was deprived of all the profits and advantages which during that time he might, and also otherwise would have derived and acquired from the use of his said (barge or vessel), to-wit, at, etc. (venue).

And whereas also the said plaintiff, before and at the time of the committing of the grievance by the said defendant as hereinafter next mentioned, was lawfully possessed of a certain other (vessel) of great value, to-wit, of the value of ten thousand dollars, to-wit, at, etc. (venue); and the said defendant was also then possessed of a certain other (vessel), to-wit, at, etc. (venue), and then and there had the care, direction and management of the same; yet the said defendant not regarding his duty in that behalf, heretofore, to-wit, on the day and year aforesaid, at, etc. (venue), took so little and such bad care of his said

(vessel) in the direction and management of the same, that the same, by and through the carelessness, misdirection, and mismanagement of the said defendant in that behalf, then and there greatly broke, damaged, and injured the said (vessel) of the said plaintiff, and thereby, etc. (Conclude as in the first count from the asterisk. Add other counts if the case suggests any, varying the statement of the injury according to the circumstances of the case, as they may be probably established in evidence, and conclude in the usual form.) Burr. App. 315, §584; 2 Chit. Pl. 713; Yates' Forms 419.

II. Complaints.

A. Complaint by Ship-Owner Against Charterer for Not Loading.

I. That on _____, at _____, the plaintiff and defendant agreed by charter party that the defendant should deliver to the plaintiff's ship _____, at _____, on the _____ day of _____, 18____, _____ tons of (merchandise), which she should carry to _____, and there deliver, on payment of _____ dollars freight; and that the defendant should be allowed _____ days for loading, and _____ days for discharging, and _____ days for demurrage, if required, at _____ dollars per day.

II. That the plaintiff duly performed all the conditions on his part, but the defendant made default in loading the agreed cargo, and failed to provide it, to the plaintiff's damage _____ dollars. 1 Abb. Forms 289.

B. Complaint by Ship-Owner Against Charterer for Demurrage.

I. (As in preceding form.)

II. That the plaintiff duly performed all the conditions on his part.

III. That the defendant kept the said ship on demurrage _____ days over and above the periods so agreed upon for loading and discharging as aforesaid, but has not paid the same; and that the defendant also detained the ship _____ days beyond the periods so agreed on for loading, discharging, and demurrage as aforesaid, whereby the plaintiff during all that time was deprived of the use of the ship, and incurred _____ dollars expense in keeping the same and maintaining the crew thereof. 1 Abb. Forms 290.

C. Complaint by Ship-Owner Against Charterer for Freight (a).

I. That at ———, on or about ———, the plaintiff and defendant agreed by charter party that the plaintiff's ship called ———, should, with all convenient speed, sail to ———, and that the defendant should there load her with a full cargo of ———, or other lawful merchandise, which she should carry to ———, and there deliver, on payment by the defendant to the plaintiff of freight at ——— dollars per ton, * one-half of such freight, to be paid in cash on unloading and right delivery of the cargo; and the remainder by approved bills on ———, at ——— months, or in cash less ——— per cent. discount, at the defendant's option.

II. That afterwards the said ship accordingly sailed to ———, aforesaid, and was there loaded by the defendant with a full cargo of lawful merchandise, and the plaintiff carried the said cargo in said ship to ——— aforesaid, and there delivered the same to the defendant.

III. That said freight amounted in the whole to the sum of ——— dollars, and the defendant paid to the plaintiff one-half of said freight in cash, and all conditions were fulfilled, and all things happened, and all times elapsed which were necessary to entitle the plaintiff to maintain this action; yet that the defendant did not pay to the plaintiff the remainder of said freight, either by such approved bills as aforesaid, or in cash, less discount as aforesaid. 1 Abb. Forms 288.

Complaint by Ship-Owner Against Charterer, for Freight. (Short Form) (b).

I. (As in preceding form.)

II. That the plaintiff duly performed all the conditions on his part, but that no part of said freight has been paid (except the sum of, etc.) 1 Abb. Forms 289.

D. Complaint for Freight Against Consignor.

That the defendant is indebted to the plaintiff on an account for the work, labor, and services of the plaintiff (and his servants), * in carrying in their vessel, the ———, from ——— to ——— (100 barrels of flour, or, sundry goods and merchandise), at the

request of the defendant. 1 Abb. Forms 201.

E. Complaint for Freight Against Consignee.

(As in preceding form, substituting at the *), in carrying in their vessel, the ———, from ——— to ——— (100 barrels of flour, or, sundry goods and merchandise), which were consigned to the defendant, and by the plaintiff delivered to him, and by him accepted. 1 Abb. Forms 202.

F. Complaint by Ship-Owner Against Assignee of Cargo.

I. That at ———, on or about ———, the plaintiff and one M. N. agreed by charter party (continue as in paragraph I of II, C, substituting the charterer's name for the word "defendant").

II. That thereafter the said M. N. assigned the cargo (or, the charter party and cargo) to the defendant, who thereupon became the owner thereof and entitled to receive the same.

III. (Continue as in II, C, paragraphs II and III. 1 Abb. Forms 289.

G. Complaint Against Carriers by Water for Not Regarding Notice To Keep Dry.

I. That on the ——— day of ———, 18—, at the port of ———, the defendant being master and commander of a vessel known as the ———, then lying at said port, the plaintiff caused to be shipped on board said vessel certain (very briefly designate the goods) merchandise, the property of the plaintiff, of the value of ——— dollars (then in good order and well conditioned), in consideration whereof, and of the sum of ——— dollars, then and there paid (or, agreed to be paid) by the plaintiff (or, by one M. N.) to the defendant (or, in consideration of a reasonable compensation by ———, agreed to be paid to the defendant therefor), the defendant then and there promised to take care of and safely carry said goods to ———, and there safely to deliver them to ———, danger of the seas only excepted, and then and there received said goods for that purpose.

II. That the plaintiff then and there caused due notice to be given to the defendant, that it was necessary to the preservation of said goods that they should be kept in a dry condition.

III. That the defendant failed to

take care of or safely to carry said goods; but, on the contrary, not regarding his said promise, so negligently and carelessly carried the same (and so negligently conducted, and so misbehaved in regard to the same in his said calling as a carrier), that they became wet, and thereby entirely ruined (or state other injury, in its nature and extent, according to the facts); which injury was occasioned, not by reason of any danger of the seas, but wholly through the negligence of the defendant and his servants.

IV. That by reason of the premises the plaintiff was injured, to his damage _____ dollars. 1 Abb. Forms 409.

H. *Complaint, Averment of Loss in Unloading.*

III. That said vessel afterwards safely arrived at _____, and no (excepted perils), prevented the safe carriage or delivery of the goods.

IV. That the defendant, not regarding his duty in that behalf, did not deliver the said goods to the plaintiff; and for want of due care in the defendant and his servants in unloading and delivering said goods, they were wholly lost to the plaintiff, to his damage _____ dollars. 1 Abb. Forms 410.

I. *Complaint for Negligence in Loading a Cargo.*

I. That on the _____ day of _____, at _____, the plaintiff, at the request of the defendant, caused to be delivered to him (very briefly designate the goods), of the plaintiff, of the value of _____ dollars, to be by the defendants safely and securely loaded on board a certain vessel, at _____, for the plaintiff, for a reasonable compensation to the said defendant in that behalf; and the defendant then received the goods for that purpose.

II. That the defendant, not regarding his duty in that behalf, afterwards, by himself and his servants, conducted so carelessly and improperly in the loading of the said goods on board the said vessel, that by their mere negligence and improper conduct, the goods were broken and injured, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 403.

J. *Complaint for Not Properly Stowing Cargo, Whereby Freight Was Diminished.*

I. That on the _____ day of _____, 18____, at _____, the defendant undertook with the plaintiff, for compensation, to superintend the loading and stowing of a cargo of the _____, a vessel of the plaintiff at _____, for her voyage.

II. That in consideration of the premises, the defendant then promised the plaintiff to use due care and diligence in the loading and stowing the cargo on board the said ship; and accepted and acted upon said retainer.

III. That the said defendant did not use due care or diligence in said loading and stowing, whereby the said vessel could not contain as much cargo as the same would otherwise have been reasonably capable of containing, and the plaintiff was compelled to dispatch the vessel on her voyage with a much smaller cargo than he otherwise would have had on board, and was obliged to decline to receive on board thereof _____ tons weight of goods, which he otherwise might and would have taken on freight in the said vessel; and the plaintiff was deprived of the gains which would have otherwise arisen to him from having a full cargo, to his damage _____ dollars. 1 Abb. Forms 400.

K. *Complaint, Charterer Against Owner for Abandoning Voyage.*

I. That on or about _____, at _____, the plaintiff and defendant agreed by charter party that the defendant's ship called _____, then at _____, should, with all convenient speed, having liberty to take an outward cargo for owner's benefit, sail to _____, or so near there as she could safely get, and there load from the plaintiff (or, the factors of the plaintiff) a full cargo of _____, or other lawful merchandise, which he should carry to _____, and there deliver, on payment of freight (certain perils and casualties in the said charter party mentioned only excepted).

II. That the plaintiff duly performed all the conditions on his part.

III. That said ship was not prevented by any of said perils or casualties from completing said outward voyage; but that she did not with all convenient speed sail to _____, or

so near thereto as she could safely get; and the defendant caused the said ship to deviate from her said voyage and abandon the same, to the plaintiff's damage ——— dollars. 1 Abb. Forms 290.

SLANDER.—See LIBEL AND SLANDER.

SOCIETIES.—See ASSOCIATIONS.

SIMILITER.—See ISSUES IN PLEADING AND PRACTICE.

SODOMY

Indictment for Sodomy.

Kings County, ss:

The jurors of the people of the state of New York, in and for the body of the county of Kings, upon their oath present, that George W. Lambertson, now or late of the city of Brooklyn, in the county of Kings aforesaid, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and sixty, at the city and in the county of Kings aforesaid, in and upon the body of Peter Cohen, in the peace of God and of the said people, then and there being with force and arms, did feloniously make an assault, and him, the said Peter Cohen, then and there feloniously, wickedly, diabolically, and against the order of nature, carnally knew, then and there feloniously, wickedly, diabolically, and against the order of nature, with the said Peter Cohen, did commit and perpetrate the detestable and abominable crime of buggery, against the statute in such case made and provided, to the evil example of all others in like case offending, and against the peace of the people of the state of New York, and their dignity.

John Winslow, District Attorney.

Lambertson v. People, 5 Park. Crim. (N. Y.) 200.

Note.—Words "venereal affair" are not words of art (4 Bl. Com. 307) and are not necessary to describe the offense. *Id.* 204.

SOLICITATION.

Indictment for Soliciting a Person To Commit an Offense.

Middlesex, to-wit: The jurors for our lady the queen upon their oath present, that J. S. late of the parish of B., in the county of M., laborer, on the third day of August, in the fourth

year of the reign of our sovereign Lady Victoria, falsely, wickedly, and unlawfully, did solicit and incite one J. W., a servant of one J. N., to take, embezzle, and steal a large quantity, to-wit, one hundred pounds weight of cotton twist, of the value of ———, of the goods and chattels of his master, the said J. N., to the great damage of the said J. N., to the evil example of all others in the like case offending, and against the peace of our lady the queen, her crown and dignity. Archb. Cr. Pl. 693.

SPECIAL ASSESSMENT.

I. Complaint To Enjoin a Municipal Corporation From Deeding Land Sold for Illegal Special Assessment, 1157

II. Answer, Pleading Illegality of Assessment, 1158

III. Answer, Pleading Exemption From Special Assessment, 1158

I. Complaint To Enjoin Municipal Corporation From Deeding Lands Sold for Illegal Special Assessment.

I. That the plaintiff is the owner in fee simple of (designate his estate, e. g., thus) one undivided seventh part of four lots of land on 25th and 26th streets, in the sixteenth ward of the city of New York, bounded and described as follows—(description); the other six-sevenths being owned in fee simple by the defendants (designating which).

II. That the defendants W. and X. are the owners in fee of two lots adjoining the four above described lots; which said two lots are bounded, taken together, as follows: (description).

III. That the two lots last above described, and the two of the other four lots which front on 26th street, were sold in one parcel on the ——— day of ———, 18——, by the defendants, the mayor, aldermen, and commonalty of the city of New York, to satisfy two alleged assessments for local improvements,—one for the opening of 26th street from the Hudson river to the Bloomingdale road, and the other for setting curb and gutter in the 8th avenue from 24th street to 42d street.

IV. That the other two of the first described lots, fronting on 25th street,

were sold in one parcel on the said _____ day of _____, 18____, by the said mayor, alderman, and commonalty, to satisfy two alleged assessments for local improvements,—one for opening 25th street, and the other for setting the curb and gutter aforesaid.

V. That in the proceedings relative to all the said assessments, and in the proceedings to collect the same, both fraud and legal irregularity have been committed.

VI. That the following, among others, are the frauds and legal irregularities committed, in respect to the assessment for opening 26th street:

1. That the land in the street, to the middle thereof, fronting on the said lots, belonged to the same owner as the said four lots, which owner was wrongly stated to be one M. N.

2. That the benefit above the damage was assessed at _____ dollars, for the said four lots with two adjoining lots, thus charging the owner with a large sum for taking his own property.

3. That the petition of the said mayor, aldermen, and commonalty, and the order of the supreme court thereon made, appointing commissioners of estimate and assessment, appointed them for the opening of 26th street from Hudson river to the Fourth avenue, instead of to the Bloomingdale road.

VII. That the following, among others, are the frauds and legal irregularities committed in respect to the proceedings to collect all the said assessments:

1. That notices were not left before the advertisement of sale at the residence of the owners or with the tenants on the property, which property was then occupied.

2. That the advertisement described the assessment for opening 26th street as confirmed on the _____ day of _____, 18____; whereas, if it was ever confirmed, it was confirmed on the _____ day of _____, 18____.

VIII. The plaintiff further alleges, that upon the said sales the property was bid in by the said mayor, aldermen, and commonalty, who shortly afterwards assigned the said bid for the lots on 26th street to the defendant W., and for the lots on 25th street to the defendant X.; but that no lease has yet been executed, pursuant to the said sale.

Wherefore, the plaintiff demands judgment:

1. That the said mayor, aldermen, and commonalty be enjoined from executing or delivering any lease pursuant to the sales above mentioned.

2. That the said assessments, and all proceedings to collect the same, be declared void, and set aside.

3. For costs of this action.

1 Abb. Forms. 564.

II. Answer, Pleading Illegality of Assessment.

“1. The above claim is on a municipal assessment purporting to be made by the city of Scranton against defendant's lot on Luzerne street, for the cost and expense of grading the said street, by ordinance passed Sept. 4, 1889. The said assessment against defendant's lot, as described on the lien on which the scire facias in the above entitled case was issued, was wholly illegal and void, for the reason that it was made by the foot front on measurements made by the city engineer, and not according to benefits, as required by law. That no assessments according to benefits were ever made by the city of Scranton against defendant's lot for the cost of grading, for which the above entitled action is brought to recover.

“2. The work done by the plaintiff in the grading of said Luzerne street was without authority of law or ordinance, because the grading was not done according to the grade established by ordinance, but according to another grade established by the city engineer, without authority.” *Scranton v. Bush*, 160 Pa. 499, 28 Atl. 926.

III. Answer, Pleading Exemption of Property From Special Assessment.

“The claim on which this writ issued seeks to enforce a charge against the property therein described, to-wit, on the south side of Spring Garden street, between Tenth street and Eleventh street, of which the defendant is the owner, for paving so much of the unpaved space of Spring Garden street as was reserved for market purposes and occupied by the old Spring Garden market sheds, and as was in front of the defendant's property.

“Deponent further saith that at the time the paving of the market plots was authorized, and when the same

were paved, Spring Garden street was occupied in front of defendant's property, and for a great distance east and west thereof by the tracks of the Union Passenger Railway Company, which company was incorporated by the act of April 8, 1864, P. L., 297, which act authorized said company to lay its tracks from Seventh street along Spring Garden street to Twenty-third street. Said act, by its 8th section, provided that the said company shall be at the entire cost and expense of paving, repaving, and repairing that may be necessary upon any street where the tracks of said company may be laid.

"And deponent says that by reason of said act of assembly the ground of defendant is relieved of the cost and charge of the paving, if otherwise it was liable, and that the said railway company is, and that defendant is not, liable therefor." *Dietrich v. Dietrich*, 154 Pa. 92, 25 Atl. 1080.

SPECIAL INTERROGATORIES TO JURIES.

CROSS-REFERENCE:

VERDICT:

Special Answers With General Verdict.

I. Form of Verdict on Special Interrogatories.

"We, the jury, impaneled and sworn to try this action, do find the issues with the said plaintiff, and do assess his damage at \$1,000.

J. W. Hudson, foreman.

"And in response to the several questions propounded to them by the plaintiff, and at his request, now return the same with their special findings thereon as follows, to-wit:

"1. Did Guarnieri know at the time he purchased the poison that the same was a poison? No.

"2. Did Forster know at the time he sold the drug that the same was a deadly poison? We are of the opinion from the evidence that he did not know.

J. W. Hudson, foreman.

"And in response to the several questions propounded to them by the said defendant, and at his request, now return them with their special findings thereon, as follows, to-wit:

"1. If Guarnieri purchased the

drug of Forster, then was he, Guarnieri, acting for himself or as the agent of his wife? For himself.

"2. Did Guarnieri make known to Forster when he got the drug what he wanted it for, and that it was to be taken as a medicine? Not intelligently.

"3. Did Guarnieri make known to Forster, when he got the drug, to whom he intended to administer it? Not intelligently.

"4. Was the large bottle, containing the oil of bitter almonds, handed to Guarnieri by Forster? Yes.

"5. If so, did Guarnieri look at it and smell of it? Yes."

Davis v. Guarnieri, 45 Ohio St. 470.

SPECIAL PLEAS.—See PLEAS.

SPECIFIC PERFORMANCE.

I. Bills, 1160

- A. *Vendee Against Vendee*, 1160
- B. *Vendee Against Vendor*, 1160
- C. *Vendee Against Vendor and Subsequent Purchaser*, 1161
- D. *Lessee Against Lessor*, 1162
- E. *Vendor Against Administrator and Minor Children*, 1163
- F. *Parol Agreement, Relying on Part Performance*, 1163
- G. *Prayer*, 1164
- H. *Agreement of Compromise*, 1164
- I. *Prayer by Surety for Performance by Principal*, 1164
- J. *General Form*, 1165

II. Decrees, 1165

- A. *Order To Inquire if Good Title Can Be Made*, 1165
- B. *Declaration of Right and Inquiry*, 1165
- C. *Where Title Accepted, Subject to Requisitions and Compensation*, 1165
- D. *On Bill by Vendor*, 1166
- E. *Where Title Accepted at Hearing*, 1166
- F. *On Bill by Purchaser*, 1166
- G. *Purchaser Having Waived Title*, 1166
- H. *Inquiry if Part to Which Title Not Shown Is Material*, 1167
- I. *Voluntary Settlement Set Aside*, 1167
- J. *Abatement for Deficiency*, 1167
- K. *Abatement for Delay*, 1167
- L. *Inquiry if Leases Tendered Are Proper*, 1167
- M. *On Bill by Lessee*, 1167

- N. *Direction for Lease To Contain Covenant*, 1168
- O. *To Execute a Mortgage*, 1168
- P. *Against Specific Performance*, 1168

III. Complaints, 1168

- A. *Vendor Against Purchaser*, 1168
- B. *On an Exchange*, 1169
- C. *Of Agreement To Give Chattel Mortgage*, 1169

IV. Answers (Code), 1169

- A. *Denial of Payment or Tender*, 1169
- B. *Denial of Readiness To Convey*, 1170
- C. *Denial of Title*, 1170
- D. *Denial of Delivery of Possession*, 1170
- E. *Denial of Part Performance*, 1170

CROSS-REFERENCES:

FRAUDS, STATUTE OF:

Plea of Statute of Frauds to Bill for Specific Performance.

REFERENCES:

Order of Reference To Take Testimony, as to Value of Use and Occupation, in Action for Specific Performance.

REVIVOR:

Bill in Nature of Bill of Revivor, Devisee Against Vendee for Specific Performance.

I. Bills.

- A. *Bill for Specific Performance by Vendor Against Vendee, Title in Question.*

Humbly complaining, sheweth unto your honors your orator, J. C., of, etc., that your orator being seized or well entitled in fee simple of and to a certain messuage or dwelling-house with the appurtenances situate at ———, and, hereinafter described, and being desirous of selling such premises, and D. E., of, etc., being minded to purchase the same, your orator and the said D. E., on or about the ——— day of ———, entered into and signed a memorandum of agreement respecting the said sale and purchase in the words and to the purport and effect following, that is to say (stating the agreement verbatim), as by the said memorandum of agreement, to which your orator craves leave to refer, when produced, will appear. And your orator further shows that the said D. E. paid to your orator the sum of \$1500, part of the said purchase-money

at the time of signing the said agreement. And your orator has always been ready and willing to perform his part of the said agreement, and on being paid the remainder of his said purchase-money with interest, to convey the said messuage to the said D. E., and his heirs, and to let him into the receipt of the rents and profits thereof, from the time in the said agreement in that behalf mentioned; and your orator hoped that the said D. E. would have performed the said agreement on his part as in justice and equity he ought to have done. But now so it is, may it please your honors, that the said D. E. alleges that he is, and always has been, ready and willing to perform the said agreement on his part in case your orator could have made, or can make a good and marketable title to the said messuage and premises, but that your orator is not able to make a good title thereto; whereas your orator charges that he can make a good title to the said messuage and premises. To the end, therefore, that the said D. E. may true answer make to the premises aforesaid, and more particularly that he may answer and set forth in manner aforesaid, whether, etc. (interrogating to the stating and charging parts). And that the said D. E. may be compelled by the decree of this honorable court specifically to perform the said agreement with your orator, and to pay to your orator the remainder of the said purchase-money with interest for the same from the time said purchase-money ought to have been paid, your orator being willing, and hereby offering specifically to perform the said agreement on his part, and on being paid the said remaining purchase-money and interest to execute a proper conveyance of said messuage and premises to the said D. E., and to let him into possession of the rents and profits thereof from the said ——— day of ———. And that your orator may have such further and other relief in the premises as to your honors shall seem meet and this case may require; may it please your honors, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1907.

- B. *Bill Praying Specific Performance by Vendee Against Vendor.*

And your orator further sheweth, that previously to the signing of the said

agreement, your orator paid unto the said S. B. the sum of \$500, as a deposit and in part of his said purchase-money or sum of \$2,900; and the said S. B. has since delivered up possession of the said purchased premises to your orator. And your orator further sheweth unto your honors, that he has always been ready and willing to perform his part of the said agreement, and, on having a good and marketable title shown to the said estate and premises, and a conveyance of the fee-simple thereof discharged of all incumbrances made to him, to pay the residue of the said purchase-money or sum of \$2,900, to the said S. B. And your orator hoped that the said S. B. would have specifically performed his part of said agreement as in justice and equity he ought. But now so it is, etc., the said S. B. refuses to perform his part of the said agreement, and to color such refusal, he gives out and pretends that he is unable to make out a good and marketable title to the said estate and premises, and that he is willing to cancel the said contract or agreement, and to repay the said deposit or sum of \$500 to your orator. Whereas your orator charges that the said S. B. is able to make out a good and marketable title to the said estate and premises, if he thinks proper to do so, but that the said S. B. refuses and declines to make out a good and marketable title to the said premises, notwithstanding your orator has required him so to do, and offered to pay him the residue of the purchase-money upon having the title made out and a proper conveyance of the said premises executed to your orator, his heirs and assigns, by the said S. B. And your orator charges that the whole of the residue of the purchase-money of the premises has been ready and unproductive in his hands for completing the said purchase from the time it ought to have been completed by the terms of the said agreement. All which actings, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1908.

C. Bill for Specific Performance by Vendor Against Vendor and Subsequent Purchaser.

(Charge of agreement to convey to third person who has notice.)

And your orator charges that the said G. K. has since contracted for the

sale of the said premises to the said T. P., at an advanced price, and has actually conveyed the said premises or entered into an agreement to convey the same to the said T. P., or to some other person or persons by his order, or to his use, or in trust for him. And your orator charges that the said T. P., at the time he entered into the said contract for the purchase of the said premises, or at the time of the conveyance thereof to him, if the same have been conveyed to him, or at the time of the payment of the purchase-money for the same, if he has actually paid such purchase-money, well knew or had been informed, or had received some intimation, or had some reason to believe or suspect that the said G. K. had entered into such agreement as aforesaid with the said A. B., or into some agreement with your orator, or with some person on his behalf for the sale of said premises to your orator. And the said T. P., or the agent employed by him in the said purchase or contract, had at some or one of the times aforesaid some knowledge or intimation of the several circumstances aforesaid respecting the said premises, which had passed between your orator and the said G. K., or their solicitors. And your orator charges that the said J. F. was in fact the agent employed in the contract or sale by the said G. K. to the said T. P., as well on the part of the said G. K., as of the said T. P. And your orator further charges that, if, in fact, the said T. P. has paid the purchase-money for the said premises or any part thereof, to the said G. K., the said T. P. has had or taken some indemnity from the said G. K., or some other person in respect of such payment or of such purchase. And your orator further charges that after your orator, by the said A. B., had entered into such agreement with the said G. K., as aforesaid, and after the hay season of this year, your orator verbally agreed with the said G. K., that the hay on the farm should be left by the said G. K., and taken by your orator at an appraisement but the said G. K. has nevertheless sold and removed the said hay from the farm, to the great injury thereof, and the said G. K. has, since his said agreement with the said A. B., ploughed up more than sixty acres of land, which

according to the usual course of husbandry ought to have been laid down with grass. And the said G. K. has also cut down many timber and other trees upon the said premises, and has committed and done waste and injury thereto. And the said G. K., and also the said T. P., threaten and intend to cut down other trees on and from the said premises, and to commit other waste and injury thereto. All which actings, etc. And that the said defendants may answer the premises; and that the said defendant, G. K., may specifically perform the said agreement so made and entered into by him as aforesaid with the said A. B. as the agent of your orator, your orator being ready and willing, and hereby offering specifically to perform the said agreement in all things, on his part and behalf. And that the said G. K. may be decreed to make compensation to your orator for the waste and other damage done by him to the said premises since the making of the said agreement. And that in the meantime the said defendants, G. K. and T. P., may be restrained by the order and injunction of this honorable court from cutting down any timber or other trees upon the said premises, or from committing any other waste thereon. (And for further relief, etc.) May it please, etc. (Pray subpoena and injunction against G. K. and T. P.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1909.

*D. Bill for Specific Performance,
Lessee Against Lessor of House.*

Humbly complaining, sheweth unto your honors your orator A. B., of, etc.; that C. D., of, etc. (the defendant hereinafter named), being or pretending to be seized or possessed of a message or tenement situate, etc., and being willing and desirous to let the same, he, in the month of, etc., proposed and agreed to grant unto your orator a lease of the aforesaid premises with the appurtenances, and thereupon your orator and the said C. D. duly executed or subscribed a certain memorandum or agreement bearing date, etc. (stating the agreement) as in and by, etc. And your orator further sheweth that in expectation and full confidence that a lease would have been made and executed to him of the said message or tenement and premises, pursuant to the terms of the said agreement, your

orator has laid out sundry sums in repairs on the said premises to a considerable amount. And your orator further sheweth that your orator has been always ready to perform his part of the said agreement, and to accept a lease of the said premises pursuant to the terms thereof. And your orator for that purpose caused a draft of a lease to be drawn pursuant to the terms of the aforesaid agreement, and tendered the same to the said defendant for his perusal and approbation, but he refused to accept or peruse the same. And your orator further sheweth that he has frequently by himself and his agents applied to the said C. D., and in a friendly manner requested him to make and execute unto your orator a lease of the said message or tenement and premises conformably to the said agreement. And your orator well hoped, etc. (But now so it is, etc.) defendant pretends that no such agreement as aforesaid was ever made or entered into by or between the said defendant and your orator, or any agreement, or that he consented to grant a lease to your orator of the aforesaid message or tenement and premises. Whereas your orator charges the contrary of said pretences to be the truth, and so the said confederate will at other times admit; but then he pretends that he has been always ready and willing to make and execute a lease of the said message or tenement and premises, pursuant to the terms of the said agreement and in all respects to perform the same on his part. Whereas your orator charges the contrary thereof to be the truth. But nevertheless the said defendant refuses to comply with your orator's aforesaid requests to perform or fulfil the aforesaid agreement. All which actings, etc. And that the said agreement may be specifically performed and carried into execution, and that the said defendant may be decreed to execute a lease of the aforesaid message or tenement and premises to your orator according to the terms of the aforesaid agreement, your orator hereby offering to execute a counterpart thereof, and in all other respects to perform his part of the said agreement. May it please your, etc. (Pray subpoena against C. D.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1911.

E. Bill by Vendor Against Administrator and Minor Children.

A. B., of, etc., humbly complaining, sheweth that C. D., of, etc., etc., being seized and possessed of a certain parcel of real estate, situate, etc. (give the description and boundaries), entered into a written agreement with the plaintiff for the purchase and sale thereof, as follows, viz.: (state the agreement) (or a copy of which agreement is hereto annexed), as by the said agreement, which the plaintiff has here in court ready to be produced, and to which he craves leave to refer, will appear (or as by said agreement hereto annexed will appear). And the plaintiff further shows that, pursuant to the said agreement, he has paid the taxes on the said premises for the year, etc., amounting to the sum of \$———. And the plaintiff further shows, that, since the making of the said agreement, to-wit, on the, etc., the said C. D. died intestate, and that during his lifetime he never made any conveyance of the said premises to the plaintiff, that the said C. D. left a widow, M. A. D., and four children, viz.: M. D., L. D., M. A. D., and J. D., all of whom are minors under the age of twenty-one years, and the sole heirs of the said C. D. That S. K., of, etc., esq., has been duly appointed administrator of the goods and estate, which were of the said C. D.; but no person, as yet, has been appointed guardian of the said minor children. And the plaintiff further shows that he is desirous of obtaining a conveyance of the said real estate, pursuant to the terms of said agreement between the plaintiff and the said C. D., deceased, and is willing and ready to pay therefor the price stipulated in the said agreement in cash, or to give his note of hand, secured by mortgage of the premises, as is provided in the said agreement, and further that he is willing to waive any claim which he has upon the heirs of the said C. D., or upon his administrator, to advance the sum of \$———, upon the erection by him of the two dwelling houses on the said real estate, as the said C. D. agreed that he would do. And the plaintiff further shows that he has made application to the said M. A. D., the widow of said C. D., and ascertained that she is willing to release to the plaintiff her dower in the premises,

upon having the interest of one-third part of the purchase-money secured to and paid to her during the period of her natural life, or having paid to her an amount equal to the present value of her said life interest. But by reason that the said C. D. died intestate, there is no person who has legal authority to execute a deed, whereby to convey to the plaintiff the fee of the said real estate, of which the said C. D. died seized. In consideration whereof, etc. To the end, therefore, that the said S. K., the said M. D., the said L. D., M. A. D., and J. D. may, upon their several and respective oaths, etc., etc., and that the said S. K., and the said M. D., L. D., M. A. D., and J. D., may be decreed specifically to perform the said agreement entered into by the said C. D. with the plaintiff, the plaintiff being ready and willing and hereby offering specifically to perform the said agreement on his part, and that the plaintiff may have such other and further relief, etc., etc. (Prayer for a subpoena.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1912.

F. Bill for Specific Performance of Parol Agreement, Relying on Part Performance.

(The bill stated the lease under which the plaintiff claimed, and negotiations for purchase by the defendant.)

On the ——— day of ———, it was agreed by and between the plaintiff and defendant, that the defendant should give the plaintiff \$——— for the purchase of the plaintiff's term and interest in the said leasehold premises under the said lease, he, the defendant, taking the plaintiff's title, such as it was, and the plaintiff consenting to do certain works to the premises, which the defendant then specified (that is to say), etc.

(Subsequent correspondence and statement of the works required by the defendant to be performed to the premises.)

The plaintiff, in pursuance of the said agreement so entered into between the plaintiff and defendant as aforesaid, performed all the works so agreed to be performed by him to the premises; and the plaintiff, in pursuance of the said agreement, and in full faith and reliance that it would be performed on the part of the defendant, permitted

the defendant to enter into, and he did accordingly on, etc., enter into and remain in possession of the said premises.

The defendant, however, now refuses to perform the said agreement on his part, and he alleges that no contract has been entered into by or between the plaintiff and defendant for purchasing the said premises for the term and interest of the plaintiff therein, under and by virtue of the said indenture of lease; whereas the plaintiff charges the contrary thereof to be truth.

The defendant, at other times, alleges that he has not accepted the title of the plaintiff as shown by said indenture of lease; whereas the plaintiff charges that the defendant has accepted the plaintiff's title to the premises, and has so admitted to the plaintiff and to other persons. (Charge as to documents.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1913.

G. *Prayer for Specific Performance.*

The plaintiff prays as follows:

1. That the agreement so made or entered into by or between the plaintiff and defendant for the purchase of the term and interest of the plaintiff in the said leasehold messuage and premises may be specifically performed by the defendant, the plaintiff being willing to perform the same so far as it remains on his part to be performed.

2. That proper directions may be given for settling an assignment of the said premises to the defendant for the remainder of the plaintiff's term therein, with a proper covenant therein to indemnify the plaintiff against the payment of the rent and observance of the covenants respectively reserved and contained in the said indenture of lease; and that the defendant may be decreed to execute such assignment or a counterpart thereof, and that upon the execution of the assignment by the plaintiff, the defendant may be decreed to pay the said purchase money of \$_____ to the plaintiff, together with interest at the rate of \$_____ per centum per annum, from, etc., together with the costs of this suit.

3. (For further relief, etc.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1914.

H. *Bill for Specific Performance of Agreement of Compromise.*

The bill alleged that J. F. died on

the 22d day of June, 1855, leaving the female plaintiff his sole daughter and heiress, and the defendant, her step-mother, his widow; that on the 9th day of April preceding, he had executed an instrument purporting to be his last will and testament, giving most of his property, real and personal, to the defendant, the provisions of which, as the plaintiffs then and now believed, and had good reason to believe, were induced and brought about by undue influence exercised over him in his last illness, and while he was very weak in body and mind, and the plaintiffs thereupon objected to its probate as his will; that while the probate was pending, on the 3d day of July, 1855, the plaintiffs and defendant compromised the matter by agreeing that the provisions of the will as to them should be set aside, and the testator's real estate, shares in corporations and other personal property be divided between the defendant and the female plaintiff, according to an agreement then executed by them under seal; that the plaintiffs offered to perform their part of the agreement, and to make conveyance and transfers to the defendant according to it, and requested the defendant to convey, according to the agreement, to the female plaintiff the rest of the testator's real estate, stocks, and other personal property; but the defendant declined to accept the conveyances tendered by the plaintiffs, or to execute any herself. (Prayers for relief, etc.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1919; *Leach v. Forbes*, 11 Gray (Mass.) 506.

I. *Prayer by Surety To Compel Specific Performance by Principal With Obligee, and for Writ of Ne Exeat.*

And that the defendant may be decreed specifically to perform the said agreement, and to make a mortgage to the plaintiff of the said estate and premises to indemnify him against the obligation he has entered into in the admiralty court as hereinbefore mentioned. And that it may be referred to a master to settle such conveyance if the parties should differ about the same. And that the defendant may be restrained from going out of the jurisdiction of this honorable court, into parts beyond the seas or into _____, and for that purpose a writ

of ne exeat regno may be issued out of and under the seal of this honorable court to restrain the defendant from going out of the state (or commonwealth) of, etc. (or into parts beyond the seas, or out of the jurisdiction of this honorable court). (General relief.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1914.

J. Bill for Specific Performance, General Form.

Bill of Complaint.

To the honorable, etc.

John Lee, of Lynn, in said county of Essex, merchant, the above-named plaintiff, brings this his bill of complaint against Henry Jones, of Salem, in said county, esquire, the above-named defendant, and thereupon complains and shows as follows:

1. That the said Henry Jones, by an agreement in writing, dated on the _____ day of _____, by him subscribed (or signed), a copy of which is annexed to this bill, marked _____, agreed to purchase of the said John Lee, the plaintiff (or sell to him), a certain farm (or messuage, or parcel of real estate) situate in _____, and bounded and described as follows: (here give the description and boundaries) (or one hundred shares in the capital stock of the Eastern Railroad Corporation), in the said agreement referred to, for the sum of \$_____.

2. The plaintiff has always been ready, and has offered and now offers specifically to perform the said agreement on his part.

3. The plaintiff has made or caused to be made an application to the said Henry Jones, specifically to perform the said agreement on his part, but said Jones has not done so.

The plaintiff therefore prays as follows:

1. That this court will declare that the plaintiff is entitled to a specific performance and execution of the said agreement, and will decree the same accordingly.

2. That this court will decree to the plaintiff his costs of this suit.

3. That the plaintiff may have such further and other relief as the nature of his case requires.

4. That for the purposes aforesaid, all proper inquiries may be made, accounts taken, and directions given.

5. That a writ of subpoena may issue out of this court, directed to the said Henry Jones, commanding him to be and appear before this court (to be holden in and for the county of Essex aforesaid), on a day and under a pain therein specified, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to this court shall seem meet. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 1920.

II. Decrees.

A. Order To Inquire if Good Title Can Be Made.

This court doth order, that it be referred to A. B., one of the masters in chancery for the county of, etc., to inquire whether a good title can be made to the estates comprised in (Lot No. 3 in the particulars of sale, and in) the agreement in the plaintiff's bill mentioned; and in case it shall appear that a good title can be made to the said estates, it is ordered, that the said master do further inquire when it was first shown that such good title could be made. Adjourn, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2258; *Matthews v. Swallow*, 1 Seton Dec. (Eng. ed. 1862) 593.

B. Decree, Declaration of Right on Bill by Vendor, and Inquiry.

This court doth declare, that the agreement in the pleadings mentioned ought to be specifically performed and carried into execution, in case (provided that) a good title can be made to the premises comprised therein; and decree the same accordingly. Inquiries as to title. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2259.

C. Decree, Where Title Accepted Subject to Requisitions and Compensation.

This court doth declare, that the defendant is bound to accept the title of the plaintiff to the estate mentioned in the agreement of the _____ day of _____, in the plaintiff's bill mentioned, subject to the requisitions of the said defendant upon the said title, mentioned in the exhibit marked B, and dated, etc.; and the court doth further declare, that the plaintiff is entitled to a specific performance of the said agreement, subject to the deduction of \$_____ from the amount of

the purchase-money of \$——, by way of compensation to the defendant in respect of the house tax in the defendant's affidavit mentioned, provided that the plaintiff can make a good title to the estate comprised in the said agreement, so far as respects the matter of the said requisitions. Inquiry as to title having regard to the requisitions only. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2259; 1 Seton Dec. (Eng. ed. 1862) 593, 594.

D. Decree on Bill by Vendor To Enforce Contract for Sale.

This court doth declare, that the agreement in the plaintiff's bill mentioned, dated, etc., ought to be specifically performed and carried into execution; and decree the same accordingly; and it is ordered, that it be referred to A. B., one of the masters, etc., to compute interest at the rate \$—— per cent. per annum, on the sum of \$——, the (residue of the) purchase-money for the estate comprised in the said agreement, from the —— day of ——, when the same ought to have been paid according to the terms of the said agreement. And the said master is to take an account of the rents and profits of the said estate received by the plaintiffs or any of them, or by any other person, etc., since the —— day of ——; if costs are given, and tax the plaintiffs their costs of this suit (cause); and it is ordered that what shall be coming, on the said account of rents and profits, be deducted from the amount (of the residue) of the said purchase-money, and interest (and costs) when so computed (and taxed) as aforesaid; and upon the plaintiffs' executing a proper conveyance of the said estate to the defendant (at the expense of the defendant according to the said agreement) or to whom he shall appoint, such conveyance to be settled by the said master (or the court) in case the parties differ, it is ordered that the defendant pay to the plaintiffs the balance which shall be found to remain due to them in respect of such purchase-money, and interest (and costs), after such deduction as aforesaid. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2259; 1 Seton Dec. (Eng. ed. 1862) 607, 608.

E. Decree, Where Title Accepted at the Hearing.

The defendant R., by his counsel, declaring himself content with the title to the estate, in the pleadings mentioned, agreed to be purchased by him of, etc., this court doth declare, that the agreement in the plaintiff's bill mentioned, dated, etc., ought to be specifically performed, etc. 3 Dan. Pl. & Pr. (Perkins' ed.) 2260.

F. Decree on Bill by Purchaser.

And upon the plaintiff paying to the defendant the balance which shall be found due to him in respect of such purchase-money (and) interest (and costs), after such deduction as aforesaid, it is ordered that the defendant execute a proper conveyance of the said estate to the plaintiff, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2260.

G. Decree, Purchaser Having Waived Title, Indemnity Against Mortgage.

This court doth declare, that, under the circumstances in the plaintiffs' bill mentioned, the defendants have waived their right to investigate the plaintiffs' title to the estate in the pleadings mentioned, and that they have accepted such title; and thereupon it is ordered, adjudged, and decreed, that the defendants specifically perform the agreement dated, etc., by accepting an assignment of the equity of redemption of the said estate from the plaintiffs, without previous investigation of the title; and it is further ordered, etc., that the defendants execute to the plaintiffs a proper deed of indemnity against the mortgage debt secured by the indenture in the bill mentioned, dated, etc., and interest thereon, the plaintiffs, by their counsel, undertaking to execute and deliver to the defendants a proper deed of assignment of the said equity of redemption, and otherwise to specifically perform the said agreement on their own parts, so far as the same has not been waived by the defendants; and such deeds of assignment and indemnity respectively are to be settled by the said master (or judge, or the court). Defendants to pay plaintiffs' costs of suit. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2260; 1 Seton Dec. (Eng. ed. 1862) 609.

H. Order for Inquiry, if Part, to Which Title Not Shown, Is Material.

It is ordered, that the master do inquire whether such part, if any, of the said estate, as to which the plaintiff cannot make a good title, is material to the enjoyment of the remainder, and if not, what deduction ought to be made from the purchase-money in respect thereof. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2261.

I. Decree, Voluntary Settlement Set Aside in Favor of Purchaser.

Decree for performance of agreement for sale, with consequent directions, "And it is declared by the court, that the plaintiff is a purchaser within the intent and meaning of the act of the 27 El. c. 4, entitled 'An act against covinous and fraudulent conveyances,' and that the indenture of settlement dated, etc., in the pleadings mentioned, is void as against the plaintiff; and it is ordered, etc., by the court that the defendants S. and M. (trustees of the settlement) convey or concur with the defendant W. (vendor and settlor) in conveying and assuring to the plaintiff, or as he shall direct, such parts of the estate comprised in the said agreement for sale as are comprised in the said indenture of settlement, and also deliver up to the plaintiff all deeds and writing in their custody relating to the said estate." Plaintiff to pay the trustees' costs of suit; defendant W. to repay plaintiff what he shall so pay, and pay his costs up to the decree. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2261; 1 Seton Dec. (Eng. ed. 1862) 610.

J. Decree, Abatement of Price for Deficiency.

It is declared that the sale and purchase, in the documents and proofs stated and shown, were fair, and that the quantity of land existed, and the title, as declared, existed, and that the description given of the premises was substantially true; and that the fact that the buildings, stated to be on lot 42, being part and parcel of the premises which were sold entire, and for one entire price, do project, in a small degree, on lot 43, being another part and parcel of the said premises, is not sufficient, nor are any of the circumstances stated in the case sufficient, to set aside the sale, or to exempt the

purchaser from being holden to the performance of the contract of sale. But as the circumstance of that projection may diminish the value of the purchase below what would be its value if such projection did not exist, and may entitle the purchaser to compensation by deduction from the price he gave; it is, thereupon, ordered, that it be referred to G. F. C., esq., one of the masters of this court, to ascertain and report what, in his opinion, under all the circumstances of the case, is the diminution in value (if any) of the premises, as one entire parcel, by means of the projection below what it would be if no such projection existed, and assuming the value thereof, if the projection did not exist, at \$1,400; and the question of costs is reserved. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2262; King v. Bardeau, 6 Johns. Ch. (N. Y.) 38.

K. Decree, Abatement of Price for Delay.

Defendant by his answer admitting the agreement, etc., decree for performance and accounts. "And it is ordered and decreed, that the defendant be at liberty to deduct the sum of \$———, by way of compensation, for delay in delivering possession of the said estate to the defendant." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2262.

L. Decree, With Inquiry, if Leases Tendered for Execution Are Proper.

Decree performance. "And it is ordered, that the said master do inquire whether the lease of the messuage, etc., in question, executed by the plaintiff and tendered by him to the defendant, is a proper lease; and if it shall be found that the same is a proper lease; it is ordered that the defendant accept the same, and execute to the plaintiff a counterpart thereof; but if not, that a proper lease be settled by the said master (or by the judge or by the court)." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2263.

M. Decree on Bill by Intended Lessee.

The court declared that the said agreement, etc., ought to be carried into execution, according, etc., and doth order and decree the same accordingly; and that a lease be executed by the defendants S. and M., his wife, to the plaintiff of the estate comprised in the

agreement for the life of said M. (or for the term therein mentioned) at the yearly rent of, etc., and that such claim and agreement be inserted in the said lease as are directed by the memorandum of the said agreement (or with the usual covenants); and if the parties differ, it is hereby referred to G. F. C., esq., one of the masters, etc., to settle the same; and it is ordered, that the said plaintiff do execute a counterpart of such lease to the said defendants, and that such lease and counterpart be at the equal expense of the said plaintiff and defendants. And it is ordered, that the plaintiff do pay the said defendants their costs of this suit, to be taxed by the said master. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2263; 1 Seton Dec. (Eng. ed. 1862) 620, 621.

N. Decree, Direction for Lease To Contain Particular Covenant.

And it is ordered, that such lease shall contain a covenant, on the part of the plaintiff, to pay the taxes, payable in respect of said farm. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2264.

O. Decree for Specific Performance of Agreement to Execute Mortgage.

Declare, that the agreement made, etc., and dated, etc., ought to be specifically performed and carried into execution; and decree the same accordingly; and let the defendant execute to the plaintiffs a proper deed of mortgage of the estate mentioned in the said agreement, according to the terms of the said agreement; and let all proper parties join therein as the judge (this court, or the master) shall direct; and let such indenture of mortgage be settled by the judge (this court, or the master), etc., in case the parties differ; and let the defendant deliver upon oath to the plaintiff the title deeds and documents of title relating to the said estate which are now in his possession or power; and let the defendant pay to the plaintiff his costs of this cause (including the costs of such deed of mortgage), such costs to be taxed, etc. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2225.

P. Decree Against Specific Performance, Causes Stated.

"It is declared, that from the great inadequacy in value of the lots in the village of N., which the plaintiff con-

tracted to convey to T. E., deceased, for the two farms in the county of O., which the said T. E. contracted to convey to the plaintiff, and also from the habits of intoxication in which the said T. E. had indulged, in the last years of his life, and the mental debility produced thereby, and also from the want of readiness and ability in the plaintiff to convey a good and unincumbered title to the said lots, at the time fixed for the performance of the said contract, or at any time thereafter during the life of the said T. E., the articles of agreement mentioned in the pleadings ought not, in equity and good conscience, to be decreed to be carried into specific execution by the defendants. It is, thereupon, ordered, etc., that the bill be dismissed without costs." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2269; *Seymour v. Delancy*, 6 Johns. Ch. (N. Y.) 222.

III. Complaints.

A. Complaint for Specific Performance, Vendor Against Purchaser.

I. That on and before the _____ day of _____, 18____, the plaintiff was, and still is, the owner in fee (or otherwise) and possessed of certain real property hereinafter described.

II. That the defendant, being desirous to purchase the same, entered into an agreement in writing with the plaintiff, dated on that day, of which the following is a copy: (copy of contract, giving a description of the property).

III. That the defendant then paid to the plaintiff _____ dollars as a deposit, and in part of the purchase-money mentioned therein.

IV. That the plaintiff has always been, and still is, ready and willing to perform the agreement on his part; and, on being paid the remainder of said purchase-money (with interest), to convey (etc., as by the agreement), and to let the defendant into possession of said premises, and the rents and profits thereof, from the time in the agreement specified.

V. That on the _____ day of _____, 18____, at _____, the plaintiff duly tendered to the defendant a deed of the premises, pursuant to the agreement; but the defendant, then and ever since, has refused to accept the same and to pay the balance of the

purchase-money (or, and to give the bond and mortgage agreed for, or otherwise, according to the contract).

Wherefore, the plaintiff demands judgment that the defendant perform said agreement, and pay to the plaintiff ——— dollars, the remainder of said purchase-money, with interest from the ——— day of ———, 18——, the time when it ought to have been paid (or, and give to the plaintiff the bond and mortgage, etc.); and for the costs of this action.

(2. That if the defendant will not accept the conveyance, and pay said purchase-money, then the premises be sold, and the proceeds be applied to the payment of the same, with the costs of this action; and that the defendant be required to pay the deficiency, if any.) 1 Abb. Forms 590.

B. Complaint for Specific Performance on an Exchange, Parties Having Taken Possession.

I. That on the ——— day of ———, 18——, the plaintiff and the defendant entered into an agreement in writing, dated that day, whereby, in consideration of the covenants on the part of the plaintiff hereinafter mentioned, the defendant covenanted that he would, on or before the ——— day of ———, 18——, convey to the plaintiff in fee by warranty deed, and with covenants for quiet enjoyments and against incumbrances (or otherwise, according to the agreement), a lot of land, situate in the town of ———, and county of ———, in the state of ———, and described as follows: (description of premises). In consideration whereof, the plaintiff covenanted in and by said agreement (state his covenant in same manner). And it was further provided in said agreement that each party might enter into immediate possession of the premises so to be conveyed to him, and have and receive the profits to his own use.

II. That thereafter, in pursuance of said agreement, the plaintiff and the defendant respectively took possession of the premises so to be conveyed to them, and still severally occupy the same.

III. That the plaintiff duly performed all the conditions of said contract on his part, and, on the ——— day of ———, 18——, convey to the

defendant a warranty deed of said premises in ———, with covenants for quiet enjoyment and against incumbrances, duly signed and sealed by the plaintiff, and demanded of him a deed of said premises in ———; but the defendant refused to execute and deliver such to the plaintiff, and still neglects so to do.

Wherefore, the plaintiff demands judgment that the defendant convey to the plaintiff said lot in ———, pursuant to the contract, and for the costs of this action. 1 Abb. Forms 594.

C. Complaint by Creditor for Performance of Agreement To Give Chattel Mortgage.

I. That on the ——— day of ———, 18——, the plaintiff and the defendant entered into an agreement whereby the plaintiff, then being the owner of (designate the goods), situate in the house No. ———, in ——— street, agreed to sell and deliver the same to the defendant; in consideration whereof the defendant promised to pay him ——— dollars cash upon the delivery of said (goods), and ——— dollars ——— months from the date of said delivery, and to give on the delivery of such (goods) a chattel mortgage thereon to the plaintiff to secure the payment of said ——— dollars.

II. That pursuant to said contract, the plaintiff, on the ——— day of ———, 18——, delivered said (goods) to the defendant, who is now in possession thereof, and who paid him the sum of ——— dollars, but failed to deliver to him a chattel mortgage thereon, pursuant to said agreement; and although afterwards, on the ——— day of ———, 18——, requested to deliver such chattel mortgage to plaintiff, he refused so to do.

Wherefore the plaintiff demands judgment that the defendant execute and deliver to the plaintiff a chattel mortgage on said (goods), pursuant to said contract; and for the costs of this action. 1 Abb. Forms 595.

IV. Answers (Code).

A. Answer, Denial of Payment or Tender on Specific Performance.

That the plaintiff did not pay (or tender) to the defendant any part of (or said second instalment of) the said purchase money agreed. 2 Abb. Forms 162.

B. Denial of Readiness To Convey.

That the plaintiff was not ready and willing to convey the premises, as alleged; but (here state refusal or inability, according to the fact, as it would be stated in an action for damages for the breach). See **Vendor and Purchaser**. 2 Abb. Forms 162.

C. Denial of Title.

That the plaintiff was not, and is not, owner in fee (or otherwise, according to the complaint) of the said premises, and could not, nor can he, make to the defendant a good and sufficient title thereto, free and clear of incumbrances (or otherwise, according to the complaint); but on the contrary (setting forth incumbrances, if any). 2 Abb. Forms 163.

D. Denial of Delivery of Possession.

That the plaintiff did not give possession of the said premises to the defendant. 2 Abb. Forms 163.

E. Denial of Part Performance.

That said ——— did not take possession of the said premises, and do the said acts, and make the said improvements thereon alleged, nor has he in any part performed the alleged contract. 2 Abb. Forms 163.

SPLITTING OF ACTIONS.—See **SUCCESSIVE SUITS**.

STATUTE OF FRAUDS.—See **FRAUDS, STATUTE OF**.

STATUTES OF AMENDMENTS.—See **AMENDMENTS AND JEOPAILS**.

STAY OF PROCEEDINGS.**I. At Law, Orders, 1171**

- A. *On Demurrer to Evidence or Bill of Exceptions*, 1171
- B. *To Move for New Trial*, 1171
- C. *Appeal*, 1171
- D. *For Motions in General*, 1171
- E. *For Perpetual Stay*, 1171
- F. *On Payment of Debt and Costs*, 1171
- G. *Revocation of Order Stayed*, 1171

II. In Equity, 1171

- A. *Notice of Motion for Injunction To Stay Proceedings at Law*, 1171
- B. *Order Staying Present and Future Action*, 1171
- C. *Leave To Proceed With Action, But Execution Stayed*, 1172
- D. *Where Execution Issued After Notice of Decree*, 1172

III. Supersedeas, 1172

- A. *To Discharge Defendant on Capias*, 1172
- B. *To Discharge on Putting in Bail*, 1172
- C. *For Not Charging in Execution in Time*, 1172

IV. Return, Stay of Proceedings, 1173**CROSS-REFERENCES:****ADMIRALTY:**

Order Staying Proceedings for Time To Make Motion.

APPEALS:

- Undertaking To Stay Proceedings on a Money Judgment;
- Undertaking To Stay Proceedings on Judgment for Possession of Personal Property;
- Undertaking To Stay Proceedings on Judgment for Possession of Real Property;
- Undertaking To Stay Proceedings on a Justice's Judgment;
- Affidavit To Obtain Stay, on Appeal From Order Directing Delivery of Personal Property;
- Notice of Motion To Stay Proceedings;
- Order on Affidavit To Stay Proceedings.

ARREST IN CIVIL CASES:

Order To Show Cause Why a Supersedeas Should Not Issue To Discharge Defendant Out of Custody.

BILLS OF PARTICULARS:

Affidavit To Obtain Stay of Proceedings and Extension of Time, on Demanding Copy of Account.

BONDS:

Complaint on Bond for Stay of Proceedings, for Reformation and Judgment on Bond.

CASE ON APPEAL:

Order for Time To Prepare Case or Exceptions, With Stay.

CROSS BILL:

Notice of Motion for Order To Stay Proceedings in Original Suit (Cross-bill Filed);
Order To Stay Proceedings in Original Suit.

DEPOSITIONS:

Order for a Commission With Stay of Proceedings.

INJUNCTIONS:

Bond on Obtaining Injunction To Stay Proceedings.

SHERIFFS AND CONSTABLES:

Notice of Motion To Stay Proceedings Against Sheriff.

I. At Law, Orders.

A. Order for Stay of Proceedings, Demurrer to Evidence or Bill of Exceptions.

Let all the proceedings on the part of the (plaintiff) in this cause be stayed until the settlement of the bill of exceptions (or demurrer to evidence) taken herein. Dated (January 13th, 1846).

(John W. Edmonds, circuit judge.)
Burr. App. 231, §487.

B. Order for Stay of Proceedings To Move for New Trial.

Upon the within affidavits, let all proceedings in this cause be stayed until the _____ day of _____ next (or until the further order of the court thereon). Dated (January 13th, 1846).

(John W. Edmonds, circuit judge.)
Burr. App. 232, §488.

C. Order To Stay Proceedings on Appeal From Decision of Circuit Judge.

The defendant (or plaintiff) having appealed from my decision (or where a justice of the supreme court grants the order, "from the decision of" (name the judge), on the case (or bill of exceptions, etc.), made and settled in this cause, ordered that all proceedings in this cause be stayed until the further order of the court. Dated (January 13th, 1846).

(John W. Edmonds, circuit judge.)
Burr. App. 232, §489; Yates' Forms 74.

D. Order To Stay Proceedings for Motions in General.

Upon reading the within affidavit, it is ordered that all proceedings in this cause be stayed until the (first Tuesday of December) next, to enable the defendant (or plaintiff) to move for a change of venue (or as the motion may be), and, if the motion be then made, until the order of the court thereon. Dated (January 13th, 1846).

(John W. Edmonds, circuit judge.)
Burr. App. 232, §490.

E. Order for Perpetual Stay of Proceedings.

A motion having been made on the part of the defendant in this cause, and after hearing counsel in opposition thereto, ordered that all proceedings on the part of the plaintiff be perpetually stayed, upon the defendant's paying into court the sum of (five hundred)

dollars, the penalty of the bond mentioned and described in the declaration in this cause. Burr. App. 456, §908.

F. Order To Stay Proceedings on Payment of Debt and Costs.

On motion of Mr. H., of counsel for the defendant, and after hearing counsel in opposition thereto, ordered that all further proceedings in this cause be stayed on payment of (five hundred) dollars, the debt due from the defendant to the plaintiff, for which this action is brought, together with the plaintiff's costs to be taxed. Burr. App. 456, §907; Archb. Forms 538.

G. Order of Revocation of Order Staying Proceedings.

Let the plaintiff show cause before me, at my chambers in _____, on the _____ day of _____ next, why a supersedeas should not issue in this cause, to discharge the defendant out of custody. Dated (January 13th, 1846).

(John W. Edmonds, circuit judge.)
Burr. App. 232, §492.

II. In Equity.

A. Notice of Motion for Injunction To Stay Proceedings at Law.

Take notice that this honorable court will be moved, for and on behalf of the plaintiff, on the _____ day of _____ instant (or next), that the defendant _____ may be restrained from commencing or prosecuting any action or other proceedings at law against the plaintiff, for the recovery of the sum of \$_____ in the plaintiff's bill mentioned, or for _____, or in respect of the matters mentioned in the plaintiff's bill, or any of them, until the further order of this court. Dated this _____ day of _____, 1857.

A. B., plaintiff's solicitor.

3 Dan. Ch. Pl. & Pr. (Percins' ed.) 2149.

B. Order by Court of Equity Staying Present and Future Action.

This court doth order that an injunction be awarded to restrain the defendant T., his attorneys and agents, from further prosecuting the action commenced (by the defendant) against the plaintiff (in the _____ court, etc.), as in the bill mentioned, to recover the amount of principal interest and costs secured by the judgment dated, etc., in the plaintiff's bill mentioned; and from commencing (or

prosecuting) any other action at law (or taking any other proceeding) against the plaintiff for the recovery of such principal, interest and costs, or any part thereof, until the hearing of this cause, or until the further order of this court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2306; 2 Seton Dec. (Eng. ed., 1862) 874, 875.

C. Order, Leave To Proceed With Action, But Execution Stayed.

It is ordered that the defendant be at liberty to proceed with the action at law commenced by him against the plaintiff (in _____ court, etc.), respecting the matters in the plaintiff's bill mentioned; and in case the defendant shall obtain judgment in the said action, he is not to sue out execution thereon, or take any other proceedings thereunder, until the further order of this court. Liberty to apply. Costs of application to be costs in cause. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2307; 2 Seton Dec. (Eng. ed., 1862) 875.

D. Order To Stay Sale and Withdraw Where Execution Issued After Notice of Decree.

It is ordered that, etc., to restrain H. from selling or disposing of any part of the property and effects of and belonging to, or forming part of, the estate of V., the intestate, taken in execution by the sheriff of M., under and by virtue of the writ of fi. fa., sued out in the action in the court of, etc., wherein the said H. is plaintiff, and the defendant V., as administratrix of the said estate, is defendant, and from taking any further proceedings in the said action, or under the said execution; and it is ordered that the said H., withdraw from the possession of the property and effects of the said intestate so taken in execution as aforesaid. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2307; 2 Seton Dec. (Eng. ed., 1862) 883.

III. Supersedeas.

A. Supersedeas To Discharge Defendant From Custody on Capias ad Respondendum.

The (people of the) state of New York, to the sheriff of the (city and) county of _____, greeting:

Whereas by our writ, we lately commanded you that you should take C. D., if he might be found in your bailiwick, and him safely keep, so that you might have his body before our (justices)

of our _____ court of _____, at the _____ in the city of _____, on the _____ Monday of _____, in the year one thousand eight hundred _____, to answer unto A. B., plaintiff, of a plea of trespass. And also to a bill of the said plaintiff, against the said defendant, for (_____ dollars on promises), according to the custom of our said court, before our said justices, then and there to be exhibited.* And because the said C. D. hath come into our said court, before our said justices, and put in common bail (or entered his appearance), at the suit of the said A. B., in the plea, and to the bill aforesaid: Therefore we command you that from taking the said C. D., arresting, imprisoning, or in any wise molesting him, on that account, you entirely desist and supersede. And if you have taken the said C. D., and do detain him in prison on that account, and no other, then that you cause him the said C. D. to be delivered and discharged without delay, out of the prison in which he is so detained, at your peril. Witness, _____, esquire, our (chief justice), at the _____ in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred _____, _____, _____, clerks.

G. H., attorney.

Burr. App. 484, §986; Till. Forms 21; Yates' Forms 644.

B. On Putting in Bail.

(As in last form to the *, and then thus): And because the said C. D. hath come into our said court, before our said justices thereof, and found sufficient bail to answer the said A. B., of the plea (and to the bill) aforesaid. Therefore we command you that from further taking, etc. (as in last form to the end). Burr. App. 485, §987.

C. Supersedeas To Discharge Defendant for Not Charging Defendant in Execution in Time.

The (people of the) state of New York, to the sheriff of the county of _____, greeting:

Whereas C. D. is detained in our prison, under your custody, by virtue of a certain writ of capias ad respondendum, issuing out of our _____ court of _____, before our aforesaid (justices) thereof, and returnable on the _____ day of _____, at the

_____ in the city of _____, to answer unto A. B. of a plea of trespass, and also to a bill, etc. (as in the *capias*). And whereas the said A. B., in _____ term last past, obtained judgment in our said court, before our said justices thereof, against the said C. D., upon the said writ. But because it appears to us that the said A. B. hath not proceeded to charge the said C. D. in execution, within three months after the said judgment so obtained, according to the form of the statute in such cases made and provided: And because the said C. D. hath come into our said court, before our said justices thereof, and filed common bail (or appeared) at the suit of the said A. B., in the plea (and to the bill) aforesaid. Therefore we command you that you wholly desist from further taking, arresting, imprisoning or in any wise molesting the said C. D., on the occasion aforesaid. And if the said C. D. be detained in your custody on the occasion aforesaid, and no other, then we command you to discharge him without delay out of the prison in which he is so detained, at your peril. Witness, _____, esquire, our (chief justice), at the _____ in the city of _____, the _____ Monday of _____, in the year of our Lord one thousand eight hundred _____.

G. H., attorney.

Burr. App. 485, §988; Till. Forms 23; Yates' Forms 645.

IV. Return to Capias Ad Respondendum, Stay of Proceedings.

After the receipt of the within writ, and before I was able to arrest the defendant, as I am within commanded, an order, a copy of which is hereto annexed, was served upon me, and thereupon all further proceedings by me under the within writ were stayed. But being served with a notice which is also hereto annexed, I return this writ, as I am required to do by said notice.

The answer of S. T., sheriff.

Burr. App. 438, §845a.

STIPULATIONS.

I. Stipulation by One Party, 1173

II. Stipulation by Both Parties, 1173

III. Stipulation Dismissing Writ of Error, 1173

IV. Stipulation Admitting Facts, 1174

V. Stipulation That Judgment in One Case Stand for Judgment in Another, 1174

VI. Stipulation Striking Out Counterclaim, 1174

CROSS-REFERENCES:

ADMIRALTY:

Stipulation for Agreed or Appraised Value;

Stipulation as to Method of Taking.

DEPOSITIONS:

Stipulation as to Mode of Returning Commission;

Stipulation To Appear and Abide Decree.

EMINENT DOMAIN:

Stipulation as to Title in Condemnation Proceedings.

JUDGMENT RECORDS:

Judgment Record on Cognovit in Assumpsit With Stipulations.

REFERENCES:

Stipulation Agreeing on Nomination;

Consent to Refer.

REVIVOR:

Stipulation in Action Against Corporation, on Expiration of Charter. To Revive in Name of New Corporation.

I. Stipulation by One Party.

It is hereby stipulated on the part of the plaintiff (defendant) that (state what).

Dated, etc.

E. F., attorney for plaintiff (defendant).

Burr. App. 478, §970.

II. Stipulation by Both Parties (a).

It is hereby stipulated by and between the parties plaintiff and defendant in this cause, that (state what).

Dated, etc.

E. F., attorney for plaintiff.

G. H., attorney for defendant.

Burr. App. 478, §971.

Stipulation by Both Parties (b).

It is hereby stipulated and agreed (state what). 2 Abb. Forms 495.

III. Stipulation Dismissing Writ of Error.

On the supreme court of appeals of West Virginia: Charles D. Colman, plaintiff below and defendant in error v. The West Virginia Oil & Oil Land Co., defendant below and plaintiff in error. On writ of error to the circuit court of Ritchie.

It is hereby stipulated and agreed

on the part and behalf of the parties in the above entitled cause that the writ of error issued and pending therein be dismissed agreed; and that an order to that effect be entered at the first sitting of this court and this court is hereby requested to grant and cause to be entered such order.

"West Virginia Oil & Oil Land Co.,
President and chief executive officer thereof.

"Charles D. Colman.

"Parkersburg, W. Va., February, 29, 1884."

Colman v. Oil Co., 25 W. Va. 148.

IV. Stipulation Admitting Facts.

"It is agreed by and between the attorneys for the plaintiff and the defendants, in the above entitled cause, that the record of a certain deed, made by the said Louis J. Brush to one George F. Drew, for the premises in question, shall be admitted in evidence on the trial of the above cause without proof of the execution of the original, if either party desires so to introduce the same." Nelson v. Brush, 22 Fla. 374.

V. Stipulation That Judgment in One Case Stand for Judgment in Another.

(Court and title.)

"Whereas, There is a case pending between one J. Q. Howey and the defendant, E. H. Edwards, in the same court, before the same justice, involving the same questions, as to the right of said Howey 'who, with said Cary, plaintiff herein, claims to be co-surety of the said Edwards,' to compel contribution of and from the said Edwards, for an amount paid by them on a judgment in favor of J. V. Pierce, and against said Howey and Carey, rendered by W. P. Talbot, Esq., J. P., and accounting, by said Edwards, of certain moneys, received by him, proceeds of property claimed to apply on said debt:

"Now it is hereby expressly agreed and stipulated, by and between the parties to this, the above-entitled suit, that whatever judgment shall be recovered against said Edwards in the said action of Howey v. Edwards, shall be entered and shall stand as the judgment in this case, without any trial in this case, or any other evidence as to amount than the judgment in the case of Howey v. Edwards; provided, that

said case shall be tried upon its merits; excepting, also, the costs, which shall be taxed, in either case, the same as if this stipulation had not been made." Edwards v. Cary, 20 Kan. 414.

VI. Stipulation Striking Out Counterclaim.

(Title of cause.) "It is hereby stipulated and agreed, by and between the respective parties, that the counterclaim set up in the defendants' answer, in this action, be withdrawn, and stricken out of the answer, without prejudice to defendant's right to maintain an action thereon against the plaintiffs, and the same is not to be affected by the future litigation of this action. Dated April 10, 1865." Foster v. Milliner, 50 Barb. (N. Y.) 385.

STOCKHOLDERS' SUITS.

I. Statements of Bill by Minority Stockholders To Enjoin Pooling, 1174

II. Statement by Minority of Gross Mismanagement, 1176

CROSS-REFERENCE:

WINDING UP CORPORATIONS:

Complaint, Action by Stockholder To Wind Up Corporation.

I. Statements of Bill by Minority Stockholders of Unfair Management, and To Enjoin Pooling in Interest of Majority.

The complainants in the bill represent that they were the owners of 203.5 shares of the capital stock of the American Glucose Company, a corporation organized under the laws of the state of New Jersey, with its general offices in Buffalo, New York, and office situate, and plant and property operated, in Peoria, Illinois; that such shares of stock are represented by a certificate issued to said Harding, July 1, 1885; that the Chicago Real-Estate Loan & Trust Company is the equitable owner of said stock as pledgee for the security of a loan, but that said Harding is the owner thereof, subject to the rights of said pledgee; that the capital stock of the American Glucose Company is \$1,500,000, the shares being \$100 each, but the original issue of said stock (of which the present certificate represents the reduced issue) made the said shares of said Harding 2,035 in number, and of the par value of \$203,500, instead of \$20,-

350; that Harding paid in property \$203,500 for the original stock; that, by reason of these facts, orators became, and now are, the owners of one sixty-second part of the entire capital stock of the said American Glucose Company, if all of the stock had been issued but about \$400,000 of it never was issued, but is owned by the corporation itself; that the American Glucose Company has, for many years past, been engaged in the manufacture and sale of glucose and grape sugar in Peoria; that the management during that period has been in the hands of the said Cicero J. Hamlin, late president, and his two sons, William and Harry Hamlin, and the board of directors have been and are now controlled by said Hamlin and sons; that your orators are unable to give a detailed statement of the management and administration of the affairs of the company, because the details thereof have been and are persistently, wilfully, and fraudulently concealed by the said Hamlins and their co-defendants from your orators; that the defendants have fraudulently manipulated and controlled the board of directors of said company, and conducted the affairs and business thereof fraudulently, for their own interest and profit, and in gross disregard of the interest of your orators as stockholders, and have fraudulently paid, and still pay, enormous salaries to themselves and others in the business of said company, and, by these and other fraudulent expenditures and practices, have diverted to their own use the profits of said business, and prevented the payment to your orators of such dividends as they were entitled to receive; that, during that entire period, said Hamlins and said defendants have fraudulently controlled, and still fraudulently control, all the capital stock of said company, except that owned by your orators, and a few hundred dollars of stock owned by minority stockholders; that your orators file this bill, not only in their own behalf, but also on behalf of all other stockholders similarly situated, who may see fit to come into this suit and join therein; that said fraudulent salaries paid have been more than ten times the value of the services rendered, and said sums so diverted have amounted to the sum of \$100,000 a year during that period, and thereby

your orators have been greatly defrauded and injured. The bill further represents that a giant pool, trust, or combine has been recently formed, for the purpose of unlawfully regulating and fixing the price of glucose and grape sugar, being articles of merchandise and commodities manufactured and sold throughout the United States and in this country.

(The bill is further set out at length in the report but is too long for insertion here. It particularly sets out the purpose to fraudulently transfer to the parties forming the pool, the plant and property of the corporation, to the injury of the minority of stockholders, by which transaction "large sums as a bonus for such unlawful and fraudulent sale go to them [the holders of the majority of stock] individually, and none of which will accrue to the benefit of your orators or the other stockholders of said company, or to the said company, and your orators, if possible, are to be frozen out and defrauded by the carrying out of said contract of sale," etc.)

The prayer of relief is as follows: "To the end, therefore, that your orators may have equity in the premises; and that the American Glucose Company, Cicero J. Hamlin, William Hamlin, Harry Hamlin, Joseph Firmenich, George Firmenich, C. H. Matthieson, F. O. Matthieson, the officers, directors, and stockholders of the American Glucose Company, the unknown owners or holders of the option given by the president of the American Glucose Company for the sale of the plant in Peoria, the unknown persons having any interest in said option or under it, all of whom are made parties defendants, may be duly summoned to answer (but not under oath, their oaths being waived); that there may be an accounting, under the order of the court; and that your orators may have decreed to them such dividends or sums as they may be found entitled to as stockholders of said stock; and to the end that all of the said defendants and agents may be restrained and enjoined from closing up the business of manufacturing glucose and grape sugar, and such other business as said American Glucose Company has hitherto engaged in in the city of Peoria, and from changing the business, and from relinquishing this

branch of the business and from carrying out in any way said option for sale or transfer of said property, or any part thereof, and from aiding or assisting any of the said acts, and from selling or transferring the said plant to any pool, trust, or combine, or any association, corporation, or individual, in violation of the laws of Illinois, or to any person, or corporation or pool, or trust, or association, etc., to enable them to regulate or fix the price of glucose, or grape sugar, or by-products, or to fix the amount to be manufactured of same, and from any other violations of said acts of the general assembly of Illinois, approved June 11, 1891, and amended in 1897, and also act approved June 20, 1893; and that a receiver may be appointed of the said American Glucose Company to take charge of and protect and preserve its plant and property, and manage same, under the orders of this court; and that such injunction may be made perpetual; and to the end that your orators may have such other and further and different relief in the premises as equity may require." *Harding v. American Glucose Co.*, 182 Ill. 551, 55 N. E. 577, 64 L. R. A. 738, 746.

II. Statement of Allegations by Minority of Gross Mismanagement.

"The petitioners alleged that the Webbs voted enormous and exorbitant salaries to each other, and voted and paid over to S. J. Webb and to Webb & Bro. large sums of money by way of royalties for the use of so-called improvements, which allowances were unauthorized and unjustifiable under the charter, but were grossly excessive; and that all this was done for the sole purpose of absorbing the revenues of the company and defrauding the petitioners. They alleged, further, that the Webbs were holders of a majority of the stock of the company, and had the management of its affairs entirely in their own hands, as well as all the funds of the company, and were so conducting the business of the company as to divert to themselves all the profits of the company, which were large, and so as to defraud the petitioners of their rights, all of which amounted to gross mismanagement of the affairs of the company and made the appointment of a receiver necessary. *Crichton v. Webb Press Co.*, 113

La. 167, 36 So. 926, 67 L. R. A. 76, 82.

STREET RAILROADS.

CROSS-REFERENCES:

INJURIES TO PERSONS:

Declaration, Injuries by Collision Between Two Street Cars;
Complaint, Injuries Received on Jumping From Street Car, Collision Imminent.

STREETS.—See HIGHWAYS, STREETS AND BRIDGES.

STRIKING OUT.

I. Notice of Motions, 1176

- A. *To Strike Out Counts*, 1176
- B. *To Strike Out Plea*, 1176
- C. *To Strike Out Irrelevant Answer*, 1177
- D. *To Strike Out Irrelevant or Redundant Matter*, 1177

II. Order Striking Out, 1177

- A. *Counts*, 1177
- B. *Plea*, 1177
- C. *Irrelevant Answer*, 1177
- D. *Irrelevant or Redundant Matter*, 1177

CROSS-REFERENCE:

FRIVOLOUS AND SHAM PLEADINGS:

Affidavit To Strike Out Sham Plea;
Notice of Motion To Strike Out Sham Plea;
Notice of Motion To Strike Out Sham Answer;
Notice of Motion To Strike Out One Defense as Sham, and for Judgment on Other as Frivolous;
Order Striking Out Sham Pleading.

I. Notice of Motions.

- A. *Notice of Motion To Strike Out Counts.*

Sir: Please to take notice that upon the affidavit, with a copy whereof you are herewith served, this court will be moved, at the next special term, to be held at the _____ in the city of _____, on the first Tuesday of _____ next,* that the (third and fourth) counts of the plaintiff's declaration in this cause be stricken out of said declaration, as superfluous (with costs). Dated, etc. *Burr. App.* 207, §405.

- B. *Notice of Motion To Strike Out Plea.*

(As in I, A, to the *, and then as follows): that the plea of (specifying

the plea) pleaded by the defendant in this cause, be stricken out as false (or frivolous), with costs. Dated _____, 18—. Burr. App. 209, §11.

C. Notice of Motion To Strike Out Irrelevant Answer.

Please take notice that on (the affidavit herewith served, and) the pleadings in this action, the undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, to strike out the answer herein as irrelevant; or for such other relief as may be just (with costs). 2 Abb. Forms 214.

D. Notice of Motion To Strike Out Irrelevant or Redundant Matter.

Please take notice that on (the affidavit herewith served, and) the pleadings in this action, the undersigned will move the court, at a special term to be held at _____ on the _____ day of _____, 18—, at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, to strike out all of the third paragraph of the complaint (or answer) herein, and so much of the fifth paragraph as is contained between the word _____ and the word _____ (or so much thereof as is contained between the word _____ in folio _____, and the word _____ in folio _____), both inclusive, as irrelevant or redundant; or for such other relief as may be just (with costs). 2 Abb. Forms 211.

II. Orders Striking Out.

A. Order To Strike Out Counts.

On motion of Mr. H., of counsel for the defendant, and after hearing counsel in opposition thereto, ordered that the (third and fourth) counts of the plaintiff's declaration in this cause be, and the same are hereby stricken out of said declaration (with ten dollars costs to be paid by the plaintiff). Burr. App. 456, §909.

B. Order To Strike Out Plea.

On reading and filing affidavit of service of notice of motion in this cause, and on motion of I. J., of counsel for the plaintiff (no one appearing to oppose), ordered that the defendant's plea of (specifying it) in this cause be stricken out as false, with ten

dollars costs, to be paid by the said defendant. Burr. App. 457, §910.

C. Order on Motion To Strike Out Irrelevant Answer.

(Recitals as in II. D.)

Ordered that the answer (of the defendant Y. Z.) in this action be stricken out as irrelevant, with _____ dollars costs to plaintiff. 2 Abb. Forms 214.

D. Order on Motion To Strike Out Irrelevant or Redundant Matter.

On reading and filing (describe motion papers), and on motion of Q. R. for the (defendant), and after hearing S. T. in opposition thereto (or and on proof of due service of notice of the motion, and no one appearing in opposition thereto):

Ordered that the matter contained in the (complaint) in this action, from the word "and" in folio 10 thereof, to the word "plaintiff" in folio 21, be stricken out as redundant (or irrelevant); and that as to the matter contained in the second paragraph, said motion be denied. 2 Abb. Forms 212.

SUBJECTS OF ACTION.

CROSS-REFERENCE:

JURISDICTION:

Demurrer for Want of Jurisdiction as to Subject;

Answer, No Jurisdiction of the Subject.

SUBMISSION OF CONTROVERSY.—

See ARBITRATION.

SUBPOENA.

I. Subpoena, 1178

II. Subpoena Duces Tecum, 1178

III. Subpoena Ticket, 1178

IV. Subpoena Ticket, Duces Tecum, 1178

V. Subpoena on Writ of Inquiry, 1178

VI. Subpoena Ticket on Writ of Inquiry, 1179

VII. Subpoena on Reference, 1179

VIII. Subpoena Ticket on Reference, 1179

CROSS REFERENCES:

BANKRUPTCY:

Summons to Witness.

CRIMINAL INQUEST:

Subpoena for Witness.

DEPOSITIONS:

Subpoena Pursuant to Letters Rogatory.

DISCOVERY:

Summons (Subpoena) to Party To
Attend Examination.

INTERSTATE COMMERCE COMMISSION:

Subpoena.

PROCESS:

Subpoena Ad Respondendum.

I. Subpoena for Circuit.

The (people of the) state of _____,
to K. L., M. N., etc. (naming the
witnesses), greeting:

We command you, that all and singular business and excuses being laid aside, you and each of you appear and attend before our justices of our _____ court, circuit judges, or some or one of them, at a _____ court, to be held in and for the (city and) county of _____, at the _____, in the said city, on the _____ Monday of _____ next, at _____ o'clock in the forenoon, to testify and give evidence in a certain cause now pending in the _____ court, then and there to be tried, between A. B., plaintiff, and C. D., defendant, of a plea of (trespass on the case), on the part of the (plaintiff). And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damage sustained thereby to the party aggrieved, and forfeit _____ dollars in addition thereto.

Witness, _____, esquire, our (chief justice), at the _____ in the city of _____, the _____ Monday of _____, in the year of our Lord one thousand eight hundred and _____, clerks.

E. F., attorney.

Burr. App. 480, §977.

II. Subpoena Duces Tecum.

The (people of the) state of New York,
to M. N., greeting:

We command you, that all business and excuses being laid aside, you appear and attend before our justices of our supreme court, circuit judges, or some or one of them, at a circuit court, to be held at the (court house) in the (town) of _____, in and for the county of _____, on the _____ day of _____ next, to testify and give evidence in a certain cause, now pending in the _____ court, then and there to be tried, between A. B., plaintiff, and C. D., defendant, of a plea of (trespass on the case) on the part of the (plaintiff). And that you bring with you, and then and there produce

a certain paper writing (or deed, or agreement, or book, as it may be), purporting to be (here describe the instrument or book as near as may be, with ticable), now in your custody, and all other deeds, evidences, and writings, which you have in your custody or the date, and other particulars, if practicable, concerning the premises. And for a failure, etc. (as in the common subpoena to the end). Burr. App. 481, §979.

III. Subpoena Ticket for the Circuit.

By virtue of a writ of subpoena, to you directed and herewith shown, you are commanded, that all business and excuses being laid aside, you be and appear before the justices of the supreme court, circuit judges, or some or one of them, at a circuit court, to be held, etc. (as in the subpoena, I), at ten o'clock in the forenoon, to testify and give evidence, in a certain cause now pending in the supreme court, then and there to be tried, between A. B., plaintiff, and C. D., defendant, in a plea of (as in subpoena) on the part of the plaintiff (or defendant). And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit _____ dollars in addition thereto.

Dated the _____ day of _____, 18_____.

By the court.

E. F., attorney.

To I. J.

Burr. App. 482, §981.

Note.—In some jurisdictions it is the practice to give a copy of the subpoena.

IV. Subpoena Ticket Duces Tecum.

(Same as last form, with the exception of the "duces tecum" clause in the proper place. See the subpoena duces tecum, II. Burr. App. 482, §982.

V. Subpoena on Writ of Inquiry Before the Sheriff.

The (people of the) state of New York,
to K. L., M. N., etc. (naming the witnesses), greeting:

We command you, that all business and excuses being laid aside, you and each of you, appear and attend before the sheriff of the (city and) county of _____, at his office in the _____ of the city of _____, on the _____ day of _____ next, at six o'clock

in the afternoon, to testify and give evidence in a certain cause now pending in our _____ court of _____ before our (justices) thereof, between A. B., plaintiff, and C. D., defendant (of a plea of trespass on the case) (or as the action is) on the part of the plaintiff (or, "defendant," as the case may be), on which a writ of inquiry of damages has been issued to the said sheriff, and is then and there in due form of law to be executed. And this you are in no wise to omit, under the penalty upon each of you, of _____ dollars.

Witness, _____, esquire, our (chief justice), at the _____ in the city of _____, the _____ day of _____, in the year one thousand eight hundred and _____.

_____, clerks.

E. F., attorney.

Burr. App. 478, §972.

VI. Subpoena Ticket on Writ of Inquiry.

By virtue of a writ of subpoena, to you directed and herewith shown, you are commanded, that all business and excuses being laid aside, you appear and attend before the sheriff of the (city and) county of _____ at (the jail office in the said county), on the _____ day of _____, at _____ o'clock in the _____ noon, to testify in a certain cause now pending undetermined in the _____ court of _____, then and there to be tried upon a writ of inquiry, between A. B., plaintiff, and C. D., defendant, in a plea of (trespass on the case) on the part of the plaintiff (or defendant) and for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damage sustained thereby to the party aggrieved, and forfeit _____ dollars in addition thereto.

Dated the _____ day of _____, 18____.

By the court.

E. F., attorney.

To I. J.

Burr. App. 481, §980.

VII. Subpoena on Reference.

The (people of the) state of New York, to K. L. and M. N., etc. (naming the witnesses), greeting:

We command you, that all business and excuses being laid aside, you (and each of you) appear and attend before

the referees appointed by our _____ court of _____, on the _____ day of _____ next, at four o'clock in the afternoon, at (here specify the place) to testify and give evidence in a certain cause now pending in the said court, and then and there to be tried between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff (or defendant). And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damage sustained thereby to the party aggrieved, and forfeit _____ dollars in addition thereto. Witness, etc. (teste in the usual form). _____, clerks.

E. F., attorney.

Burr. App. 480, §976.

VIII. Subpoena Ticket for Appearance Before Referee.

By virtue of a writ of subpoena, to you directed and herewith shown, you are commanded, that all business and excuses being laid aside, you appear and attend in your proper person, before the referees appointed by the _____ court, at (here name the place), on the _____ day of _____ at _____ o'clock in the _____ noon, to testify and give evidence, in a certain cause now pending in the said supreme court, then and there to be tried, between A. B., plaintiff, and C. D., defendant, in a plea of (trespass on the case) on the part of the (defendant). And for a failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit _____ dollars in addition thereto.

Dated the _____ day of _____, 18____.

By the court.

To I. J. G. H., attorney.

Burr. App. 482, §982.

SUBROGATION.

I. Complaint by Fire Insurance Company To Be Subrogated, 1179

II. Complaint by Vendor of Land Subject to Mortgage, 1180

III. Complaint by Purchaser Where Foreclosure Was Set Aside, 1181

I. Complaint by Fire Insurance Company To Be Subrogated to Insurer's Rights, by Statute.

"Plaintiff alleges that the T. A.

Miller Lumber Company is and at all times herein stated was a corporation duly organized and existing by law. That plaintiff Lumbermen's Mutual Insurance Company is, and at all times herein stated was, a corporation duly organized and existing by virtue of the laws of the State of Illinois and engaged in the business of insuring property owners against loss or damage by fire. That defendant, Kansas City, Fort Scott and Memphis Railroad Company, is, and at all times herein-after stated was, a corporation, and was engaged in operating a railroad through the town of Ash Grove, in the State of Missouri, and was using and operating thereon steam engines and locomotives.

"That at the time of the issuing of the policy of insurance, hereinafter mentioned, and on the 6th day of April, 1894, the T. A. Miller Lumber Company was the owner of a certain stock of lumber, lath, shingles, sash, doors and other stock such as is usually kept for sale in country lumber yards, also of a certain brick office building and certain office furniture and fixtures therein contained, and also of certain lumber sheds, all situated on lots 2, 3, 4, 5, in Brok and Ralph Watkin's Railroad Addition to the town of Ash Grove, Missouri. That on the 13th day of December, 1893, in consideration of a certain premium to it paid by said T. A. Miller Lumber Company, the Lumbermen's Mutual Insurance Company issued to said T. A. Miller Lumber Company a certain policy of insurance, insuring it against loss or damage by fire to the property hereinbefore specified, for the period of one year from said date, to the amounts and as follows: \$2,000 on said described stock of lumber; \$250 on said described brick office building and the furniture and fixtures therein contained, and \$250 on said described lumber sheds.

"That on the 6th day of April, 1893, and while said policy of insurance was in full force and effect, the said stock of lumber, laths, shingles, sash, doors and other stock in trade, being of the reasonable cash value of \$2,517.24, was wholly destroyed by fire, and said brick office building was damaged by fire to the amount of \$150, and said lumber sheds, being at the time of the reasonable cash value of \$395.60, were wholly destroyed by fire.

"That the fire which destroyed and damaged said property was communicated thereto by a locomotive engine being used by defendant upon its said railroad.

"That by reason of said fire said Lumbermen's Mutual Insurance Company became liable to pay to said T. A. Miller Lumber Company the sum of \$2,400, and by virtue of the terms of said policy of insurance, which sum said Lumbermen's Mutual Insurance Company has long since paid. That upon the payment of said sum the said Lumbermen's Mutual Insurance Company became and was subrogated to all the rights of the said T. A. Miller Lumber Company against said defendant for the recovery of said sum of money, twenty-four hundred dollars, by reason of the destruction of said property by fire, communicated thereto by a locomotive engine of defendant as aforesaid.

"That by reason of all the premises aforesaid, an action has accrued to plaintiff against defendant, and plaintiff alleges that it has sustained damages in the sum of \$3,013.42, for which it asks judgment, and for costs." *Lumbermen's M. Ins. Co. v. Kansas City, etc. R. Co.*, 149 Mo. 165, 50 S. W. 281

II. Substance of Complaint for Subrogation by Vendor of Land Subject to Mortgage, Compelled To Pay.

"That, on the 20th day of September, 1861, the plaintiff was the owner of certain lands in Ripley county, which are described; that on said day he executed a mortgage of the same to Stephen C. Prebble, to secure a certain indebtedness, set forth in the mortgage; that on the 20th day of April, 1864, the plaintiff and his wife sold and conveyed said lands to Henry H. Wise, who, as a part of the purchase money therefor, assumed the payment of said indebtedness set out in the mortgage to Prebble, which agreement was set forth in the conveyance to Wise; that said Wise, on the 31st day of August, 1864, sold and conveyed said real estate to Joshua Buchanan, who, also, as a part of the purchase money, agreed to pay said indebtedness secured by the mortgage of plaintiff to Prebble, which agreement was inserted in the conveyance from Wise to Buchanan; that Buchanan, on the 15th day of December, 1866,

sold and conveyed said real estate to James M. Risk, the appellant, and said Risk agreed, as a part of the purchase money, to pay off and satisfy the indebtedness secured by said mortgage, which agreement was inserted in the conveyance he received from Buchanan. The mortgage and the several conveyances, containing the agreements as above averred, are made exhibits.

The plaintiff further avers that, on the 6th day of October, 1875, Prebble, the mortgagee, recovered judgment against the plaintiff, in the Jennings circuit court, for eighty-three dollars and seventy cents, which was a part of the indebtedness secured by the mortgage; that the plaintiff, on the 26th day of May, 1876, paid said judgment and the costs thereon, which amounts are still due and unpaid. Prayer to be subrogated to the rights of Prebble under the mortgage, and for judgment and decree of foreclosure," etc. *Risk v. Hoffman*, 69 Ind. 137.

III. Substance of Complaint for Subrogation by Purchaser, Where Previous Foreclosure Was Set Aside.

John Radley, in 1839, being seized of the land in question, mortgaged it to Jesse L. Holman, school commissioner, to secure the payment of one hundred dollars, borrowed from the school fund, with interest. In default of payment, the school commissioner, in 1842, sold the land at public sale, to pay the debt. James Muir became the purchaser of the land at this sale. In 1848, Muir sold and conveyed the land to John Mullen, with covenants of warranty. Mullen took possession of the land and made lasting and valuable improvements thereon. In 1862, the heirs of James Radley, who had died in the meantime, brought suit against Mullen to obtain possession of the land. In this suit the sale made by Holman to James Muir was declared void for want of proper notice, and, in 1864, the Radley heirs recovered judgment and obtained possession of the land against Mullen, who then sued the appellants as heirs at law of James Muir on the covenants of warranty in the deed of James Muir to him, and recovered judgment against them, which they paid. The Radley heirs then conveyed the land to John G. Berkshire, and Berkshire to George W. Hunter, who now

claims to be the owner, of all of which proceedings Berkshire and Hunter had notice. *Muir v. Berkshire*, 52 Ind. 149.

SUBSCRIPTIONS.

CROSS-REFERENCES:

BONDS:

Complaint on Bond for Accounting of Subscription Agent.

CORPORATIONS:

Complaint by Corporation on Stock Subscription (a), (b).

Complaint, on Subscription to Public Object.

(I. For averment of incorporations, see **Corporations.**)

II. That the plaintiffs, in the month of _____, 18____, were erecting a building at _____, for the purposes of (an academy).

III. That the defendants and others were desirous that the building should be completed, and requested that the plaintiffs should complete the same, and for the purpose of enabling the plaintiffs to do so, the defendants subscribed and agreed to pay the plaintiffs the sum of _____ dollars, in consideration of the premises, and of the like subscription and agreement of other persons (or, in consideration of which the defendants were to receive from the plaintiffs _____ shares of the capital stock of the plaintiffs).

IV. That upon the faith of said subscription, the plaintiffs proceeded with the erection of the building, and expended thereon large sums of money, and incurred large liabilities, and have completed said building, and otherwise duly performed all the conditions on their part.

V. That no part of the defendants' subscription has been paid (except, etc.) 1 Abb. Forms 322.

SUBSTITUTION OF ATTORNEY.

I. Consent, 1181

II. Order, 1182

III. Notice, 1182

I. Consent to Substitution of Another Attorney.

I hereby consent that I, E., of _____, esquire, be substituted in my place, as attorney (and counsel) for the defendant in the above entitled cause. Dated, etc.

G. H., attorney for deft.

Burr. App. 71. §116a.

II. Order of Substitution of Attorney

On reading and filing a consent in writing signed by G. H., esquire, attorney for the above named defendant, and on motion of J. R., ordered, that the said J. R. be substituted in the place of the said G. H., as attorney for the said (defendant). Burr. App. 452, §893a.

III. Notice of Substitution of Attorney.

Sir—Please to take notice, that a rule has this day been entered, in the above entitled cause, in the office of the clerk of this court in the city of _____, that I. R., of _____, be substituted in the place and stead of G. H. as attorney for the above named (defendant). Dated, etc.

Yours, etc.,

I. R., atty. for deflt.

(Residence.)

To E. F., esq., atty. for plttf.

Burr. App. 202, §391a.

SUCCESSIVE SUITS.

For forms of former adjudication, see *Res Judicata*.

SUBSTITUTION OF PARTIES.—See OFFICERS; PARTIES.

SUMMONS.—See PROCESS.

SUNDAY AND HOLIDAYS.

I. Indictment for Keeping Open Shop on Sunday, 1182

II. Indictment for Keeping Open Grocery on Sunday, 1182

III. Indictment for Working on Sunday, 1182

IV. Complaint for Keeping Saloon Open, 1182

V. Indictment for Keeping Open Room and Selling Liquor, 1183

VI. Indictment for Selling Liquor on Sunday, 1183

VII. Indictment for Keeping Open Bowling Alley on Saturday Evening, 1183

CROSS REFERENCE:

INTOXICATING LIQUORS:

Indictment, Selling Liquor on Sunday.

I. Indictment for Keeping Open Shop on Sunday.

"Did keep open his shop, there situate, for a long time, to-wit, for the space of one hour, for the purpose of

doing labor, business or work therein, namely, selling goods and merchandise therein on said Lord's day, as aforesaid, the same not being works of necessity or charity, against the peace of said commonwealth, and the form of the statute in such case made and provided." Com. v. Lynch, 8 Gray (Mass.) 384.

II. Indictment for Keeping Open Grocery on Sunday.

"The indictment charged that the defendant, on, etc., at, etc., did then and there unlawfully keep open a grocery by then and there permitting persons to enter said grocery and then and there to drink intoxicating liquors." State v. Crabtree, 27 Mo. 232.

III. Indictment for Working on Sunday.

"William Schmidt swears that on the 13th day of January, A. D. 1889, which was the first day of the week, commonly called Sunday, Marion Saurbaugh, who was at that time a person over fourteen years of age, at the county of Allen, and in the state of Indiana, was then and there found unlawfully at common labor, and engaged in his usual avocation, to-wit: Selling and delivering merchandise to sundry persons, and waiting on customers; and was then and there found unlawfully at common labor, and following his usual avocation on Sunday, said common labor and usual avocation not being then and there a work of charity or necessity; and the said Marion Saurbaugh not being then and there a person who conscientiously observed the seventh day of the week as the Sabbath, nor a traveler, nor a family removing, nor a keeper of a toll bridge, toll gate, or ferryman, acting as such." State v. Saurbaugh, 122 Ind. 208, 23 N. E. 720.

IV. Complaint for Keeping Open Saloon on Sunday.

"State of Michigan, Wayne County, city of Detroit, ss. In the recorder's court.

"Peter Graham, being first duly sworn, makes complaint and says, that at the city of Detroit aforesaid, on Sunday, the first day of September, A. D. one thousand eight hundred and sixty-seven, and within the corporate limits of said city, one James Lynch, keeper of saloon bearing street num

ber 4 Woodward avenue, did then and there unlawfully and wilfully keep his saloon open before the hour of two o'clock in the afternoon, to the evil example of all others in the like case offending, and contrary to the ordinances of said city, in such case made and provided: Sec. 1 of an ordinance relative to quiet and good order.

(Signed) "Peter Graham."

Lynch v. People, 16 Mich. 472.

V. Indictment for Keeping Open Room on Sunday and Selling Liquor.

For that on the twelfth day of January, 1873, being the first day of the week commonly called Sunday, they did, unlawfully and wilfully, keep open for a long time, certain rooms, generally known as the Overland Exchange, situated in Boise city, Ada county, Idaho territory, in which said Overland Exchange intoxicating liquors, lager beer, and ale were then and there kept for sale at retail, in violation of the third section of the act entitled an act to provide for the better observance of the Sabbath day, approved January 8, 1873, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the United States and of the territory of Idaho. People v. Griffin, 1 Idaho 476.

VI. Indictment for Selling Liquor on Sunday.

It was charged in the indictment that "C. Thon, within twelve months last past, in the year one thousand eight hundred and seventy-eight, at the said city and within the jurisdiction of the state hustings court of the city of Richmond, in the bar room of him, the said C. Thon, there situate, between twelve o'clock on Saturday night of the week and sunrise of the succeeding Monday morning, unlawfully did sell intoxicating drinks, against the peace and dignity of the commonwealth of Virginia." Thon v. Com., 31 Gratt. (Va.) 887.

VII. Indictment for Keeping Open Bowling Alley on Saturday Evening.

"With force and arms, was the keeper for the time being of a certain bowling alley there situate, and being the keeper of said alley on as aforesaid, did there and then suffer and permit certain persons to said complainant un-

known, to play at and in the said bowling alley after the hour of six o'clock in the afternoon of said fourteenth day of July, the same being Saturday, against the peace of said commonwealth, and the form of the statutes in such cases made and provided." Com. v. Colton, 8 Gray (Mass.) 488.

SUPPLEMENTAL PLEADING.

I. Bills, 1184

- A. *To Restrain Action of Law*, 1184
- B. *Extension of Patent*, 1184

II. Decrees, 1185

- A. *To Carry on Proceedings*, 1185
- B. *To Carry on Suit Against Assignee of Bankrupt*, 1185
- C. *To Carry on Proceedings on Bill in Nature of Revivor*, 1185

III. Obtaining Leave (Code), 1186

- A. *Affidavit To File Complaint*, 1186
- B. *Affidavit To File Answer*, 1186
- C. *Notice of Motion*, 1186
- D. *Order for Leave To File Complaint*, 1186
- E. *Order for Leave To Make Pleading*, 1186

IV. Complaints, 1186

- A. *In Creditor's Suit To Set Aside Assignment*, 1186
- B. *In Action To Enjoin Continuing of Trade*, 1187
- C. *Allegation of Ignorance, Matters Before Suit*, 1188

CROSS REFERENCES:

BILLS OF REVIEW:

- Supplemental Bill in Nature of Bill of Review.

DEMURRER:

- Demurrer to Bill of Review and Supplemental Bill.

EMEND ED DEMAND:

- Supplemental Answer in Condemnation Proceedings.

PLEA IN EQUITY:

- Plea to Supplemental Bill, Matters Well Known at Filing of Original Bill.

RELEASE:

- Supplemental Answer of Release and Discharge Since Last Continuance.

REVIVOR:

- Bill of Revivor and Supplemental

Death of Plaintiff and Birth of Heir of Defendant;
 Notice of Motion To Revive, or To Serve Supplemental Complaint.

I. Bills.

A. Supplemental Bill To Restrain Action at Law.

Humbly complaining, sheweth unto your honors your orator J. K., of, etc., that in or as of _____ term _____, your orator exhibited his original bill of complaint in this honorable court against H. B. S., and which said bill has been amended by order of this honorable court, thereby praying that the said defendant might be decreed specifically to perform his agreement with your orator, touching the lease of the farm and premises in the said bill mentioned, and to grant your orator a lease thereof for _____ years, commencing from the expiration of his former lease, at the yearly rent of \$_____, your orator being ready and willing to do and perform everything on his part required to be done and performed in pursuance of the said agreement. And your orator further sheweth that the said defendant appeared and put in his answer to the said original bill; as by the said bill and answer now remaining as of record in this honorable court, reference being thereto had, will appear. And your orator further sheweth, by way of supplement, that since the filing of the said original bill the said defendant has caused an action of ejectment to be commenced in the _____ court _____, for the purpose of turning your orator out of possession of the said farm and premises, and the said action is still depending in the said court. And your orator being advised that the said defendant cannot support such action, and that your orator is entitled to a specific performance of the said agreement as prayed by his said amended bill, he has by himself and his agents several times applied to and requested the said defendant to desist from proceeding in the said action, and he was in hopes that he would have complied with such fair and reasonable requests, as in justice and equity he ought to have done. But now so it is, etc., the said H. B. S. refuses, etc., and insists upon proceeding in his said action, and to turn your orator out of possession of the said farm and lands, to the mani-

fest wrong and injury of your orator in the premises. To the end, therefore, etc.

And that the said defendant may be restrained by the injunction of this honorable court from proceeding in the said action, and from commencing any other action or proceeding at law for the purpose of turning your orator out of possession of the said farm and lands. May it please, etc. (Pray subpoena and injunction against H. B. S.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2085.

B. Supplemental Bill, Extension of Patent.

E. H., Jr., of B., in the state of N. Y., and a citizen of the state of N. Y., brings his supplemental bill against C. W. W., of said Massachusetts.

And thereupon your orator complains and says, that he filed his original bill against the defendants in this court, August 9th, 1859, wherein he prayed for a discovery, account, payment of profits, and an injunction to restrain the said defendants from infringing your orator's patent, granted to him by the United States of America, for improvement in sewing machines, dated September 10th, 1846, and for other relief, as stated in his said original bill.

And your orator further shows, that since the filing of his said original bill, namely, on the eighth day of September, in the year eighteen hundred and sixty, upon the application of your orator, and after due proceedings had in all respects as required by law, the commissioner of patents granted the extension of said patent for the term of seven years from and after the expiration of the first term thereof, viz.: the tenth day of September, 1860, and made a certificate of such extension thereon, and entered the same on record in the patent office in due form of law; and thereupon the said patent was renewed and extended, and now has the same effect in law as though it had been originally granted for the term of twenty-one years, as in and by said certificate or a certified copy thereof here in court to be produced, will more fully appear. Yet the said defendant, well knowing the premises, but contriving how to injure your orator, and without his consent or allowance, and without right and in violation of said

letters patent and your orator's exclusive rights, secured to him as aforesaid, from September 1st, 1857, has made, used, or vended, and still does make, use, or vend to others to be used in said district and in other parts of the United States, a large number of sewing machines, but how many your orator cannot state, but prays that the defendant may discover and set forth, each embracing substantially the improvement in sewing machines, or a material part thereof, patented by your orator as aforesaid, and thereby the said defendant has infringed, and still does infringe, and cause your orator to fear that in the future he will infringe upon the exclusive rights and privileges intended to be secured to your orator in and by his said letters patent.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief herein and in his said original bill prayed; and may, under oath and according to his best and utmost knowledge, remembrance, information, or belief, full, true, direct, and perfect answer make to all and singular the premises, and more especially, may answer, discover, and set forth, whether during any and what period of time since September 1st, 1857, and where he has made, used, or vended to others to be used; for any and what consideration, if any, and how many sewing machines; and whether or not the same embraced the said improvement in sewing machines, or any substantial part thereof, patented to your orator as aforesaid, or how the same differed from your orator's said patent, if at all.

And that the said defendant may answer the premises, and may be decreed to account for and pay over to your orator all gains and profits realized from his unlawful making, using, or vending of sewing machines, embracing said improvement patented to and vested in your orator as aforesaid; and may be restrained, by an injunction to be issued out of this honorable court, or by one of your honors, according to law in such case provided, from making, using, or vending any sewing machines embracing said improvement, or any substantial part thereof, patented to your orator as aforesaid, and that the infringing machines, now in possession

or under the control of the defendant, may be delivered up to your orator or be destroyed; and for such further and other relief in the premises as the nature of the case may require, and to your honors may seem meet. May it please your honors, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2079.

II. Decrees.

A. Decree To Carry on Proceedings.

It is ordered that the decree (or order), dated, etc., made in the original suit, wherein A. was plaintiff, and C. and D. were defendants, be carried into execution, and the accounts and inquiries, and several other matters thereby directed (and the several proceedings thereunder), be carried on and prosecuted between the parties to this suit, in like manner as thereby directed between the parties to the said original cause; and it is ordered that the further consideration of this cause be adjourned, in like manner as the further consideration of the said original cause was adjourned by the said decree (or order). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2352.

B. Order To Carry on Suit Against Assignees of Bankrupt or Insolvent Defendant.

It is ordered that this suit be carried on and prosecuted by the plaintiff against the said M., etc., as such assignees as aforesaid, as if the said defendant had not become bankrupt, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2352; 2 Seton Dec. (Eng. ed. 1862) 1165.

C. Decree To Carry on Proceedings on Supplemental Bill, Nature of Bill of Review. Original Decree Made After Suit Abated.

This court doth declare that the plaintiffs are entitled to have the benefit of the proceedings which have been had in the original suit of H. v. P., and others, under the decree made in that suit, dated, etc., against the defendants in this suit, who are the executors of R., named as a defendant in the original suit, who died previously to the date of the said decree, as if previously to such decree (a bill had been filed against the executors of the said R., and) an order to revive the said suit had been duly obtained, and doth decree that the said suit and proceedings be carried on accordingly, and adjourn further consideration, etc., in

like manner as, etc. 3 Dan. Ch. PL & Pr. (Perkins' ed.) 2352; 2 Seton Dec. (Eng. ed. 1862) 1175.

III. Obtaining Leave (Code).

A. *Affidavit for Leave To File Supplemental Complaint.*

A. B., being duly sworn, says:

I. That he is the plaintiff above named; that this action was commenced in this court by the service of a summons and complaint on the _____ day of _____, 18____; that the action is brought for the purpose of (state briefly the object of the suit, as, the foreclosure of a certain mortgage, particularly described in the complaint herein); that issue has been joined herein, and the cause is now upon the calendar of this court, awaiting trial.

II. Deponent further says that he has read the annexed draft of the proposed supplemental complaint, and the facts therein stated are true, to the best of deponent's knowledge and belief. That said facts did not occur (or, did not come to the knowledge of this deponent, nor had he any information thereof) until after the service of the original complaint herein. 2 Abb. Forms 202.

B. *Affidavit on Application To File Supplemental Answer.*

Y. Z., defendant above named, being duly sworn, says:

I. That this action was commenced on the _____ day of _____, 18____; that issue was joined therein by the service of this defendant's answer on the _____ day of _____, 18____, and this cause is now upon the calendar of this court, awaiting trial.

II. Deponent further says, that this action is brought upon a promissory note alleged to have been made by him, and to be held and owned by the plaintiff. That since the joining of the issue, viz., on the _____ day of _____, 18____, this defendant paid to the plaintiff the sum of _____ dollars in full payment of the note mentioned in the complaint, and of the costs, up to that day, accrued herein. 2 Abb. Forms 204.

C. *Notice of Motion for Leave To File Supplemental Complaint.*

Please take notice, that upon the affidavit (and copy of supplemental complaint) herewith served, and upon all the proceedings in this action, the

undersigned will move the court, at a special term to be held at _____, on the _____ day of _____, etc., for leave to file and serve such supplemental complaint in this action (or, to serve a supplemental complaint setting up the matters contained in the annexed affidavit); or for such other relief as may be just. 2 Abb. Forms 201.

D. *Order on Motion for Leave To File Supplemental Complaint.*

On reading and filing (describe motion papers); and on motion of Q. R., for the plaintiff, and after hearing S. T. (or no one appearing) in opposition:

Ordered, that the plaintiff have leave to serve, within _____ days after this date, a copy of the supplemental complaint filed upon this motion, on payment to the (defendant) of _____ dollars costs. 2 Abb. Forms 204.

E. *Order for Leave To Make Supplemental Pleading.*

(Recitals as in III, D.)

Ordered, that the defendant (or, plaintiff) be allowed to make a supplemental answer (or, complaint) herein, setting up payment of the note in suit (or, as proposed by him); such answer (or complaint) to be served upon the attorney for the plaintiff (or defendant) within _____ days from the entry of this order (the issue to stand as of the _____ day of _____, 18____). 2 Abb. Forms 206.

IV. Complaints.

A. *Supplemental Complaint in Creditor's Suit To Set Aside Assignment.*

(Title of the cause, naming among the defendants the assignees now joined as parties.)

The plaintiff, by way of supplement to their original complaint, and on behalf of themselves, and all other creditors of M. N. & Co., entitled under the original complaint to come in, and who may come in and contribute to the expenses of this suit, complain and allege:

First. That on the _____ day of _____, 18____, they commenced their action in this court against the defendants (naming the debtors) by the service of a summons and copy of complaint, to which complaint the plaintiff's refer as if the same were herein

repeated, and as part of this supplemental complaint.

Second. That an injunction was granted, pursuant to the said complaint, restraining the said defendants from making any assignment or disposition of the property owned by the firm of M. N. & Co. in the month of ———, 18——, or the proceeds thereof. That at the time of service of the said summons and complaint, the said injunction was duly served on all the said defendants.

Third. That after the service of the said injunction, the said defendants, in violation thereof, executed an assignment to the present defendants (naming assignees) of all the property of the firm of M. N. & Co., including a large amount of property owned by the said firm in the month of ———, 18——, and a large amount of the proceeds of other property also belonging to the said firm in the said month.

Fourth. That, as the plaintiffs are informed and believe, the said (assignees) had notice of this action and of the said injunction at the time of the execution and delivery of the said assignment.

Fifth. That, as the plaintiffs are informed and believe, the said assignment was upon some trust for the payment of creditors of the said firm, with certain preferences to a large amount to a part of their creditors, not including the plaintiffs, and in violation of the agreement alleged in the said original complaint; and the property thus assigned is not sufficient to pay the debts which the said firm owed in said month of ——— last, and still remaining unpaid.

Sixth. That the said (debtors) have recently, in the most public manner, stated that they owed, at the time of their failure in ——— last, three million dollars, two millions of which they claim to have satisfied; they also as openly state their losses in disposing of a portion of their stock of goods, and their store expenses, and expenses in making collections, at six hundred thousand dollars since their failure in ——— last, and the plaintiffs believe and insist that there has been an unwarrantable sacrifice of their best assets.

Seventh. That, as the plaintiffs are informed and believe, the said firm, and all the members thereof, were, in

——— last, when they obtained the extension mentioned in the original complaint, and have ever since been, largely insolvent.

Eighth. That it was a condition of the said extension that all the creditors of the said firm should come into it, and the extension given by the plaintiffs was upon that condition; but in fact only about one-third of the creditors did come into it, and this fact was concealed from the plaintiffs; they received the extended notes on the faith of the extension having been agreed to by all the creditors.

Ninth. That if the said assignment is carried into effect, the plaintiffs will receive as their dividend not more than fifty per cent. of their demands, as they are informed and believe. The said (assignees) are not of sufficient pecuniary responsibility or business experience to be intrusted with so large an amount of property; the said O. P. was formerly a clerk of the said M. N. & Co., and the said Q. N. is a son of M. N., and, as the plaintiffs believe, will be entirely under the control and direction of said M. N., and the said assignment is merely a cover to enable the said M. N. to keep the property in his own possession.

Wherefore, the plaintiffs demand judgment as in the original complaint demanded, and that the said assignment be set aside, that the property assigned be delivered to a receiver, and distributed equally among all the creditors of M. N. & Co. who were such in ——— last; and that in the meantime the defendants be restrained by injunction from disposing of any of the said assigned property. 2 Abb. Forms 177.

B. Supplemental Complaint in Action To Enjoin Violation of Agreement Not To Continue Trade.

The plaintiff, for a supplemental complaint herein alleges:

I. That, immediately after the commencement of this action by the service of the summons and complaint upon the defendant Y. Z., by the said defendant, anticipating the service of an injunction upon him to stay the proceedings complained of in the original complaint, made a pretended transfer of his business to one W. X., whose name the defendant has ever since carried on a lithographic business at No.

_____ street, in the city of New York.

II. That the said W. Z., is a roofer by trade, having a place of business at _____, in _____, and is entirely unacquainted with the business of lithography; that he is a brother of the defendant, and allows his name to be used as an accommodation to the defendant, at the request of the latter, and does not in reality carry on the said business of lithography at all.

III. That the defendant openly superintends the lithographic business so pretended to be carried on by W. Z., that he takes all the orders, makes all the estimates, directs the workmen, and collects the proceeds of the business, and does in fact wholly conduct the same; and has put up a placard announcing his presence there.

IV. That the stock, including presses, stones, drawings, and all the other property employed in the conduct of the said lithographic business, with the exception of a very few articles newly purchased, consists of the identical materials which were apportioned to the defendant, upon the dissolution of the late firm of A., B. & Z., as the defendant's share of the stock of the said firm.

V. That the defendant has thus continued, under the pretended proprietorship of his brother, the same business in the same building in which he was himself carrying on business, in violation of the agreement mentioned in the original complaint, employing the same materials and the same workmen, in the execution of the same work, including certain orders given to the defendant by his customers; and that there is no apparent change in the conduct of the said business, further than in the substitution of the name of "W." for that of "Y. Z."

VI. That this pretended change of ownership is in every respect fictitious, and is a mere fraud and trick, concerted between the defendant and his said brother, for the purpose of defrauding the plaintiff and evading the injunction of this court; they knowing that many customers of the said late firm did not know the defendant's Christian name, and would suppose that the said W. Z. was really the defendant.

VII. That the defendant resides with his family in the county of _____, in his own house, and never comes to

the neighborhood of the said No. _____ street, except for business purposes, that building being occupied exclusively as a place of business, and not as a residence.

VIII. That the plaintiff has continued to carry on the business of lithography ever since the dissolution of partnership between himself and the defendant, and now continues such business at No. _____, _____ Row, in said city, being more than one and less than four blocks distant from the premises occupied by the said partnership at the time of its dissolution. That the plaintiff is abundantly able and willing to supply the public with every species of lithographic work, and that there are many other establishments of the same kind in the said city, more than enough to supply the public demand.

IX. That the acts of the defendant herein complained of have greatly damaged the plaintiff, and will, and do, injure him to an extent for which pecuniary damages will be an inadequate compensation.

Wherefore, the plaintiff demands judgment:

1. That the defendant, his agents and servants, be restrained by injunction from carrying on, superintending, working in, advising about, aiding, assisting, or attending to or upon, any business carried on at No. _____, _____ street, in the city of New York, or within one block thereof in any direction, whether such business be conducted in his own name or in the name of any other person; and also from putting or keeping up any sign or mark, or publishing any announcement, indicating his continuance in the said building or the said vicinity, or the continuance therein of any person in whose business the defendant may be interested, either as a principal or as a servant, for the term of _____ from the _____ day of _____, 18____.

2. For five hundred dollars damages, and for costs. 2 Abb. Forms 179.

C. *Supplemental Complaint, Allegation of Ignorance, Matters Before Suit.*

(Commencement and allegation of the new matter, as in other cases.)

II. That, to the best of their recollection and belief, the plaintiffs (or,

the defendants) were ignorant of the facts stated in this supplemental complaint (or answer) when their former complaint (or answer) was made.

Wherefore, etc. 2 Abb. Forms 181.

SUPPLEMENTARY PROCEEDINGS.

- I. Affidavit To Obtain Order, 1189**
- II. Order for Examination, 1189**
- III. Affidavit To Obtain Arrest, Debtor About To Leave, 1190**
- IV. Warrant for Arrest of Judgment Debtor, 1190**
- V. Affidavit of Service of Order for Examination, 1190**
- VI. Examination of Debtor, 1190**
- VII. Order That Debtor Pay Judgment, 1191**
- VIII. Receivers, 1191**
 - A. *Order Appointing, 1191*
 - B. *Receiver's Notice, 1191*
 - C. *Complaint by Receiver, 1191*
- IX. Contempt, 1191**
 - A. *Affidavit of Non-attendance, 1191*
 - B. *Notice of Motion for Attachment, 1192*
 - C. *Order To Show Cause, 1192*
 - D. *Order Adjudging Offender Guilty, 1192*
 - E. *Attachment Against Judgment Debtor or Third Person, 1192*
 - F. *Order for Interrogatories, 1193*
 - G. *Commitment for Contempt, 1193*

CROSS-REFERENCES:

BILLS AND ANSWERS:

Title to Supplemental Answer.

REVIVOR:

Answer to Original Bill and Bill of Revivor and Supplement.

I. Affidavit To Obtain Order for Examination of Debtor, on Judgment of Court of Record.

A. B., being duly sworn, says, I. That he is the attorney (or one of the attorneys) for the plaintiff (or the defendant, whichever is the creditor in the judgment), (or that he is the plaintiff, or, the defendant, or one of them), in the above action.

II. That judgment was duly rendered in this action against the above named defendant (or plaintiffs, whichever is the debtor in the judgment), in the superior court of the city of New York (or, the court of common pleas for the city and county of New York, or, the county court of the county of ———), in this state, on the

—— day of ———, 18——, for ——— dollars ——— damages and costs; that the judgment roll in said action was on said day filed in the office of the clerk of the said court at ———; that a transcript of said judgment was on the ——— day of ———, 18——, duly filed in the office of the clerk) of the county of ———.

III. Thereafter execution on said judgment against the property of the defendant (or, the plaintiff) above named (or, against the property of Y. Z., who is one of the several debtors in the said judgment, or, against the joint property of the defendants above named, and the individual property of the defendant Y. Z.) was on the ——— day of ———, 18——, duly issued to the sheriff of ——— county.

IV. That Y. Z. then did (and still does) reside in the last mentioned county.

Or, IV. That Y. Z. then had (and still has) a place of business in the last mentioned county, to-wit, an office as broker, at No. ———, street, in the city of ———.

Or, IV. That Y. Z. then did not (and does not now) reside in this state. 2 Abb. Forms 618.

II. Order for Examination of Judgment Debtor After Return of Execution.

It appearing to my satisfaction by the (annexed) affidavit of A. B., one of the attorneys for the plaintiff (or, for the defendant), (or, one of the plaintiffs, or, one of the defendants), that an execution against the property of Y. Z., one of the defendants, and a judgment debtor in the above entitled action, has been duly issued to the sheriff of the proper county, upon the judgment herein, and return unsatisfied.

I do hereby order and require the said Y. Z. to appear before me, at (the chambers of the ——— court at the ———, in the city and county of ———), on the ——— day of ———, at ——— o'clock, in the ——— noon, and on such further days as I, or the referee duly appointed shall name (or, to appear before R. F. Esq., of ———, whom I hereby appoint referee, to take and certify the examination, at the office of said referee, No. ———, street, in the city of ———, on the

— day of —, instant, and on such further days as said referee shall name), to be examined and make discovery on oath concerning his property (or, concerning the joint property of the defendants above named, and the individual property of the defendant Y. Z.) And the said Y. Z. is hereby forbidden to transfer, or make any other disposition of any property belonging to him (or, the joint property of the defendants above named, or the individual property of the defendant Y. Z.), not exempt from execution, or in any manner to interfere therewith, until further order in the premises.

Dated at —, the — day of —, 18—.

(Judge's signature.)

(Attorney's signature.)

2 Abb. Forms 619.

III. Affidavit To Obtain Arrest of a Judgment Debtor Who Is About To Leave the State or Conceal Himself.

(As in I. with or without the allegation that execution has been returned, and adding at the end):

That the said Y. Z. is about to leave this state to go to the state of — (or, that deponent has today inquired at the store of the said Y. Z. and was then and there informed by a clerk of said Y. Z. that said Y. Z. had started for —, to get out of the reach of his creditors).

That the said Y. Z. has property which he unjustly refuses to apply to said judgment, as follows: that said Y. Z. lately owned and possessed a stock of jewelry at his store, No. —, — street, and that he has removed and concealed the same, and is about to carry a portion of the same to the state of —: that deponent, on the — day of —, at —, requested the said Y. Z. to pay said judgment, or to secure the same upon said stock of jewelry, but said Y. Z. then and there refused to apply any portion of his property to pay said judgment. 2 Abb. Forms 621.

IV. Warrant for the Arrest of a Judgment Debtor.

The people of the state of —, to the sheriff of — county, greeting:

Whereas, a judgment was duly rendered and given in this action against

the above-named defendant Y. Z. (etc., varying the recitals as to the judgment and execution, etc., according to the case).

And whereas, proof has been furnished to the judge issuing this warrant, to his satisfaction, by the annexed affidavit of A. B., that there is danger of the said Y. Z. leaving the state (or, concealing himself, or both).

And whereas, it in like manner appears to the satisfaction of said judge, that the said Y. Z. has property which he refuses to apply to said judgment.

Now, therefore, we do warrant, and command you, that you arrest the said Y. Z. and bring him before the undersigned J. J., a justice of the — court, to be examined on oath and proceeded with, pursuant to subdivision —, of section — of the (Code of Procedure).

And have you then there this writ.

Given under my hand, at —, in the county of —, this — day of —, 18—.

(Signature of judge.)

(Signature of attorney.)

2 Abb. Forms 622.

V. Affidavit of Service of Order for Examination of Judgment Debtor.

A. B., being duly sworn, says that he is the attorney for the plaintiff herein, that he did on the — day of —, 18—, at No. —, — street, personally serve Y. Z. with the annexed (affidavit and) order, by delivering to and leaving with the said Y. Z. a true copy thereof, and at the same time and place exhibiting and showing to him the annexed original(s). And deponent further says, that he knew the person so served by him as aforesaid to be the said Y. Z., the person mentioned and described in said order, and to whom the same is directed. 2 Abb. Forms 624.

VI. Examination of Debtor in Supplementary Proceeding.

Examination of (the defendant) Y. Z. in proceedings supplementary to execution in this action, taken before the Hon. J. J., on the — day of —, 18—.

The said defendant, being duly sworn, says: (here follows the examination).

(Signature.)

Taken, subscribed, and sworn to be —

fore me, this _____ day of _____,
18____. (Signature of judge.)
2 Abb. Forms 624.

VII. Order That Debtor Pay the Judgment.

On reading and filing the affidavit and order of examination of Y. Z., the judgment debtor herein, and the order to show cause why the defendant should not pay to the plaintiff or his attorney the amount of the judgment herein, with costs; and on hearing M. N., attorney for plaintiff, in support of said motion, and O. P., in opposition thereto; it is ordered that Y. Z. pay to M. N., the plaintiff's attorney, the amount of the judgment herein, with interest, and _____ dollars costs and disbursements of the supplementary proceedings, within ten days, or in default thereof, that an attachment issue. (Signature of judge.) 2 Abb. Forms 625.

VIII. Receivers.

A. Order Appointing Receiver in Supplementary Proceedings.

(Recite jurisdictional facts as in II and III.)

And whereas, the said Y. Z., the judgment debtor in said action, has been examined on oath concerning his property before me (or, before R. F., Esq., referee, appointed by (Mr. Justice J. J.) this court, pursuant to an order granted by said justice and such referee this day filing the report of his proceedings; now, on motion of J. N. L., of counsel for the plaintiffs, defendant consenting (or, opposing), I hereby order and direct, that R. C., of _____, be, and he hereby is, appointed receiver of all the debts, property, equitable interests, rights and things in action of the said judgment debtor; that such receiver before he enter upon the execution of his trust, execute to and file with the clerk of this court a bond, with sufficient sureties to be approved by me, in a penalty of _____ dollars, conditioned that he will faithfully discharge the duties of such trust; and that the said receiver, upon filing such bond, be invested with all rights and powers as receiver according to law; and that plaintiffs recover _____ dollars, costs of these proceedings, with _____ dollars, their disbursements, to be paid to the plaintiffs or their attorney, out of funds that come into his hands as

receiver. Dated at _____, _____,
18____. (Signature of judge.) 2 Abb. Forms 626.

B. Receiver's Notice in Supplementary Proceedings.

Please to take notice, that the foregoing is a copy of an order heretofore made in the above-entitled actions, by Hon. J. J., justice of the _____ court, pursuant to §_____ of the (Code of Procedure), and that I have given the security required by said order, approved by said judge; and that I claim from you, and each of you, by virtue of said appointment, all and any debts, property, equitable interests rights, and things in action, which belonged to the above named Y. Z., or in which he had any interest on the _____ day of _____, 18____, or at any time thereafter, and an accounting for the proceeds thereof. (Signature of receiver.)

To G. H., and to all other persons indebted to Y. Z., the said judgment debtor, or who have any property or equitable interest of said judgment debtor. (Signature of attorney for receiver.) 2 Abb. Forms 626.

C. Complaint by Receiver Alleging Appointment in Supplementary Proceedings.

I. A. B., complaining as receiver of the property of M. N., alleges: (set forth cause of action accruing to the judgment-debtor).

II. That on the _____ day of _____, 18____, at _____, upon an application made by O. P., a judgment creditor of said M. N., in proceedings supplementary to execution, and by an order or determination then duly made by Hon. _____, one of the justices of the supreme court (or, county judge for the county of _____), the plaintiff was appointed receiver of the property of said M. N.

III. That thereafter, and before the commencement of the present action, he gave his bond required by the said order, as such receiver, approved by the said justice, which bond, with such approval, are on file in the said _____ court, and were so there prior to the commencement of this action. 1 Abb. Forms 155.

IX. Contempt.

A. Affidavit of Non-attendance by Judgment Debtor.

A. B., being duly sworn, says that

he is the attorney for the plaintiff (defendant) herein; that he did, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, attend before the Hon. J. J., one of the justices of this court, at chambers (or, before R. F., Esq., the referee named in the annexed order), at _____, and there remained for (half) an hour, prepared to take the examination of Y. Z., pursuant to the annexed order; that during that time, the said Y. Z. failed to appear before the said judge (or, referee), at the place aforesaid, and thus disobeyed the annexed order; and deponent further says that at said time and place, he caused the said Y. Z. to be duly and repeatedly called, but that said Y. Z. failed to appear, whereupon deponent caused his default to be duly noted by the proper officer (or, said referee). 2 Abb. Forms 627.

B. Notice of Motion for an Attachment in Supplementary Proceedings.

Take notice, that upon the annexed order (of the Hon. J. J.) of the _____ court, and upon the annexed affidavits, of which copies are herewith served upon you, the undersigned will move said justice (or, court at a special term, to be held), at the _____, in the _____ of _____, on the _____ day of _____, 18____, that an attachment issue against you to bring you before the said judge (or, court), to answer for your misconduct in disobeying the annexed order, by failing to appear before the said judge (or, court), (or, before R. F., Esq., the referee named in the said order), at the time and place in said order required, as for a contempt of the said judge (or, court). 2 Abb. Forms 628.

C. Order To Show Cause in Supplementary Proceedings, on Contempt.

Upon the annexed order (of the Hon. J. J., one of the justices of the _____ court) and upon the annexed affidavits, copies of which are to be herewith served, let Y. Z., the defendant (or, the person mentioned in said order), show cause before me, at (the chambers of the supreme court) at the _____, in the city of _____, on the _____ day of _____, 18____, why he should not be punished for his misconduct in disobeying the an-

nexed order by failing to appear before me (or, the _____ court, or, before R. F., Esq., the referee named in said order), at the time and place in said order required, as for a contempt of the said _____ court. (Signature of judge.) (Date.) (Signature of attorney.) 2 Abb. Forms 628.

D. Order Adjudging Offender Guilty of Contempt in Supplementary Proceedings.

Y. Z., the defendant (or, the person named in the order hereinafter mentioned) having appeared to show cause why he should not be punished as for a contempt, pursuant to the order of the Hon. J. J., dated _____, 18____, and after hearing M. N. for the plaintiff, and O. P. for the said Y. Z.: I do adjudge that the said Y. Z. is guilty of a contempt, in having wilfully disobeyed the annexed order, dated _____ 18____, by failing to appear before me (or, the _____ court, or, R. F., Esq., the referee named in the said order), at the time and place in said order required, and that such misconduct tended to defeat and impair the rights and remedies of the plaintiff herein.

And I order and direct that the said Y. Z. pay to the clerk of the _____ court a fine of _____ dollars for the indemnity and the use of the plaintiff herein, and that he be imprisoned in the common jail of _____ county, for _____ days; and I likewise order that he be further imprisoned in said common jail of _____ county, until he pay the said fine as aforesaid, and that a commitment issue to carry this judgment into effect. (Signature of judge.) 2 Abb. Forms 629.

E. Attachment Against Judgment Debtor or Third Person for Disobedience of Order.

The people of the state of New York to the sheriff of _____ county, greeting:

Whereas, a judgment was duly given and recovered (recite the facts as in I, A). And whereas on the _____ day of _____, 18____, and subsequent to the return (or, the issuing) of the said execution, the Hon. J. J., one of the justices of our (supreme) court, being cognizant of the foregoing facts, and upon due proof thereof, did, at the instance of the said (plaintiff), issue an order signed by him, with his

name and his said official title, in which he did order and require the said Y. Z. (the defendant) to appear before him (or, before the _____ court, or, before R. F., Esq., the referee named and appointed in said order), at (the chambers of the said court), at _____, in the _____ of _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, to make discovery on oath concerning his property (or, to answer concerning his property; or, to answer concerning said property in his possession, and said debt due from him to the defendant).

And whereas, the said order was, on the _____ day of _____, 18____, at No. _____, _____ street, in the _____ of _____, duly served upon the said Y. Z., by delivering to and leaving with him a true copy thereof, and at the same time and place exhibiting and showing to him the said original order, and signature thereof.

And whereas, the said Y. Z. did, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, and for one (half) hour thereafter, fail to appear before the said (Hon. J. J., justice of the) supreme court (or, before R. F., esq., the referee named and appointed in said order), at (the chambers of the supreme court), at _____, in the _____ of _____, and was guilty of a disobedience of the said order of the said judge (or, of the said _____ court), in failing to appear at the time and place in said order required, and became liable to punishment therefor, as for a contempt of _____ court, pursuant to section _____ of the (Code of Procedure), and under the general power of said court to punish offenses calculated to impair its dignity and efficiency.*

Now therefore, you are commanded that you attach the said Y. Z., and have his body before the Hon. J. J. (one of the justices of our said court), at the chambers of the said court, at the _____ in the _____ of _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, to answer for his misconduct, in failing as aforesaid to appear before (the Hon. J. J., justice of) our said _____ court (or, before R. F., Esq., the referee named and appointed in said order), at the time and place in said order required.

And have you then and there this writ.

Witness, the Hon. J. J., justice of the supreme court, at the _____, in the city of _____, and county of _____, this _____ day of _____, 18____. (Signature of attorney.) By the court. (Signature of clerk.) 2 Abb. Forms 630.
Indorsement of the Writ.

Attachment.—The within writ of attachment is hereby allowed. Admit to bail in _____ dollars. (Date.) (Signature of judge.)

By the special order of the court. (Signature of attorney.) (Signature of clerk.) 2 Abb. Forms 631.

F. *Order for Interrogatories After the Return of the Attachment Where the Contempt Is Denied.*
Court of _____, county of _____.

The people of the state of New York on the relation of A. B. against G. H.

The said G. H. being now in attendance under the attachment heretofore issued in this proceeding, and denying his alleged contempt: Ordered that the interrogatories touching the alleged contempt be filed by the relator with the clerk of this court, within two days, and that the said G. H. within two days thereafter file his answers to the said interrogatories, and that further proceedings herein stand adjourned till the _____ day of _____, 18____, at _____ o'clock in the _____ noon, at (the chambers of this court at the city hall), in the _____ of _____, until which time, the said G. H. is remanded to the custody of the sheriff of _____ county, to be then and there produced (or, at which time, day, and place, it is directed by the court that the said G. H. appear). 2 Abb. Forms 632.

G. *Commitment for Contempt for Disobedience of an Order in Supplementary Proceedings.*

Court of _____, county of _____.
The people of the state of New York on the relation of A. B. against Y. Z. The people of the state of New York to the sheriff of _____ county, greeting:

Whereas, a judgment was duly given and recovered in an action (recite the facts as in IX. E. down to the *). And whereas the said court, on complaint of the above named A. B., was satisfied

by due proof by affidavit, that the said Y. Z. had been guilty of misconduct aforesaid, and whereas the said court did cause said affidavits to be served on the said Y. Z., on the _____ day of _____, 18____, which was a reasonable time to enable the said Y. Z. to make his defense; and whereas the said court, at a special term thereof, held at _____, in _____, on the _____ day of _____, 18____, after hearing the defense of the said Y. Z., did, by its order then duly entered in the office of the clerk of said court, adjudge and declare that the said Y. Z. had been guilty of a contempt of said court by failing to appear before the Hon. J. J., a justice of the said court, at the (chambers of) said court at the city hall, in the city of _____, on the _____ day of _____, 18____, at _____ o'clock in the _____ noon, and for one (half) hour thereafter, in disobedience of the order first hereinbefore recited, and that such misconduct did, in fact, impair, impede, hinder and delay the rights and remedies of the said A. B., the said plaintiff, in said proceeding, and that the said Y. Z. thereby had become liable to punishment for such disobedience, pursuant to section _____ of the (Code of Procedure); and whereas, the said court did, at the same time, in form and manner aforesaid, order and direct that the said Y. Z. be punished for his said contempt, by imprisonment in the common jail of _____ county, for the term of _____ days.

Now therefore, you are required and commanded, and we do warrant and enjoin you, that you forthwith attach the said Y. Z. and commit him to the common jail of _____ county, and detain him there for the term of _____ days, as a punishment for his said contempt of the _____ court, and for such arrest, imprisonment, and detention, this shall be your sufficient warrant.

Witness the Hon. J. J., justice of the _____ court, at the city hall, in the city and county of _____, this _____ day of _____, 18____. (Signature of judge.) (Signature of attorney for the relator.) (Indorse the writ.) By the special order of the court. (Signature of the clerk.) 2 Abb. Forms 633.

SURETY.—See PRINCIPAL AND SURETY.

SURPLUSAGE AND SCANDAL.

- I. Exceptions to Bill for Scandal and Impertinence, 1194
- II. Exceptions to Answer for Scandal and Impertinence, 1194
- III. Order To Expunge Scandal and Impertinence on Submission to Exceptions, 1195
- IV. Order To Expunge Scandal and Impertinence on Report of Master, 1195

CROSS-REFERENCE:

STRIKING OUT:

- Order Striking Out Irrelevant or Redundant Matter;
- Notice of Motion To Strike Out Irrelevant or Redundant Matter.

- I. Exceptions to Bill for Scandal and Impertinence.

Exceptions taken by C. D. defendant (impleaded with others) to the bill of complaint of A. B., complainant, filed against him (or them).

First exception.—For that the allegation in the 5th, 6th and 7th lines of the 3d folio of the said bill, in the words following, to-wit: (insert matter objected to) is impertinent and ought to be expunged.

Second exception.—For that the allegations in the said bill commencing with the word "that" in the 1st line of the 10th folio and ending with the word "orators" in the 5th line of the 12th folio thereof, are scandalous and impertinent, and should be expunged.

In all which particulars the said defendant (impleaded as aforesaid) humbly insists that the said complainant's said bill of complaint is irrelevant, impertinent and scandalous: wherefore the said defendant (impleaded as aforesaid) doth except thereto, and humbly prays that the impertinence and scandal of the said bill of complaint, excepted to as aforesaid, may be expunged with costs.

W. A. B., Solr. for defendant.

W. W. of counsel.

2 Barb. Ch. Pr. 401.

- II. Exceptions to Answer for Scandal and Impertinence.

Exceptions taken by the complainant to the answer of the defendant C. D. to the bill of complaint in this cause, for scandal and impertinence.

First exception.—For that the said answer is scandalous from and includ-

ing the word "they," in the third line of the second folio, down to and including the word "appear," in the eleventh line of the third folio thereof.

Second exception.—For that the said answer is impertinent from and including, etc. (as above).

In all which particulars this exceptant excepts to the said answer put in by the defendant C. D. to the said bill of complaint as scandalous or impertinent, and he humbly insists that the same ought to be expunged from the said answer.

J. E., sol. and of counsel
for comp't.

2 Barb. Forms 428.

III. Order To Expunge Scandal and Impertinence on Submission to Exceptions.

The answer of the defendant C. D. having been excepted to for scandal and impertinence, and the said defendant having submitted to such exceptions in the matters of the first, second, and fourth exceptions, as appears by a notice of such submission signed by his solicitor and served upon the complainant's solicitor; on reading and filing such notice of submission, and on motion of J. E., solicitor for the complainant, ordered that the register of this court do expunge from the said answer such scandalous and impertinent matter, according to said notice of submission. And it is further ordered that the said C. D. pay to the complainant or his solicitor the costs of the said exceptions and the proceedings thereon, within twenty days after service of a copy of this order and of the taxed bill of costs, on him or his solicitor, or that an attachment issue against him. 2 Barb. Forms 429.

IV. Order To Expunge Scandal and Impertinence From Answer, on Report of Master.

The answer of the defendant C. D. having been reported by P. G. E., the master to whom the exceptions for scandal and impertinence were referred, to be scandalous in the matter of the first and second exceptions, and impertinent in the matter of the fourth, on reading and filing due proof that said report has become absolute against the said defendant; on motion of J. E., solicitor for the complainant, ordered that the register of this court do expunge from the said answer such scan-

dalous and impertinent matter, according to said report. And it is further ordered that the said C. D. pay to the complainant or his solicitor the costs of the said exceptions and the proceedings thereon, within twenty days after service of a copy of this order and of the taxed bill of costs, on him or his solicitor, or that an attachment issue against him. 2 Barb. Forms 428.

TAXATION.

- I. Complaint for Collection of Personal Tax, 1195
- II. Complaint for Recovery of Tax Paid Under Protest, 1196
- III. Judgment of Foreclosure of Lien for Back Taxes, 1196

CROSS-REFERENCE:

SPECIAL ASSESSMENT:

Complaint To Enjoin a Municipal Corporation From Deeding Land Sold for Illegal Special Assessment;
Answer, Pleading Illegality of Assessment.

I. Complaint for Collection of Personal Tax From Manufacturing Corporation.

In a plea of debt for that the said defendant corporation on the first day of April, A. D. 1897, was the owner of a saw-mill, wharf and landing-place in said Farmingdale; that it was also on said date the owner of certain personal property, to-wit: four million feet of logs of the value of twenty thousand dollars; that said company was then, and there occupying said saw-mill, wharf and landing-place for the purpose of employing said logs in trade, to-wit: of manufacturing said four million feet of logs into lumber, and selling the same in the open market; that said defendant company was liable to be taxed in said town of Farmingdale for said logs and the assessors of taxes of said town for the year of 1897, duly elected and legally qualified, assessed upon said defendant company on said logs the sum of two hundred and twenty-five dollars, said sum being said defendant's proportion of the town, county and state taxes of said year 1897. And the assessors did on the first day of June, 1897, make a perfect list of said taxes under their hands and commit the same to the hands of John H. Burnham, col-

lector of said town for said year, who was duly elected and duly qualified with a warrant in due form of law for said year, under their hands of the date aforesaid; that said John H. Burnham died on the 16th day of January, 1898, without having completed the collection of taxes committed to him for the year 1897, and that Georgie T. Burnham, of said Farmingdale, was duly appointed by the selectmen of said Farmingdale, to perfect the collection of taxes of said John H. Burnham, deceased, and was duly qualified by law therefor on the 31st day of January, 1898; and the plaintiffs aver that the said tax was duly and seasonably demanded of said defendant company by said collector prior to the commencement of this suit. Said plaintiffs further aver that the selectmen of said town did, on the 6th day of January, 1899, direct in writing the collector of taxes of said town to commence an action of debt in the name of the inhabitants of said town against said Berlin Mills Company for the collection of said tax and interest due thereon; whereby and by reason of the statute in such cases made and provided, the defendant company became liable and an action hath accrued to the plaintiffs, to have and recover of the defendant company the sum of two hundred and twenty-five dollars. *Farmingdale v. Berlin Mills Co.*, 93 Me. 333, 45 Atl. 39.

II. Complaint for Recovery of Tax Paid Under Protest.

"The plaintiff is a joint stock association duly organized and existing under the laws of the state of New York. The defendant, Frank Ratterman, is, and at the times hereinafter mentioned, was treasurer of Hamilton County, Ohio.

"The principal office of the plaintiff is, and during the time hereinafter mentioned was, in the city of New York. During said time, it has been, and now is, engaged in the express business, and is an express company within the meaning of the Revised Statutes of Ohio, sec. 2777, with an office in the city of Cincinnati and other points in said county, and doing an express business between said offices in said county and other points in the state of Ohio and in other states.

"Plaintiff's horses, wagons, furni-

ture and other property in the state have been and are taxed like other property in said state.

"In the month of May, 1886, the plaintiff delivered to the auditor of said county a statement, as required by Rev. St. Ohio, sec. 2778, showing the receipts of said plaintiff in said county for the year next preceeding, in the carrying on of its said business, which said gross receipts amounted to the sum of \$31,776.00, a large portion of which was for business done by the plaintiff between its offices in said county, and points outside of the state of Ohio. That is to say, said receipts were largely for business and transportation pertaining to commerce between the states, and not for business and transportation between different points within the state of Ohio. And thereupon, said auditor assessed a tax on said receipts for said year amounting to \$805.84. And the defendant required the plaintiff to pay the same; and the plaintiff did make payment thereof, to-wit: one-half thereof, \$402.92, on December 20, 1886, and a like amount on June 20, 1887.

"At the time of making said payment, the plaintiff duly protested against paying said tax, on the ground that the same was unlawful and in violation of the Constitution of the United States. And said payment was made by the plaintiff to avoid the penalties, disabilities and punishments provided by Revised Statutes Ohio, section 2843, which the defendant would otherwise have enforced, to the interference, stoppage and destruction of the plaintiff's business.

"The plaintiff says that said taxes so assessed against it and paid by it under protest, were illegal and void and in violation of the Constitution of the United States; and it prays to recover from the defendant said sum of \$805.84, with interest on one-half thereof from December 20, 1886, and on one-half thereof from June 20, 1887, and for its costs, and for all other relief to which it may be entitled." *Ratterman v. Express Co.*, 49 Ohio St. 608.

III. Judgment of Foreclosure of Lien for Back Taxes.

"Now, on this day comes plaintiff by his attorneys and this cause coming on to be heard and it being proven to the satisfaction of the court from the

affidavit of John Ray, publisher of the Cassville Democrat, that defendant had been duly notified of the bringing, object and general nature of this action by publication in the Cassville Democrat, a weekly newspaper published in this county and state for four weeks successively, the last insertion thereof being at least four weeks before the first day of the present term of this court, by which said notice the defendant was required to appear at this term, and on or before the third day thereof answer to plaintiff's petition, or the same would be taken as confessed and judgment rendered accordingly and it further appearing to the court that the defendant herein has failed to appear in anywise, but herein makes default and the court proceeding to hear the cause finds from the evidence adduced by plaintiff that this is an action founded on a duly certified tax bill filed with plaintiff's petition whereby it appears that the back taxes for the years in the amounts hereinafter mentioned inclusive of interests, costs, etc., now due and constituting a charge and lien upon the following described tract of land, to-wit: (description and itemized statement of taxes by years).

It is, therefore, considered, ordered and adjudged by the court that plaintiff have judgment for and recover the said sums amounting, in the aggregate, to \$33.11, together with ten per cent. thereon as costs for attorneys' fees in this suit amounting to \$3.31, and his other costs. It is further adjudged and decreed that the said lien of the state of Missouri upon said land be foreclosed, and that the real estate above described, or so much thereof as may be necessary to satisfy this judgment and costs be sold: that to that end a special fieri facias issue in the usual form to the sheriff of this county against the said land." *Gibbs v. Southern*, 116 Mo. 204, 22 S. W. 713.

TAXATION OF COSTS.—See *COSTS*.

TELEGRAPHS AND TELEPHONES.

Complaint by Addressee for Failure To Deliver Message.

"That the defendant, the Western Union Telegraph Company, was, at the time of the grievances hereinafter stated, and is now, a corporation duly organized and incorporated under the

laws of the state of New York, and as such was and is doing business in the state of Kansas, and was and is owning and operating a telegraph line in the state of Kansas, between the city of Topeka, in and through Shawnee county, and the city of Delphos, Ottawa county, in the state of Kansas, and was then and is now engaged as a common carrier for hire, in sending messages for the public, by means of such telegraph between said points.

"Plaintiff further states, that on or about the 14th day of September, 1885, he was temporarily at the city of Delphos, in the state of Kansas, and that on or about said date the plaintiff, by his agent, John G. West, made and entered into a contract with defendant, its agents and employees, at the city of Topeka, which, in consideration of the sum of forty cents to it paid by plaintiff, undertook, promised and agreed to transmit and deliver, without unnecessary delay, a certain telegraphic message to plaintiff, at the city of Delphos, state of Kansas, where plaintiff was temporarily residing as aforesaid, which message was in words and figures following, to-wit:

"'North Topeka, Kansas, September 14, 1885.—To George West, Delphos, Kansas, care of post office: Uncle Sam died last night; funeral Wednesday.'

John G. West.'

"That plaintiff, by his agent as aforesaid, then and there paid defendant forty cents, the regular consideration and price by it charged for transmitting and delivering said message from the city of Topeka to the city of Delphos in the state of Kansas, which consideration was then and there accepted by defendant, and for which it agreed, without unnecessary delay, as aforesaid, to transmit said message to plaintiff at the city of Delphos as aforesaid, and deliver the same to plaintiff in person, or in care of the post office, at said city of Delphos; that although defendant well knew the whereabouts of plaintiff, and the post office, in the care of which said message was sent at said city of Delphos, state of Kansas, and could and should have delivered the same to plaintiff as aforesaid at the same time it was sent, yet defendant, its agents and employees, willfully and in gross neglect of duty failed and refused to deliver the

same to plaintiff, or to the post-office as aforesaid, within a reasonable time, but grossly and maliciously neglected and failed to deliver said message to plaintiff when called for by him in person, and never delivered the same to plaintiff or in care of the said post-office as by its contract it had obligated itself to and was bound to do.

"Plaintiff further avers, that at the time of the said grievances he was seventy-three years of age, and had an only brother, Samuel C. West, who was seventy-six years of age, and who resided in Philadelphia, Pennsylvania, and that said telegram was to notify plaintiff of the death of his said brother Samuel, which was then and there to the defendant, its agents and employes, well known, and whose funeral the plaintiff desired to and would have attended, but for the gross negligence of defendant, its agents and employes, to deliver said message to plaintiff, as by the contract it obligated and bound itself to do; that the funeral of the said Samuel C. West, deceased, was deferred so that plaintiff could attend the same, and which the plaintiff intended to and would have done, if said telegram had been delivered within a reasonable time, in accordance with said contract, but in consequence of the failure and gross and malicious negligence of the defendant, its agents and employes, to deliver said dispatch, as by its said contract it had obligated itself, and was bound to do, the plaintiff was deprived of the satisfaction and pleasure of seeing his said brother, and being present at his funeral, and because of which plaintiff suffered great and irreparable injury, distress and mental pain and anguish, and which was great and overpowering, and was due and caused by the failure and gross and malicious neglect of the defendant, its agents and employes, to comply with, and in breach of, its said contract. And thereby also, because of the failure of defendant to transmit and deliver said telegram to plaintiff, as it was bound to do, the plaintiff was forced to and did then and there lay out and expend large sums of money, and performed labor, to-wit, ten dollars, in and about making search for, and attempting to find said telegram, caused by the failure and gross and malicious neglect of the defendant, its agents and employes, to comply with,

and in breach of, its said contract, and by its negligence.

"Wherefore, the said damage sustained, as aforesaid, by reason of the breach of contract and gross negligence of the defendant, through its agents and employes, was and is in the sum of ten thousand dollars, for which plaintiff demands judgment, costs, and other relief." West v. Western Union Tel. Co., 39 Kan. 93, 17 Pac. 807.

TENDER.

I. Pleas, 1198

- A. *In Assumpsit*, 1198
- B. *In Covenant*, 1199

II. Payment Into Court, 1200

- A. *Order for Leave*, 1200
- B. *Notice of Paying*, 1200

III. Replication to Plea of Tender, 1200

IV. Verdict for Defendant on Plea of Tender, 1200

V. Entry of Tender, 1200

VI. Answers, 1200

- A. *Tender of Payment*, 1200
- B. *Tender as to Part, and Payment*, 1201
- C. *Denial of Part, and Tender*, 1201
- D. *Demand After Plaintiff's Tender*, 1201

CROSS-REFERENCES:

LANDLORD AND TENANT:

Answer, Tender of Rent Upon the Land.

REPLEVIN:

- Plea to Avowry, Damage Feasant, Tender Before Impounding;
- Plea in Traverse to Cognizance, No Rent in Arrear in Part, Tender in Part;
- Replication to Plea to Avowry, Denial of Tender;
- Replication to Plea to Avowry, Demand After Tender.

I. Pleas.

- A. *Plea of Tender Before Suit in Assumpsit*.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the force and injury, when, etc. (general issue as to all except the sum tendered, thus): and as to all the said several promises and undertakings in the said declaration mentioned, except as to the sum of (three hundred) dollars (the sum tendered) parcel of the said several sums of money, in the

said declaration mentioned (or, if some of the counts are denied altogether, or a tender cannot be pleaded thereto say, in the said third, fourth and last counts mentioned), says that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, etc. (And the said plaintiff doth the like, etc.) And as to the said sum of (three hundred) dollars, parcel of the said several sums of money in the said declaration (or in the said third, fourth and last count, according to the counts pleaded to), mentioned, the said defendant says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, to recover any more or greater damages than the said sum of (three hundred) dollars, parcel, etc., in this behalf, because he says, that after the making of the said several supposed promises and undertakings in the said declaration mentioned (or in the said ——— counts mentioned), as to the said sum of (three hundred) dollars, parcel, etc., and before the exhibiting of the bill of the said plaintiff against the said defendant and in this behalf (or and before the commencement of this suit), to-wit, on the ——— day of ———, in the year ——— (the precise day of the tender is not in general material), at ——— aforesaid, he, the said defendant, was ready and willing, and then and there tendered and offered to pay to the said plaintiff the said sum of (three hundred) dollars, parcel, etc., to receive which of the said defendant, he, the said plaintiff, then and there wholly refused; and the said defendant in fact further saith, that he, the said defendant, always, from the time of the making of the said several promises and undertakings in the said declaration mentioned (or in the said ——— counts mentioned), as to the said sum of (three hundred) dollars, parcel, etc., hitherto, at, etc., aforesaid, been ready to pay, and still is there ready to pay to the said plaintiff the said sum of (three hundred) dollars, parcel, etc., and he now brings the same into the court here, ready to be paid to the said plaintiff, if he will accept the same (or, if the money has been already paid into court, instead of the words "and he now brings," etc., the form should be thus:

"And the said defendant avers that he, the said defendant, hath paid the said sum of (three hundred) dollars, into the court here, in this action so depending as aforesaid, ready to be paid to the said plaintiff, if he will accept the same"), and this he, the said defendant, is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action against him, to recover any more or greater damages than the said sum of (three hundred) dollars, parcel, etc., in this behalf, etc. (Add a plea of set off to the sum not tendered, if advisable.) Burr. App. 352, §642; 3 Chit. Pl. 922, 12 Wend. (N. Y.) 393.

B. Plea of Tender of Rent & Covenant.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the wrong and injury, when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, to recover any more or greater damages than the said sum of ——— dollars, because he says that he, the said defendant, was present at the said demised dwelling house at the time when the said ——— dollars became due as aforesaid, to-wit, on, etc., for a reasonable time, to-wit, the space of one hour before sunset, and there continued until a reasonable time, to-wit, one hour after sunset on the same day, and during all the interval of time aforesaid, was there ready to pay the said ——— dollars to him the said plaintiff but that neither the said plaintiff, nor any other person on his behalf during the said time or any part thereof, was there ready to receive the same; and the said defendant further saith, that since the said day he hath always been, and still is ready to pay the said ——— dollars to the said plaintiff, to-wit, at, etc., and he now brings the said ——— dollars here into court ready to be paid to the said plaintiff, if he will accept the same; all which he is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his said action thereof against him, the said defendant, to recover any more or greater damages than the said sum of ——— dollars in this behalf, etc. Burr. App. 350, §634; 3 Chit. Pl. 1017; Yates' Forms 448.

II. Payment Into Court.**A. Order for Leave To Pay Money Into Court.**

Ordered that the defendant have leave to pay into court the sum of (three hundred and fifty) dollars, and (fifty-one) cents, in this cause, upon entering the common rule for that purpose. Dated, etc.

_____, circuit judge.

Burr. App. 229, §479; Yates' Forms 86.

B. Notice of Paying Money Tendered Into Court.

Please to take notice, that the sum of (one hundred and fifty) dollars, and (twenty-one) cents has been duly paid into court in this cause; and that a rule was thereupon entered, of which the annexed is a copy. (Annex same to notice. Dated, etc. Yours, etc.

G. H., def't's atty.

No. _____ street, (Albany).

To E. F., esq., plff's atty.

Burr. App. 197, §369.

III. Replication to Plea of Tender.

And the said plaintiff, as to the said plea of the said defendant, by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

And the said plaintiff, as to the said plea of the said defendant, by him secondly above pleaded, says that, etc. (Continuing the replication in the usual form.)

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded (as to the said sum of _____ dollars, parcel, etc.), says that he, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him (to recover further damages than the said sum of _____ dollars, parcel, etc., in this behalf), because he says, that the said defendant did not tender or offer to pay to him, the said plaintiff, the said sum of _____ dollars, parcel, etc., in manner and form as the said defendant hath above in his said (last mentioned) plea in that behalf alleged. And this he, the said plaintiff, prays may be inquired of by the country.

(If a set-off were also pleaded, proceed thus):

And as to the said plea of the said

defendant by him lastly above pleaded the said plaintiff saith that he, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, because he says, that he was not, nor is indebted to the said defendant, in manner and form as the said defendant hath in his said last plea above alleged. And this he, the said plaintiff, also prays may be inquired of by the country, etc. Burr. App. 376, §684; 3 Chit. Pl. 1151.

IV. Verdict for Defendant on Plea of Tender in Part, Non-assumpsit in Part.

(Usual form, continuing): As to the first issue above joined between the said parties, that the said defendant did not undertake or promise, to an amount beyond the sum of _____ dollars, above mentioned, in manner and form as the said plaintiff hath above in that behalf alleged; and as to the last issue above joined between the said parties, the jurors aforesaid upon their oath aforesaid, say, that the said defendant did tender and offer to pay to the said plaintiff the said sum of _____ dollars, parcel of the several sums of money in the said declaration mentioned, in manner and form as the said defendant hath above in that behalf alleged. Burr. App. 426, §814; Archb. Forms 146.

V. Entry of Tender.

(After the plea proceed thus):

And hereupon, the said plaintiff accepts the said sum of (four hundred dollars and fifty cents), so tendered as aforesaid, by the said defendant: Wherefore, of that sum the said defendant may go quit, etc. And thereupon the said sum so accepted by the said plaintiff, is deducted from the recovery to be had by the said plaintiff in this suit, and judgment shall be rendered only for the residue, if any. Burr. App. 95, §180; Yates' Forms 338.

VI. Answers.**A. Answer, Tender of Payment.**

I. That before this action, and on the _____ day of _____, 18____, at _____, this defendant tendered to the plaintiff _____ dollars in payment of said note and interest (or other indebtedness), but * he refused to receive the same.

II. That this defendant has ever

since remained, and still is, ready and willing to pay to the plaintiff said sum; but the plaintiff has hitherto refused to receive the same.

III. That this defendant now brings the said sum of _____ dollars into this court (or if already paid into court, that this defendant has paid said sum of _____ dollars into this court in this action) ready to be paid to the plaintiff, if he will accept the same. 2 Abb. Forms 54.

B. Answer, Tender as to Part, and Payment as to Part.

I. That before this action (and on or about the _____ day of _____, 18____), this defendant paid to the plaintiff _____ dollars, in full (or in part) payment of the said note (or other indebtedness).

II. As to the residue of said claim, the defendant says that on the _____ day of _____, 18____, at _____, he tendered (continuing as in preceding form). 2 Abb. Forms 54.

C. Answer, Denial of Part, and Tender of Residue.

I. That he promised to pay the plaintiff _____ dollars only.

II. That before this action, and on the _____ day of _____, 18____, at _____, he tendered to the plaintiff _____ dollars in payment of said sum; but (continuing as in VI, A, from the *). 2 Abb. Forms 55.

D. Answer, Demand Before or After Plaintiff's Tender.

I. That before the making of the tender, alleged (or after the making of the tender alleged, and before this action), and on the _____ day of _____, 18____, at _____, the defendant requested the plaintiff to pay him said sum (or to deliver to him said deed).

II. That the plaintiff then and ever since refused to pay (or, to deliver) the same. 2 Abb. Forms 54.

THREATS.

I. Indictment for Sending Threatening Letter, 1201

II. Indictment for Threatening To Do Injury to Another, 1202

III. Indictment for Threat With Intent To Extort Money, 1203

IV. Information for Threat With Intent To Extort Money, 1202

V. Indictment for Extortion by Force or Fear, 1202

VI. Indictment for Whitecapping, 1202

VII. Warrant of Commitment on Failure To Give Bond To Keep Peace, 1203

I. Indictment for Sending Threatening Letter.

And the jurors aforesaid, upon their oath aforesaid, present, that the said T. H. being such wicked and evil disposed person as aforesaid, and not regarding the laws and statutes of this realm after the passing of the said act of parliament, made and passed in the fourth year aforesaid, to-wit, on, etc., at, etc., knowingly, wilfully, and feloniously, did send to the said John F. a certain threatening letter, with the name and signature following: that is to say, "Thomas H." subscribed thereto, directed as followeth; that is to say, "Mr. F., Stapleford Melton, Leicestershire, speed," demanding money of the said John Fabling, he the said John F. then and still being a subject of our said lord the king, and which said last-mentioned letter is of the tenor following; that is to say,

Aldersgate Street, 123, May 8, 1844.

"Sir—You have taken possession of all my property, and disposed of it in a way very disgraceful to man or mankind, and you have ruined an industrious man and an innocent family to serve your friend Tom H., and to make yourself look great, but you should have recollected who you had got to contend with, and what I am bring against you, and though it is some ago, I can indit you for it. You well know you have several times made overtures to me of which I can indit you for and now you have done all you can to bring disgrace and ruin on my family, and I can bring more disgrace on you that you have in your power to bring on me, as I can have my good character from Nottingham and in London, as John Fabling says just at Stapleford and Whitby. I have determined to have it out with you this time. If I don't receive a compensation for the losses I have sustained by you, you may depend upon it I shall indit you in a few days.

Yours, etc.,

"Thomas H. Houghton."

"Mr. Fabling, Stapleford Melton, Leicestershire, speed."

With a view and intent to extort and gain money from the said John Fabling, being the person so threatened, against the form of the statute, and against the peace of our said lord the King, his crown and dignity. 3 Chit. Cr. L. 846.

II. Indictment for Threatening To Do Injury to Another.

"The said Charles Young, at, etc., feloniously and maliciously did threaten to shoot one George W. Pressley, then and there being, with intent then and thereby, by means of said threat, to compel the said George W. Pressley to submit to his person being searched, the same being against the will of him, the said George W. Pressley, and contrary to the form of the statute, in such case made and provided." State v. Young, 26 Iowa 122.

Note.—Under a statute "to compel the person so threatened to do any act against his will."

III. Indictment for Threat With Intent To Extort Money.

"Maliciously and verbally did threaten one Hosea C. Killam to accuse said Killam of having committed the crime of adultery with Antoinette M. Hazen, wife of Nathan T. Hazen, with a view and with the intent to extort money from the said Killam." Com. v. Moulton, 108 Mass. 307.

IV. Information for Threat With Intent To Extort Money.

"I know you had a corrupt agreement with the Allen's Cornice & Corrugating Works, and that you voted corruptly to allow them the contract for the repairing and replacing of the roof and gutters on the old county hospital building, and if you do not give me fifty dollars I will expose you and open up on you by putting a line in the paper tomorrow." Schultz v. State, 135 Wis. 644, 114 N. W. 505, 116 N. W. 259, 571.

V. Indictment for Extortion by Force or Fear.

"The grand jury of the city and county of New York, by this indictment, accuse the defendants of the crime of extortion, committed as follows: The said (defendants), each late of the first ward of the city of New York, in the county of New York aforesaid, on the twenty-third day of March, in the year of our Lord one thousand eight hundred and eighty-six,

at the ward, city and county aforesaid, with force and arms, did feloniously and extorsively obtain from one George Theiss, who was then and there lawfully carrying on business in the said city, with his consent, a certain written instrument, being an order for the payment of money of the kind commonly called bank checks, and being then and there wholly unsatisfied, for the payment of, and of the value of, one thousand dollars, and the sum of one thousand dollars in money, lawful money of the United States, and of the value of one thousand dollars, of the personal property of the said George Theiss, such consent being then and there by them, the said (defendants) induced by a wrongful use of fear on the part of him, the said George Theiss, and such fear being then and there by them, the said (defendants) induced by a threat then and there by them made, to the said George Theiss, to do an unlawful injury to his property, that is to say, to injure and destroy the said business of him, the said George Theiss, and prevent and hinder him from carrying on the same, against the form of the statute, etc." People v. Wilzig, 4 N. Y. Crim. 403.

VI. Indictment for Whitecapping.

"In the name and by the authority of the State of Texas, the grand jurors for the county of Coryell, State aforesaid, duly organized as such, at the January term, A. D. 1901, of the District Court for said county, upon their oaths in said court present that E. M. Dunn, on or about the 9th day of April, A. D. 1900, and anterior to the presentment of this indictment, in the county of Coryell and State of Texas, and with the intention of interfering by frightening him with the right of Jim Owens to occupy his (the Jim Owens) premises, he, the said Jim Owens, being then and there the owner and occupant of certain premises, said premises being then and there situated and being in justice precinct No. 4, in the County of Coryell, and State of Texas, and with the intention of interfering, by frightening him with the right of said Jim Owens to follow his legitimate occupation, calling, and profession, the same being that of a farmer and stockman; and he, the said Jim Owens, being then and there in the pursuit of and engaged in said occupation of a farmer and stockman, and

with the intention of causing the said Jim Owens to abandon his said premises, and to abandon the said county and precinct in which he, the said Jim Owens, then resided, to-wit, in justice precinct No. 4, and in Coryell County, State of Texas, did then and there unlawfully, wilfully, and knowingly cause to be sent to the said Jim Owens by the United States mail service, and by mailing and posting the same for transmission and delivering in the United States postoffice at Leon Junction, a town and United States post-office in Coryell County, Texas, an anonymous notice, threats, and signs of the tenor following:

“‘Jim Owens went to Hell June 20th, 1900.’

(Here drawing of coffin and person hanging from gibbet.)

—and which said notice, threats, and signs were by the said E. M. Dunn placed in the mail box at the said United States post-office at the said Leon Junction, duly enclosed in a sealed envelope, which said envelope was then already duly stamped with a United States two-cent postage stamp, and on which envelope was the following pencil-written address, viz: ‘Mr. Jim Owens, Boaz, Tex.,’ and whereby and by the means aforesaid, the said E. M. Dunn did then and there unlawfully, wilfully, and knowingly cause said notice, threats, and signs to be sent, and the same was then sent, by due course of the United States mail, from said Leon Junction post-office to the said Jim Owens at Boaz, in Coryell County, Texas, and from which said Boaz post-office said Jim Owens did receive and obtain said notice, threats, and signs, said Boaz being then and there the postoffice address of the said Jim Owens, against the peace and dignity of the state.” Dunn v. State, 43 Tex. Crim. 25, 32, 63 S. W. 571.

VII. Warrant of Commitment on Failure To Give Bond To Keep the Peace.

Otsego County, ss: To my constable of said county, greeting:

Whereas, Harvey E. Saxton, on the 11th day of September, instant, made complaint to me, in writing, on oath, that Philip Gano, on the 11th day of September, instant, at the town of Middlefield, in said county, threatened to

shoot him, the said Harvey E. Saxton, and otherwise injure him; whereas, it appeared to me, upon the examination of the said complainant, duly made on oath, and reduced to writing, and subscribed by him, that there was just reason to fear the commission of said offense by said Philip Gano, and he having been brought before me, on my warrant, required to enter into a recognizance in the sum of three hundred dollars, with sufficient surety, to appear at the next Court of Sessions, to be held in said county, and not to depart the same without leave, and, in the meantime, to keep the peace towards the people of this state, and particularly towards the said complainant; and the said Philip Gano having refused to find such security, you are therefore commanded, in the name of the people of the state of New York, forthwith to convey him to the common jail of said county, and deliver him to the keeper thereof, who is hereby required to receive the said Philip Gano into his custody, and him safely keep in the said jail until he shall find such security or be discharged by due course of law.

Witness my hand, this 12th day of September, 1861.

Nathan G. Hall, justice of the peace.

Gano v. Hall, 5 Park. Crim. 651, 652, 653.

Note.—Held under statute warrant need not be under seal.

TIME TO PLEAD.

I. Imparance, 1204

- A. *General Imparance*, 1204
- B. *Special Imparance*, 1204
- C. *General Special Imparance*, 1204
- D. *Imparance Under Later Practice*, 1204

II. Notices, 1204

- A. *To Declare*, 1204
- B. *To Plead*, 1204
- C. *To Reply*, 1204
- D. *To Rejoin*, 1204
- E. *To Surrejoinder*, 1204
- F. *To Plead to a *Sua Fama**, 1205

III. Orders for Further Time, 1205

- A. *To Declare*, 1205
- B. *To Plead*, 1205

IV. Enlarging Time To Plead, 1205

- A. *Affidavit as Motion*, 1205
- B. *Notice of Motion*, 1205
- C. *Order*, 1205

V. Affidavit for Leave To File Answer After Time, 1205

CROSS REFERENCES:

ADMIRALTY:

Order Enlarging Time.

DECREETMENT:

Order To Appear and Plead;

Order To Appear and Plead on Motion in Open Court.

SCIRE FACIAS:

Notice To Plead to Scire Facias.

I. Imparllance.

A. General Imparllance.

And the said defendant by E. F., his attorney, comes and defends the wrong and injury, when, etc., and prays a day thereupon to imparll to the said declaration of the said plaintiff, and it is granted to him, etc. And upon this a day is given to the parties aforesaid, before our lord the king, until ———— wheresoever, etc., that is to say, for the said defendant to imparll to the declaration aforesaid, and then to answer the same; at which day, before our said lord the king at Westminster, come the parties aforesaid, by their attorneys aforesaid, and the said defendant says, etc. (to the end of the plea). 3 Chit. Pl. 889. *

B. Special Imparllance.

And the said defendant (or if misnomer be pleaded, say, "and C. D. who is sued by the name of E. D.") in his proper person, comes, and saving to himself all advantages and exceptions, as well to the writ as to the declaration aforesaid, prays leave to imparll thereunto, here, until, etc., and it is granted to him, etc., the same day is given to the said plaintiff here, etc., at which day comes here as well the said plaintiff by ————, his attorney, as the said defendant in his proper person (or by ————, his attorney), and the said defendant says, etc. 3 Chit. Pl. 891.

C. General Special Imparllance.

A general special imparllance differs only from the preceding form, in this, that instead of the words in italics the following are to be inserted, "and saving all the advantages and exceptions whatsoever." 3 Chit. Pl. 891.

D. Imparllance Under Later Practice.

(After entering the declaration, proceed as follows):

And now at this day, that is to say, on the first Monday of May, in this

same term (the term in the placita), to which day the said defendant had leave to imparll to the said bill (or declaration), of the said plaintiff, and then to answer the same, before the justices aforesaid, at the (city hall in the city of New York), come as well the said plaintiff, by his attorney aforesaid, as the said defendant, by G. H., his attorney.

And the said defendant, by G. H., his said attorney, defends the wrong and injury, when, etc. (enter the plea). Burr. App. 80, §151.

II. Notices.

A. Notice To Declare.

Please to take notice that the plaintiff in this cause is hereby required to declare therein before the end of the next term after service of this notice; or that judgment of discontinuance will be entered against him. Burr. App. 195, §361.

B. Notice To Plead.

Please to take notice, that the defendant in this cause is hereby required to plead to the declaration filed therein (with a copy whereof you are herewith served), in twenty days after service of a copy thereof, and of this notice or judgment. Burr. App. 195, §362.

C. Notice To Reply.

Please to take notice, that the plaintiff in this cause is hereby required to reply to the plea (or pleas), filed herein, with a copy (or copies), whereof you are herewith served, in twenty days after service of a copy (or copies), thereof, and of this notice or judgment. Burr. App. 198, §372.

D. Notice To Rejoin.

Please to take notice, that the defendant in this cause is hereby required to rejoin to (or "answer"), the replication filed therein (with a copy whereof you are herewith served), in twenty days after service of a copy thereof, and of this notice or judgment. Burr. App. 198, §373.

E. Notice To Surrejoin.

Please to take notice, that the plaintiff in this cause is hereby required to surrejoin to (or answer), the rejoinder filed therein (with a copy whereof you are herewith served), in twenty days after service of a copy thereof, and of this notice, or judgment. Burr. App. 198, §374.

F. Notice To Plead to Scire Facias.

Please to take notice that the defendant in this cause is hereby required to plead to the writ of scire facias issued therein (with a copy whereof you are herewith served), in twenty days after service of a copy thereof. Burr. App. 196, §363; Laws of 1840, p. 333, §14.

III. Orders for Further Time.**A. Order for Further Time To Declare.**

Ordered, that the time to declare in this cause be extended to the (tenth day of April) next. Dated, etc. Burr. App. 227, §473.

B. Order for Further Time To Plead.

Let the time to plead in this cause be extended to the _____ day of _____ next (or instant). Dated, etc.

W. B. D., _____ court comr.

Burr. App. 229, §480.

IV. Enlarging Time To Plead.**A. Affidavit on Motion To Enlarge Time To Plead.**

Y. Z., being duly sworn, says:

I. That he is the defendant in the above entitled action.

II. That he has fully and fairly stated the case in this cause to Q. R., his counsel therein, who resides in the village of _____ (or, at No. _____, _____ street, in the city of _____), and that he has a good and substantial defense, on the merits, to the action, as he is advised by his said counsel, and verily believes.

III. (State excuse, *e. a.*, thus.) That he was compelled to leave the city of New York, in which he resides, on business, immediately after being served with the summons herein, and remained absent for two weeks, since which he has not had time to instruct his counsel concerning his answer in this cause, and that _____ days further time is necessary therefor. That the complaint was served on the _____ day of _____, 18____, and the time to answer expires on the _____ day of _____, and no extension of such time has been had (or if any, state what). 2 Abb. Forms 196.

B. Notice of Motion To Enlarge Time To Plead.

Please take notice, that on the affidavit a copy of which is herewith served, the undersigned will move the court, at a special term thereof to be held at _____, on the _____ day

of _____, 18____, at _____ o'clock in the forenoon, to enlarge the time to answer herein _____ days, or for such other relief as may be just. 2 Abb. Forms 195.

C. Order Enlarging Time To Plead.

On the annexed affidavit of Y. Z., let the said defendant have _____ days additional time to answer the complaint herein. 2 Abb. Forms 196.

V. Affidavit in Support of Application for Leave To File Answer After Expiration of Time.

I, A. B., of, etc., the solicitor (or managing clerk to Mr. C. D., of, etc., the solicitor) for the above-named defendant E. F. in this suit, make oath and say as follows:

1. That the printed bill of complaint (or the subpoena) in this suit was served on the said defendant E. F., on the _____ day of _____, 18____, as I have been informed by the said defendant and verily believe.

2. That I am advised by counsel and believe, that it is material and necessary for the defence of the said defendant E. F. in this suit, that he should put in (a plea or) an answer to the said bill.

3. That instructions to settle such (plea or) answer were laid before counsel on the _____ day of _____.

4. That it is not desired to put in such (plea or) answer for the purpose of delay; and that further time until the _____ day of _____ next, will, in my judgment, be necessary to put in such (plea or) answer. 2 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2185.

TITLE.**I. Declarations. 1206**

A. *Indorsement, Served in Fee Simple.* 1206

B. *Indorsement, Husband and Wife Served in Fee.* 1206

C. *Indorsement, Served for Life.* 1206

D. *Indorsement, Cutting or Dower.* 1206

E. *Indorsement, Copyhold.* 1206

G. *Title by Descent.* 1207

H. *Title by Marriage.* 1207

I. *Title by Feoffment.* 1207

J. *Title by Lease.* 1207

K. *Assignment of Term*, 1207

L. *Surrender*, 1207

M. *Covenant To Stand Seized*, 1208

CROSS-REFERENCES:

EJECTMENT:

Complaint in Ejectment Setting Forth Plaintiff's Title by Deed;

Complaint in Ejectment Setting Forth Title by Devise;

Complaint in Ejectment Setting Forth Title by Descent;

Denial of Title in Ejectment.

LIBERUM TENEMENTUM:

Plea in Trespass Quare Clausum Fregit.

NUISANCE:

Answer, Alleging Prescriptive Right To Maintain Nuisance.

QUIETING TITLE:

Complaint, Action To Quiet Title;

Cross-Complaint, Setting Up Title in Defendant.

RIGHT, WRIT OF:

Count on Seizin of Demandant's Father;

Count in Writ of Right on Demandant's Own Seizin.

I. Declarations.

A. *Declaration, Inducement That the Grantor or Lessor Was Seized in Fee Simple.*

For that whereas one G. H., before and at the time of the making of the indenture hereinafter mentioned was seized in demesne as of fee, of and in the tenements and premises, with the appurtenances, hereinafter mentioned, to have been demised, to-wit, at, etc. (venue). And being so seized, etc. 2 Chit. Pl. 560.

B. *Declaration, Inducement, Seizin in Fee, Husband and Wife in Right of Wife.*

For that whereas the said A. B. and C., his wife, before and at the time of making the indenture hereinafter mentioned, were seized in their demesne as of fee, in the right of said C., of and in the tenements and premises, with the appurtenances, hereinafter mentioned to have been demised, to-wit, at, etc. (venue). And being so seized, etc. 2 Chit. Pl. 561.

C. *Declaration, Inducement, Seizin for Life.*

For that whereas one E. F., before and at the time of making the indenture hereinafter mentioned, was seized in his demesne as of freehold, for

the term of his natural life (or for the term of the natural life of G. H.) of and in the tenements, with the appurtenances, hereinafter mentioned to have been demised, to-wit, etc. And being so seized, etc. 2 Chit. Pl. 562.

D. *Declaration, Inducement of Tenancy by Curtesy or Dower.*

For that whereas one E. F., before and at the time of making the indenture hereinafter mentioned, was seized of the tenements hereinafter mentioned to have been demised, in his demesne as of freehold, for the term of his life, as tenant thereof, by the law of England, to-wit, at, etc. (venue), and being so seized, etc. (If the seizin be stated as a derivative title, state the marriage, birth of a child, death of the wife.) 2 Chit. Pl. 563.

E. *Declaration, Inducement, Estate in Joint Tenancy.*

For that whereas, before and at the time of the making of the indenture hereinafter mentioned, E. F. and G. H. were seized as joint tenants in their demesne as of fee, of and in the tenements, with the appurtenances, hereinafter mentioned to have been demised to the said defendant, and being so seized, etc. 2 Chit. Pl. 570.

F. *Declaration, Inducement, Estate in Coparcenary.*

For that whereas, before and at the time of making the indenture hereinafter mentioned, E. F. and G. H. were seized in their demesne as of fee, of and in the tenements, with the appurtenances, hereinafter mentioned to have been demised to the said defendants as the daughters and co-heirs of one J. K., deceased. And being so seized, etc. 2 Chit. Pl. 570.

G. *Declaration, Title by Descent.*

And the said defendant, being so possessed as aforesaid, and the said E. F. being so seized of the said reversion as aforesaid, he the said E. F., afterwards, to-wit, on, etc., at, etc. (venue), aforesaid, died so seized of the said reversion of and in the said demised tenements, with the appurtenances as aforesaid, whereupon and whereby the said reversion of and in the said tenements, with the appurtenances, then and there descended and came to the said plaintiff, as son and heir of the said E. F., deceased, and thereby he the said plaintiff then and there became, and was, and still is,

seized of the said reversion of and in the said tenements, with the appurtenances, in his demesne as of fee. 2 Chit. Pl. 571.

H. Declaration, Title by Marriage.

And the said C. being so seized, of and in the said reversion in the said demised tenements, with the appurtenances, as aforesaid, she the said C., afterwards, to-wit, on, etc., at, etc. (venue), aforesaid, took to her husband plaintiff; by virtue whereof the said plaintiffs then and there became, and were, seized of the said tenements, with the appurtenances, in their demesne as of fee, in right of the said C. 2 Chit. Pl. 573.

I. Declaration, Title by Feoffment.

And the said E. F. being so seized as aforesaid, he the said E. F. afterwards, to-wit, on, etc., at, etc. (venue), enfeoffed the said plaintiff of the said tenements, with the appurtenances, to have and to hold the same to the said plaintiff and his heirs and assigns, to the use of the said plaintiff, his heirs and assigns forever; by virtue of which said feoffment, he the said plaintiff then and there became and was seized of and in the said tenements, with the appurtenances, in his demesne as of fee; and being so thereof seized, etc. 2 Chit. Pl. 573.

J. Declaration, Title by Lease.

For that whereas, heretofore, to-wit, on, etc., at, etc. (venue), by a certain indenture then and there made between E. F., of the one part, and the said plaintiff of the other part (which said indenture, sealed with the seal of the said E. F., the said plaintiff now brings here into court, the date whereof is the day and year aforesaid), the said E. F. did demise, lease, set, and to farm let unto the said plaintiff, his executors, administrators and assigns, a certain messuage or dwelling house, etc., situate, etc. (except as in the said indenture is excepted). To have and to hold the said messuage or dwelling house, etc., with the appurtenances (except as aforesaid), unto the said plaintiff, his executors, administrators and assigns, from the ——— day of ———, then last past, to the full end and term of ——— years thence next ensuing, and fully to be complete and ended (here set out any parts of the lease that may be applicable to the case), as by the said indenture,

reference being thereunto had, will (amongst other things) more fully and at large appear. By virtue of which said demise, the said plaintiff afterwards, to-wit, on, etc., entered into and upon all and singular the said demised premises, with the appurtenances, and became and was possessed thereof for the said term, so to him thereof granted as aforesaid; and being so possessed, etc. 2 Chit. Pl. 574.

K. Declaration, Assignment of a Term to the Plaintiff.

By virtue of which said demise, he the said E. F. afterwards, to-wit, on, etc., aforesaid, entered into and upon all and singular the said demised tenements, with the appurtenances, and became and was possessed thereof for the said term so to him thereof granted as aforesaid. And the said E. F. being so possessed thereof, he the said E. F. afterwards, to-wit, on, etc., at, etc. (venue), aforesaid, by his certain deed-poll indorsed on the said indenture, and duly signed by him and sealed with his seal, and which the said plaintiff now brings here into court, the date whereof is the day and year last aforesaid, he the said E. F., for the considerations therein mentioned, did bargain, sell, assign, transfer and set over, unto the said plaintiff, his executors, administrators and assigns (here set out the operative words of the deed of assignment), as by the said deed-poll, reference being thereunto had, will more fully appear. By virtue of which said deed-poll, the said plaintiff afterwards, to-wit, on, etc., and there said, at, etc. (venue), aforesaid, became and was, and from thence hitherto hath been, and still is, possessed of the said tenements, with the appurtenances, for the residue of the said term so thereof granted as aforesaid. And although, etc. 2 Chit. Pl. 575.

L. Declaration, Title by Surrender of a Leasehold Interest.

And the said E. F. being so possessed of the said demised tenements, with the appurtenances, as aforesaid, he the said E. F., after the making of the said indenture, and during the continuance of the said term thereby granted, to-wit, on, etc., at, etc. (venue), aforesaid, did surrender to the said C. H. the said term of years of him the said E. F. then to come and unexpired, of and in the said demised

tenements, with the appurtenances, and all his estate, right, title and interest, of and in the same; which said surrender he the said G. S. H. then and there accepted. 2 Chit. Pl. 575.

M. Declaration, Title by Covenant To Stand Seized To Uses.

And the said E. F. being so seized, afterwards, to-wit, on, etc., at, etc. (venue), by his certain writing then and there made by the said E. F. and sealed with his seal, the date whereof is a certain day and year therein named, to-wit, the day and year last aforesaid, he the said E. F., for and in consideration of the natural love and affection which he the said E. F. bore for the said plaintiff, then and there being his (cousin), did covenant for himself and his heirs, to and with the said plaintiff and his heirs, that he the said E. F. and his heirs, then and from thenceforth forever, did, would and should stand and be seized of the said (or of the said reversion of and in the said) demised tenements, with the appurtenances, to the use of the said plaintiff, his heirs and assigns, forever, whereupon and whereby, according to the form and effect of the said deed and of the said covenant of the said E. F., and by force of the statute for transferring uses into possession, he the said plaintiff then and there became and was seized of and in the said demised tenements, with the appurtenances (or of the said reversion) in his demesne as of fee. And being so seized, etc. 2 Chit. Pl. 576.

TRADE-MARKS AND TRADE NAMES.

I. Complaints, 1208

A. *To Restrain Infringement of Trade-Mark*, 1208

B. *To Restrain Infringement, Name of Periodical*, 1209

II. Decrees, 1209

A. *Against Use of Trade-Mark*, 1209

B. *Against Shipping Goods With Trade-Mark*, 1210

C. *Perpetual Injunction on Use of Trade-Mark*, 1210

CROSS-REFERENCE:

INJUNCTIONS:

Injunction Against Infringement of Trade-Mark;

Injunction Against Infringement of Sign.

I. Complaints.

A. *Complaint To Restrain Infringement of Trade-Mark, and for Damages.*

I. That the plaintiff is, and for a long period previous to the committing of the grievances hereinafter mentioned, had been, the manufacturer (or the vendor) of an article (describe commodity) known as ———, which he has for ——— years last past, offered for sale and sold (in packages, describing them, if the defendant's are similar), labeled with his own proper device and trade-mark, adopted by the plaintiff for that purpose in the year 18——, of which the following is a copy (or specimen: copy or specimen of label; or, in a similar manner, state other trade-mark).

II. That by reason of the long experience and great care of the plaintiff in his said business, and the good quality of said (commodity), the same has become widely known in the community as a valuable and useful article, and acquired a high reputation as such, and has commanded and still commands an extensive sale at ——— (and elsewhere), which is and has been a source of great profit to this plaintiff.

III. That it is known as such article, to the public and to the buyers and consumers thereof, by the said name of ———, and by the plaintiff's own proper device and trade-mark aforesaid.

IV. That notwithstanding the long and quiet use and enjoyment by the plaintiff of said name and trade-mark, the defendant, well knowing the premises, but wilfully disregarding the plaintiff's rights, thereafter, and in the year 18——, wrongfully (and fraudulently) prepared and offered for sale, and now does offer for sale and sell, at ———, and elsewhere, an article in imitation of the plaintiff's article, which (with intent to deceive and defraud the public and the buyers and consumers thereof), he has caused to be put up in similar packages, and labeled with a precisely (or nearly) similar label, of which false label the following is a copy (or specimen: copy or specimen of the false label).

V. That such imitation is calculated to deceive the purchasers and consumers of plaintiff's said article, and actually has and still does mislead many of them to buy the article sold by

the defendant, in the belief that it is the article manufactured by the plaintiff, greatly to the diminution of the said business and profits of this plaintiff.

VI. That the article so put up and sold by the defendant in imitation of the plaintiff's article is of a greatly inferior quality (state in what respects); and that by reason of the premises the general esteem and reputation of the said article manufactured by the plaintiff has been injured, greatly to the diminution of the said business and profits of the plaintiff.

VII. That before this action, and on the _____ day of _____, 18—, the plaintiff requested the defendant to desist from his infringement of the plaintiff's trade-mark as aforesaid, and to pay to the plaintiff what, upon a just accounting, there would be due to him therefor; yet the defendant refuses so to do.

VIII. That by reason of the premises the plaintiff has been injured, to his damage _____ dollars.

Wherefore the plaintiff demands judgment against the defendant:

1. That the defendant and his servants and agents be forever restrained from preparing, putting up, selling or offering for sale said imitation of the plaintiff's article, or any article bearing the name of _____, or any imitation of said name, or bearing said false trade-mark or any imitation of the label or trade-mark of the plaintiff.

2. That the defendant account for and pay over to the plaintiff all the profits realized by him upon sales of said (commodity), sold by him with any imitation of plaintiff's trade-mark.

3. For _____ dollars damages.

4. And for the costs of this action.
1 Abb. Forms 546.

B. Complaint To Restrain Infringement, Name of Periodical Publication.

That he is the proprietor and publisher of a newspaper (or magazine, or almanac, or other periodical) at _____, known and distinguished as (name of plaintiff's publication); and that as such proprietor he has published the same daily (or monthly, or otherwise) for _____ years last past, and that such publication has been made by the plaintiff, and those through whom he purchased the same, as the

owners and proprietors thereof, since the original establishment of the same in the year _____, under that name.

(Continue substantially as in preceding form, giving copy of the headings or title pages, if defendant has imitated the appearance of plaintiff's, and substituting "publication" for "commodity," and "subscribers and readers" for "consumers," etc.) 1 Abb. Forms 548.

II. Decrees.

A. Decree Awarding Injunction Against Use of Trade-Mark.

This court doth order that an injunction be awarded to restrain the defendants W., etc., respectively (and every and each of them), and the respective servants, agents and workmen of the said defendants (and of every and each of them), from stamping, cutting or engraving, or causing or permitting to be stamped, cut or engraved, upon any tools or other articles manufactured for or bought, procured or sold by them, the words, "Collins & Co., Hartford, Cast Steel, Warranted," or any other words similar to, or only colorably differing from such words, or any words or marks so contrived as to represent or lead to the belief that the said tools or other articles were the manufacture of the said Collins & Co.; and from affixing or causing to be affixed to any tools or other articles manufactured for or bought, procured or sold by them, or otherwise using or employing, or causing or permitting to be used or employed, any labels containing the words, etc. (as above), or any label or labels similar to or only colorably differing from the labels made or used by the said company, as in the plaintiff's bill mentioned, or so contrived and prepared as to represent or lead to the belief that the tools or other articles manufactured or sold by the defendants were the manufacture of the said company; and also from selling, exporting, consigning, or otherwise disposing of any tools or other articles having or bearing thereon any such words, marks or labels, as in the said bill mentioned, or any other words, marks or labels only colorably differing from the said marks and labels of the said company; until, etc. 2 Dec. Ch. Pl. & Pr. (Foskitt's ed.) 225; Collins v. Walker (1857), 2 Seton Dec. (Eng. ed.), 1862) 314.

E. Decree Awarding Perpetual Injunction Against Shipping Goods With Plaintiff's Trade-Marks.

This court doth order that "a perpetual injunction be awarded to restrain the defendants J. and N., and each of them, their servants and agents, from affixing or applying, or causing to be affixed or applied to any goods manufactured, sold, shipped, or supplied by them, any mark, and especially the figure of a lion, etc., so contrived as by colorable imitation or otherwise to represent the goods manufactured, sold, shipped or supplied by the defendants as being standard Spanish Stripes, etc., or other woollen goods manufactured or shipped by or for the plaintiffs, and from selling, exporting or shipping, or causing or allowing to be shipped or exported, or otherwise disposing of, any goods manufactured by or for the defendants, to which any such mark has been or shall be affixed or applied." Defendants to pay plaintiff's costs of suit to be taxed, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2320; *Henderson v. Jones* (1861), 2 Seton Dec. (Eng. ed., 1862) 915.

C. Decree, Perpetual Injunction on the Use of Another's Trade-Marks.

This cause came on to be heard at this term upon the bill, answer and proofs in the cause, and was argued by counsel on behalf of the plaintiffs, no counsel appearing for the defendant (the counsel who had previously appeared for him) having voluntarily withdrawn from the cause.

On consideration whereof, it is ordered, adjudged and decreed by the court, that a perpetual injunction be granted in the premises according to the prayer of the bill, and that the plaintiffs do recover costs against the defendant, to be taxed by the clerk under the direction of the court. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2320; *Taylor v. Carpenter*, 3 Story C. C. 458.

TRAVERSE.—See GENERAL ISSUE AND GENERAL DENIAL.

TREASON.

Indictment for Treason.

"Virginia District. In the circuit court of the United States of America

in and for the fifth circuit and Virginia district. The grand inquest of the United States of America, for the Virginia district, upon their oath, do present, that Aaron Burr, late of the city of New York, and state of New York, attorney-at-law, being an inhabitant of, and residing within the United States, and under the protection of the laws of the United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance, but being moved and seduced by the instigation of the devil, wickedly devising and intending the peace and tranquility of the same United States to disturb and to stir, move, and excite insurrection, rebellion and war against the said United States, on the tenth day of December, in the year of Christ, one thousand eight hundred and six, at a certain place called and known by the name of 'Blennerhasset's Island,' in the county of Wood, and district of Virginia aforesaid, and within the jurisdiction of this court, with force and arms, unlawfully, falsely, maliciously and traitorously did compass, imagine and intend to raise and levy war, insurrection and rebellion against the said United States, and in order to fulfil and bring to effect the said traitorous compassings, imaginations and intentions of him the said Aaron Burr, he, the said Aaron Burr afterwards, to-wit, on the tenth day of December, in the year one thousand eight hundred and six aforesaid, at the said island called 'Blennerhasset's Island' as aforesaid, in the county of Wood aforesaid, in the district of Virginia aforesaid, and within the jurisdiction of this court, with a great multitude of persons whose names at present are unknown to the grand inquest aforesaid, to a great number, to-wit: to the number of thirty persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords and dirks, and other warlike weapons as well offensive as defensive, being then and there unlawfully, maliciously and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States, and then and there with force and arms did falsely and traitorously and in a warlike and hostile manner,

See "How To Use This Volume," Introduction, page v.

array and dispose themselves against the said United States, and then and there, that is to say, on the day and in the year aforesaid at the island aforesaid, commonly called 'Blennerhasset's Island' in the county aforesaid of Wood, within the Virginia district and the jurisdiction of this court, in pursuance of such their traitorous intentions and purposes aforesaid, he, the said Aaron Burr, with the said persons so as aforesaid, traitorously assembled and armed and arrayed in manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy war against the said United States contrary to the duty of their said allegiance and fidelity, against the constitution, peace and dignity of the said United States, and against the form of the act of congress of the United States in such case made and provided. And the grand inquest of the United States of America, for the Virginia district, upon their oaths aforesaid, do further present that the said Aaron Burr, late of the city of New York and state of New York, attorney-at-law, being an inhabitant of, and residing within the United States and under the protection of the laws of the United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance, but being moved and seduced by the instigation of the devil, wickedly devising and intending the peace and tranquility of the said United States to disturb, and to stir, move and excite insurrection and rebellion and war against the said United States, on the eleventh day of December, in the year of our Lord one thousand eight hundred and six, at a certain place called and known by the name of 'Blennerhasset's Island,' in the county of Wood, and district of Virginia aforesaid, and within the jurisdiction of this court, with force and arms unlawfully, falsely, maliciously and traitorously did compass, imagine and intend to raise and levy war, insurrection and rebellion against the said United States; and in order to fulfil and bring to effect the said traitorous compassings, imaginations and intentions of him, the said Aaron Burr, he, the said Aaron Burr, afterwards, to-wit: on the said last mentioned day of December, in the year one

thousand eight hundred and six aforesaid, at a certain place commonly called and known by the name of 'Blennerhasset's Island,' in the said county of Wood, in the district of Virginia aforesaid, and within the jurisdiction of this court, with one other great multitude of persons whose names at present are unknown to the grand inquest aforesaid, to a great number, to-wit: to the number of thirty persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords and dirks, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States, and then and there with force and arms did falsely and traitorously and in a warlike and hostile manner, array and dispose themselves against the said United States, and then and there, that is to say, on the day and in the year last mentioned, at the island aforesaid, in the county of Wood aforesaid, in the Virginia district, and within the jurisdiction of this court, in pursuance of such their traitorous intentions and purposes aforesaid, he, the said Aaron Burr, with the said persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy war against the said United States, and further to fulfil and carry into effect the said traitorous compassings, imaginations and intentions of him, the said Aaron Burr, against the said United States, and to carry on the war thus begun as aforesaid against the said United States, the said Aaron Burr, with the multitude last mentioned, at the island aforesaid, in the said county of Wood, within the Virginia district aforesaid, and within the jurisdiction of this court, did array themselves in a warlike manner, with guns and other weapons, offensive and defensive, and did proceed from the said island down the river Ohio in the county aforesaid, within the Virginia district and within the jurisdiction of this court, and on the said eleventh day of December, in the year one thousand eight hundred and six aforesaid, with the wicked and traitorous intention to desecrate the said

river and the river Mississippi, and by force and arms traitorously to take possession of the city commonly called New Orleans, in the territory of Orleans, belonging to the United States, contrary to the duty of their said allegiance and fidelity, against the constitution, peace and dignity of the said United States, and against the form of the act of the congress of the United States in such case made and provided.

“Hay, attorney of the United States, for the Virginia district.

“Indorsed: A true bill. John Randolph.

“A copy. Teste, William Marshall, clerk.”

United States v. Burr, 25 Fed. Cas. No. 14,693.

TRESPASS.

I. Declarations, 1213

- A. *Quare Clausum Fregit*, 1213
- B. *De Bonis Asportatis*, 1213
- C. *Injury to Personal Property*, 1214

II. Pleas, 1214

- A. *License*, 1214
- B. *Damage Feasant*, 1214
- C. *Private Way*, 1215
- D. *Public Way*, 1215

III. Replication to Plea of License, 1216

IV. Complaints, 1217

- A. *For Trespass to Land*, 1217
- B. *Cutting and Converting Timber*, 1217
- C. *Removing Fence*, 1217
- D. *Erecting Fence*, 1217
- E. *Entering House*, 1217
- F. *Taking Goods*, 1217
- G. *Taking Goods, Possession Regained*, 1218
- H. *Seizing Vessel*, 1218
- I. *For Malicious Injury*, 1218
- J. *For Malicious Injury Claiming Increased Damages*, 1218
- K. *For Treble Damages, Injuring Trees*, 1218

V. Answers, 1219

- A. *Denial of Breaking*, 1219
- B. *Denial of Title*, 1219
- C. *Denial of Title as to Part*, 1219
- D. *Denial of Right to Possession*, 1219
- E. *Denial of Taking*, 1219
- F. *Denial of Possession*, 1219

G. *License*, 1219

H. *Not Committed on Land*, 1219

I. *Goods Attached, Fraudulent Grantee*, 1219

CROSS-REFERENCES:

ANIMALS:

- Declaration for Shooting Plaintiff's Dog;
- Complaint for Shooting Plaintiff's Dog;
- Complaint for Chasing Cattle;
- Answer, Dog Killed Worrying Sheep.

ARREST IN CIVIL CASES:

- Capias, Trespass and Assault;
- Capias Ad Respondendum, Assault and Battery;
- Capias, Trespass to Lands;
- Capias, Trespass De Bonis Asportatis;
- Capias Against Sheriff in Trespass.

ASSAULT AND BATTERY:

- Declaration for Common Assault on Person;
- Declaration in Trespass for Assault and Battery;
- Plea Son Assault Demesne;
- Complaint for Assault and Battery (a), (b), (c);
- Special Plea, Molliter Manus Impositum To Keep the Peace.

FORCEFUL ENTRY AND DETAINER:

- Complaint for Treble Damages for Forceful Entry or Detainer.

GENERAL ISSUE AND GENERAL DENIAL:

- Plea of Not Guilty, in Trespass.

INFANTS:

- Answer, Infancy and Want of Discretion as to Hired Horse.

JUDGMENTS:

- Judgment on Verdict for Plaintiff in Assumpsit, Case, Covenant and Trespass.

JUDGMENTS AND DECREES; ENFORCEMENT OF:

- Fieri Facias for Plaintiff in Trespass;
- Capias Ad Satisfaciendum in Trespass.

PARENT AND CHILD:

- Declaration in Trespass for Debauching Daughter and Servant.

REJOINDER:

- Rejoinder to Replication of Demise to Plaintiff, Notice To Quit;
- Surrejoinder That Notice To Quit Was Waived.

SCIRE FACIAS:

- Scire Facias in Trespass.

SHERIFFS AND CONSTABLES:

- Complaint by Mortgagee of Chattels

Against Sheriff for Selling on Execution Against Third Person.

TRESPASSING ANIMALS:

Plea of Escape of Cattle by Defect of Fences:

Replication to Plea of Escape of Cattle Through Defective Fence.

I. Declarations.

A. Declaration in Trespass Quare Clausum Fregit (*breaking and entering close, here his dwelling*).

For that the said defendant, on, etc., and on divers other days and times, between that day and the day of exhibiting this bill (or "commencing this suit"), with force and arms, etc., broke and entered a certain dwelling house of the said plaintiff, situate and being in the town of ———, in the county of ———, and then and there made a great noise and disturbance therein, and stayed and continued therein, making such noise and disturbance for a long space of time, to-wit, for the space of ——— days then next following, and then and there forced and broke open, broke to pieces and damaged divers, to-wit ——— doors, of the said plaintiff, of and belonging to the said dwelling house, with the appurtenances, and broke to pieces, damaged and spoiled divers, to-wit ——— locks, ———, staples and ——— hinges, of and belonging to the said doors respectively, and wherewith the same were then fastened, and of great value, to-wit, of the value of ——— dollars. And also during the time aforesaid, to-wit, on the said ——— day of ———, seized and took divers goods and chattels, to-wit (*describe the goods*), of the said plaintiff, then found and being in the said dwelling house, and being of great value, to-wit, of the value of ——— dollars, and carried away the same, and converted and disposed thereof to his own use. By means of which said several premises, he the said plaintiff and his family were, during all the time aforesaid, not only greatly disturbed and annoyed in the peaceable possession of the said dwelling house of the said plaintiff, but also he the said plaintiff was during all that time hindered and prevented from carrying on and transacting therein his lawful and necessary affairs and business, to-wit, at,

etc., aforesaid. (Add a count for an expulsion *ut infra*, if applicable to the facts, and a count *de bonis asportatis*.)

(Count for a common expulsion.) And also, for that the said defendant, on, etc., with force and arms, etc., broke and entered a certain other dwelling house of the said plaintiff, situate, etc., and then and there ejected, expelled, put out and amoved the said plaintiff and his family from the possession, use, occupation and enjoyment of the said dwelling house, and kept and continued them so ejected, expelled, put out and amoved for a long space of time, to-wit, from thence hitherto; whereby the said plaintiff, for and during all that time, lost and was deprived of the use and benefit of his said dwelling house, to-wit, at, etc., aforesaid. Burr. App. 304, §574; 2 Chit. Pl. 864, 865.

B. Declaration in Trespass De Bonis Asportatis (*taking and carrying away goods*).

Supreme court. (Of (May) term, in the year one thousand eight hundred and (forty-six). (Westchester) county, ss.: A. B., plaintiff in this suit, by M. N., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea of trespass: For that the said defendant on the ——— day of ———, in the year one thousand eight hundred and ———, with force and arms, etc., to-wit, at the town (of New Rochelle), in the county aforesaid, seized, took and drove (or "led," or, if inanimate property, say "carried away") a certain cow (or "certain goods and chattels, to-wit, etc.," enumerating them; but, if the goods or cattle have been already stated in a prior count, then say, "divers cattle, goods and chattels of the said plaintiff, of the like number, quantity, quality, description and value as the said cattle, goods and chattels, in the said first count of the said declaration mentioned, then there found and being, and converted, etc.") of the said plaintiff, of great value, to-wit, of the value of (five hundred) dollars, then there found and being, and converted and disposed of the same to his own use. And the wrongs to the said plaintiff then and there did, against the peace of the people of the state of New York, and to the damage of the said plaintiff at five

hundred) dollars, and therefore he brings his suit, etc.

M. M., plffs. atty.

Burr. App. 303, §573; Chit. Pl. §59; Yates' Forms 575.

C. Declaration in Trespass for Injury to Personal Property.

Supreme court. Of (May) term, in the year one thousand eight hundred and (forty-six). (Queens) county, ss.: A. B., plaintiff in this suit, by G. W., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea of trespass: For that the said defendant, on the _____ day of _____, in the year one thousand eight hundred and _____, and on divers other days and times, between that day and the day of exhibiting this bill (or "and the commencement of this suit"), with force and arms, etc., drove, chased and hurried the (sheep, ewes and lambs), etc., to-wit (one hundred sheep, one hundred ewes, and one hundred lambs), of the said plaintiff, of great value, to-wit, of the value of (two thousand) dollars, then depasturing and being in and upon a certain waste or common, called _____, in the town of _____, in the said county of (Queens), and then and there chased and drove the said (sheep, ewes and lambs) from and off the said common to divers places to the said plaintiff unknown, whereby the said plaintiff was not only put to great trouble and expense, amounting in the whole to a large sum of money, to-wit, the sum of (one hundred) dollars, in and about endeavoring to find his said (sheep, ewes and lambs), but also divers, thereof, to-wit (twenty sheep, thirty ewes and twenty lambs), of great value, to-wit, of the value of (four hundred) dollars, then and there died; and others thereof, to-wit, (forty sheep, fifty ewes and fifty lambs), of great value, to-wit, of the value of (one thousand) dollars, then and there became and were wholly lost to the said plaintiff; and the residue of the said (sheep, ewes and lambs) then and there became and were greatly damaged and lessened in value, to-wit, at, etc. (the venue), aforesaid.

(Second count in a more general form.) And also, for that the said defendant, on, etc., with force and arms, etc., chased and drove about other the cattle, to-wit (one hundred and other sheep, one hundred other

ewes, and one hundred other lambs), of the said plaintiff, of great value, to-wit, of the value of (three thousand) dollars, to-wit, at the town aforesaid, in the county aforesaid. Whereby the said last mentioned (sheep, ewes and lambs), being of the value aforesaid, became and were greatly damaged, lessened in value and spoiled, to-wit, at the town aforesaid, in the county aforesaid (state the damage to the cattle, according to the fact, and, if there be any evidence to support it, add a count de bonis asportatis, as in I, B). And other wrongs to the said plaintiff then and there did, against the peace of the people of this state, and to the damage of the said plaintiff of (three thousand) dollars, and thereof he brings suit, etc.

G. W., plaintiff's attorney.

Burr. App. 301, §569; 2 Chit. Pl. 858; Yates' Forms 574.

II. Pleas.

A. Plea of License in Trespass.

(First plea, general issue; second plea as follows): And for a further plea in this behalf, the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that he the said defendant, at the said several times, when, etc., by the leave and license of the said plaintiff to him for that purpose first given and granted, to-wit, at, etc., aforesaid, committed the said several supposed trespasses in the said declaration mentioned; as he lawfully might for the cause aforesaid. And this, etc. (Conclude with a verification.) Burr. App. 366, §664; 3 Chit. Pl. 1106.

B. Plea of Damage Feasant in Trespass for Removal of Goods.

And the said C. D., defendant in this suit, by G. H., his attorney, comes and defends the force and injury when, etc., and says that he is not guilty of the said supposed trespasses above laid to his charge, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him. And of this he the said defendant puts himself upon the country. (And the said plaintiff doth the like, etc.) And for a further plea in this be-

half (as to the seizing, taking, removing and carrying away the said goods and chattels in the said declaration mentioned), the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that before, and at the said time when, etc., he the said defendant was lawfully possessed of a certain close or piece or parcel of land, called ——— (or of no name), situate at, etc., and because of the said goods and chattels in the said last count mentioned, before and at the said time when, etc., in the said last count mentioned, were wrongfully in and upon the said close or piece or parcel of land, encumbering the same, and doing damage there to the said defendant, he the said defendant, at the said time when, etc., in the said last count mentioned, seized and took the said goods and chattels in the said last count mentioned, in the said close, piece or parcel of land, so incumbering the same as aforesaid, and removed and carried away the same to a small and convenient distance, to-wit, in the town aforesaid, and there left the same for the use of the said plaintiff, doing no unnecessary damage to the said goods and chattels on the occasion aforesaid; and as he lawfully might for the cause aforesaid; which are the said supposed trespasses in the introductory part of this plea, and in the said declaration mentioned, and whereof he the said plaintiff hath above thereof complained against him, the said defendant. And this he is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc.

G. H., attorney for deft.

Burr. App. 363, §660; 3 Chit. Pl. 1094.

C. Plea of Private Way in Trespass.

(First plea, general issue; second plea same as the next form to the first *, and then proceed as follows): And the said defendant further saith that he the said defendant, long before, and at the several times when, etc., was and still is seized in his *de mesne* as of fee, of and in a certain close, called ———, contiguous and next adjoining

to the said close, in which, etc., and that he the said defendant, and all those whose estate he now hath, and at the time whereof the memory of man is not to the contrary, have had and used, and have been accustomed to have and use, and of right ought to have had and used, and the said defendant at the said times when, etc., of right ought to have had and used, and still of right ought to have and use a certain way for himself and themselves, and his and their servants, farmers and tenants, occupiers of the said close, called ———, to pass and repass on foot and with horses, mares, geldings and other cattle, from a certain common and public highway, in the town of ———, aforesaid, into, through, over and along the said close of the said plaintiff, called ———, in which, etc., unto and into the said close now of the said defendant, and so from thence back again, unto, into, through and over and along the said close of the said plaintiff called ———, in which, etc., unto and into the said common and public highway, at all times of the year, at his and their free will and pleasure as to the said close of the said defendant, with the appurtenances belonging and appertaining. And the said defendant being so seized of his said close, and also being in the possession thereof, and having occasion to use the said way, did, with his servants and horses and mares and geldings and carriages, at the said several times, when, etc., pass and repass, in, by, through and along the said way from the said common and public highway, into, through, over and along the said close of the said plaintiff called ———, in which, etc., unto and into the said close now of the said defendant, and so from thence back again, in, by, through and along the said way, unto and into the said common and public highway, using the said way there for the purpose and on the occasion aforesaid, as he lawfully might for the cause aforesaid, and in so doing, etc. (as in next form from the second * to the end, justifying the trespasses according to the facts, observing the introductory part of this plea). Burr. App. 368, §666; 3 Chit. Pl. 1118.

D. Plea of Public Way in Trespass.

(First plea, general issue; second plea as follows): And for a further

plea in this behalf, as to the entering the said close of the said plaintiff in the said first count in the said declaration mentioned, and in which, etc., and with feet in walking, and with the said cattle and carriages in the said declaration mentioned, treading down, trampling upon, crushing, consuming and spoiling the grass and herbage then growing and being in the said close, and subverting, damaging and spoiling the soil of the said close, and digging up, pulling up, tearing up, prostrating and destroying the said stakes and posts in the said first count mentioned, and with the said cattle in the said declaration mentioned, eating up and depasturing the said other grass of the said plaintiff, there also growing and being, and also as to the breaking down, throwing down, prostrating and destroying the said banks, mounds and fences in that count mentioned, and also as to digging up, pulling up, prostrating, damaging and destroying the said gate-posts and other posts in the said last count of the said declaration mentioned, and taking and carrying away the same, above supposed to have been done by the said defendant, he the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in that case made and provided, saith that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the said posts in the said first count mentioned, and the said posts in the said last count mentioned, were and are the same, and not other or different posts. * And the said defendant further saith that before and at the said several times, when, etc., there was, and of right ought to have been, a certain common and public highway, into, through, over and along the said close, in which, etc., for all the good citizens of the state of New York to go, return, pass and repass on foot, and with cattle and carriages at all times of the year, and at their free will and pleasure. Wherefore the said defendant being a good citizen of the said state of New York, and having occasion to use the same way, at the said several times, when, etc., went, passed and repassed on foot, and with the said cattle and carriages, into, through, over and along the said close, in which, etc., in, by and along

the said highway there, using the same as he lawfully might for the cause aforesaid. * And in so doing he the said defendant, with his feet in walking, and with the said cattle and carriages unavoidably a little trod down, trampled upon, consumed and spoiled the grass and herbage then growing and being in the said close, in which, etc., and subverted, damaged and spoiled the soil of the same close, and the said cattle at the said several times when, etc., in passing and repassing along the said way, by stealth and morsels, and against the will of the said defendant, eat up and depastured a little other of the grass there then growing in the said way. * And because the said stakes, banks, mounds, fences, gate-posts and other posts in the said declaration mentioned, before the said several times, when, etc., had been wrongfully erected, and were then standing and being in and across the said highway, and obstructing the same, so that without digging up, pulling up, tearing up, breaking down, throwing down, prostrating and destroying the said stakes, banks, mounds, fences, gate-posts and other posts, respectively, the said defendant could not then pass and repass with the said cattle and carriages, into, through, over and along the said close, in which, etc., in the said highway there, as he ought to have done, the said defendant at the said several times, when, etc., in order to remove the said obstructions, dug up, pulled up, tore up, broke down, prostrated and destroyed the said stakes, mounds, fences, gate-posts and other posts in the said declaration mentioned, and took and carried the said gate-posts and other posts to a small and convenient distance, and there left the same for the use of the said plaintiff, doing no unnecessary damage to the said plaintiff on those occasions, which are the same supposed trespasses in the introductory part of this plea mentioned, and whereof the said plaintiff hath above complained against him the said defendant. And this, etc. (Conclude with a verification.) Burr. App. 367, §665; 3 Chit. Pl. 1116.

III. Replication, Traverse to Plea of License.

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says that the said plaintiff, by reason of any-

thing by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, because he says that the said defendant at the said time when, etc., of his own wrong, and without the leave and license of the said plaintiff, to him the said defendant first given and granted in that behalf, committed the said several trespasses in the introductory part of the said second plea mentioned, in manner and form as the said plaintiff hath above thereof complained against him the said defendant. And this he the said plaintiff prays may be inquired of by the country, etc. Burr. App. 378, §691; 3 Chit. Pl. 1209.

IV. Complaints.

A. Complaint for Trespass to Land (a).

That on the _____ day of _____, 18—, the defendant broke and entered certain land of the plaintiff (briefly designating it), and depastured the same with cattle (to his damage _____ dollars). 1 Abb. Forms 469.

Complaint for Trespass to Land (b).

That on the _____ day of _____, 18—, at _____, the defendant forcibly broke and entered (or wrongfully entered) upon the plaintiff's land (briefly designating it), and trod down the grass, cut the timber, and otherwise injured said premises, to plaintiff's damage _____ dollars. 1 Abb. Forms 469.

B. Complaint for Trespass to Land for Cutting and Converting Timber.

That on the _____ day of _____, 18—, at _____, the defendant forcibly broke and entered (or wrongfully entered) upon the plaintiff's land (briefly designating it), and there cut down and carried away the trees and timber of this plaintiff, and converted and disposed of the same to his own use, to plaintiff's damage _____ dollars. 1 Abb. Forms 470.

C. Complaint for Trespass to Land for Removing Fence.

That on the _____ day of _____, 18—, at _____, the defendant forcibly broke and entered (or wrongfully entered) upon the plaintiff's land (briefly designating it), and took down a fence standing upon said land

of the plaintiff, and removed the same, and also then and there erected another fence on said land, and also then and there disturbed the plaintiff in the use and occupation of said land, and prevented him from enjoying the same as he otherwise would have done, to his damage _____ dollars. 1 Abb. Forms 470.

D. Complaint for Trespass to Land, Where New Fence Was Not on Line.

That on the _____ day of _____, 18—, at _____, the defendant forcibly broke and entered (or wrongfully entered) upon the plaintiff's land (briefly designating it), and took down a fence standing upon said land of the plaintiff, and removed the same, and also then and there erected another fence, and said new fence was not erected upon the true division line between the land of the defendant and of the plaintiff, nor upon the line of the old fence, but upon the land of the plaintiff, without any right or authority in the defendant so to do; and, etc. 1 Abb. Forms 470.

E. Complaint for Entering House and Injuring it and Goods.

1. That on the _____ day of _____, 18—, the defendant W. X. (at the instigation and request of the defendant Y. Z., and being by him employed thereto, and assisted therein), forcibly broke and entered (or, where the entry was without force, wrongfully entered) the dwelling house of the plaintiff, situated at _____, and broke and injured the walls and doors thereof (or other injury, according to the fact), and took and carried away a table and six chairs, the property of the plaintiff, of the value of _____ dollars, and converted and disposed of said goods to his (their) use (or cut, broke, defaced and injured [or state other injury] certain [very briefly designating the things]), the property of the plaintiff, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 471.

F. Complaint for Taking Goods (Trespass).

That on the _____ day of _____, 18—, at _____, the defendant unlawfully took from the possession of the plaintiff, and carried away (here briefly designate the goods) the property of the plaintiff, of the

value of _____ dollars (and still unlawfully detains the same from the plaintiff), to his damage _____ dollars. 1 Abb. Forms 462.

G. Complaint for Taking Goods, Possession Regained Before Suit.

I. That on the _____ day of _____, 18—, at _____, the defendant unlawfully took from the possession of the plaintiff, and carried away (here very briefly designate the goods) the property of the plaintiff, of the value of _____ dollars, and unlawfully detained the same from the plaintiff.

II. That by reason of such unlawful taking and detention of said property, the plaintiff was injured, to his damage _____ dollars. (Or was compelled to pay, and did, on the _____ day of _____, 18—, at _____, pay _____ dollars to _____ to obtain the return of the same, and also _____ dollars for recartage and reweighing, and sustained other injury, to his damage _____ dollars. 1 Abb. Forms 462.

H. Complaint for Seizing Vessel.

I. That the plaintiff is, and at the time hereinafter mentioned was, the owner of (designating the vessel), her tackle, apparel and furniture, and that he had chartered the same to one M. N. for a voyage from _____ to _____ and back, for _____ dollars per month.

II. That when said vessel was at _____, engaged in her voyage aforesaid, and in the possession of O. P., her master, appointed by the plaintiffs, the defendants, on or about the _____ day of _____, 18—, forcibly seized the same with her apparel, furniture and cargo, of the value of _____ dollars, and brought the same to _____.

III. That by means thereof the plaintiff has lost the said vessel, her apparel, equipments and furniture, and the money which he was to receive for the charter for the period of _____ months, and has been put to great cost and expense in and about asserting and maintaining his rights to said vessel, her tackle and furniture. 1 Abb. Forms 462.

I. Complaint for Malicious Injury.

That on the _____ day of _____, 18—, at _____, the defendant, wilfully and maliciously in-

tending to injure the plaintiff, cut, broke, mutilated and defaced (or state other injury) certain (very briefly designating the things), the property of the plaintiff, of the value of _____ dollars; and wholly destroyed the same (or and greatly injured them, so that the plaintiff was obliged to expend _____ dollars in repairing the same), to his damage _____ dollars. 1 Abb. Forms 465.

J. Complaint for Malicious Injury, Claiming Increased Damages Under Statute.

That on the _____ day of _____, 18—, the defendant maliciously and wantonly destroyed (or injured, or defaced, or both) six ornamental trees, of the value of _____ dollars, the property of the plaintiff, growing upon his land (in the highway), at _____ (by barking and girdling them, or otherwise state nature of injury, if they are not alleged to be destroyed); and maliciously and wantonly injured about fifty feet in length of fence, of the value of _____ dollars, the property of the plaintiff, on his land at _____, by breaking off the pickets, so that the plaintiff was obliged to expend _____ dollars in repairing it; whereby the defendant, by force of the statute for the more effectual prevention of wanton and malicious mischief, became liable to the plaintiff in the sum of (five times the actual damage). 1 Abb. Forms 465.

K. Complaint for Treble Damages for Injuring Trees.

I. That the defendant, in the month of _____, 18—, entered upon the land of the plaintiff, in the town of _____ (the same being then in the possession of the plaintiff), and did, without the leave of the plaintiff, the owner thereof, cut down (or carry off, or cut down and carry off) 300 pine trees and 100 oak trees (or otherwise describe the wood, underwood, trees or timber), of the value of _____ dollars; and girdled (or otherwise spoiled) other trees (designating number and kind), of the value of _____ dollars; whereby the plaintiff lost said trees and timber, and the land belonging to the plaintiff was greatly damaged and lessened in value, to the amount of _____ dollars; and thereby the defendant, by the force of section 1 of the statute "Of Trespass on

Lands," forfeited and became liable to pay to the plaintiff treble the amount of said damages. 1 Abb. Forms 471.

V. Answers.

A. Answer, Denial of Breaking.

That the defendant did not break and enter the premises of the plaintiff, as alleged. 2 Abb. Forms 123.

Note—This denial may be as follows, viz.: The defendant answering the complaint herein denies that at the time or times alleged in the complaint he broke and entered the premises of plaintiff, or that he did so at any other time or at all.

B. Answer, Denial of Plaintiff's Title.

That the said dwelling house (or land) was not the plaintiff's as alleged. 2 Abb. Forms 123.

Note—See note to V, A.

C. Answer, Denial of Plaintiff's Title as to Part.

I. That a part of the land described in the complaint was the soil and freehold of the defendant; such part being described as follows: (description).

II. That he did not enter on any part of the land mentioned in the complaint, except the part above described. 2 Abb. Forms 123.

Note—The affirmative allegation in paragraph I may be changed to a denial that plaintiff was the owner or in possession of such part.

D. Answer, Denial of Right to Possession.

That the plaintiff was not entitled to the possession of the goods (or lands) mentioned in the complaint. 2 Abb. Forms 123.

E. Answer, Denial of Taking.

That he did not take (and carry away) said goods, as alleged. 2 Abb. Forms 124.

F. Answer, Denial of Plaintiff's Possession.

That the plaintiff was not possessed of the goods (or lands) mentioned in the complaint. 2 Abb. Forms 122.

G. Answer, License.

I. That on the _____ day of _____, 18— (and at various times between that day and the _____ day of _____, 18—), the plaintiff gave to this defendant license to enter (etc., according to the fact).

II. That under and in pursuance of

said license of the plaintiff, the defendant did enter (etc., state act of defendant, according to the fact), which acts are the same of which the plaintiff complains.

III. And the defendant denies each and every allegation of the complaint inconsistent with the foregoing. 2 Abb. Forms 124.

H. Answer, Acts Were Not Committed on Land Alleged.

That the land on which the acts alleged as trespasses were committed, was not the land mentioned in the complaint, and alleged to be the land of the plaintiff; but was (briefly designating it), the land of the defendant (or of one M. N., whose servant the defendant was, and under whose direction he did the said acts). 2 Abb. Forms 124.

I. Answer, Goods Were Attached and Plaintiff Fraudulent Grantee.

I. That one M. N., on the _____ day of _____, 18—, was indebted to the defendant in the sum of 100 dollars, over and above all discounts, and departed out of the state, or kept concealed within it, with intent to defraud his creditors of their just demands, or to avoid being arrested by the ordinary process of law (or otherwise, according to the statute).

II. That the defendant applied (stating the proceedings to obtain an attachment against M. N. pursuant to the "Act for Relief against Absconding and Absent Debtors"); that a warrant of attachment was duly issued by the said judge to the sheriff of the county of _____, commanding him to attach all the property of the said M. N., which warrant was delivered to one O. P., a deputy sheriff of said county, to be executed in due form of law.

III. That the plaintiff, on the _____ day of _____, 18—, was possessed of the said vine lotter, by virtue of a conveyance thereof, made to him by the said M. N. with the intent to defraud the creditors of the said M. N. at their just debts (state facts showing fraudulent intent).

IV. That the deputy sheriff, by virtue of the said warrant and the defendant, in aid and by the command of the said deputy sheriff, did attach, and for the space of two days did safely keep, the said vine lotter and for the proper goods and chattels of the

said M. N., which is the same trespass complained of by the plaintiff.

V. That after the said horses were so attached, the plaintiff, pursuant to the said act, put in a claim to the said horses as his property; and the said deputy sheriff did, thereupon, summon and swear a jury to try the property of the said horses; and the said jury did, by inquisition, on the ——— day of ———, 18—, find the said horses to be the property of the plaintiff; and the said deputy sheriff did, thereupon, deliver the said horses to the said plaintiff. 2 Abb. Forms 120.

TRESPASSING ANIMALS.

I. Plea, Escape of Cattle by Defective Fences, 1220

II. Replication, 1221

A. *To Plea of Escape Through Defective Fences*, 1221

B. *To Plea of Damage Feasant, Defendant Turned Cattle in*, 1222

C. *To Plea of Damage Feasant, Defendant Fence*, 1222

III. Rejoinder, Escape by Defect of Fence, 1222

CROSS-REFERENCE:

REPLEVIN:

Plea to an Avowry of Damage Feasant, Escape of Cattle by Defective Fence;

Plea to Avowry, Damage Feasant, Tender Before Impounding;

Plea (by defendant), *Cepit in Alia Loco*;

Replication to Plea to Avowry, Denial of Defect of Fences;

Replication to Plea to Avowry, Denial of Duty To Repair Fences;

Answer, Property Distrained, Doing Damage.

I. Plea of Escape of Cattle by Defect of Fences.

(First plea, general issue; second plea as follows): And for a further plea in this behalf, as to the breaking and entering of the said close in the said first count of the said declaration mentioned, and in which, etc., and with the feet in walking, treading down, trampling upon and spoiling the grass in the said close, and with the said cattle in the said first count mentioned, eating up, and treading down, depasturing, consuming and spoiling, other the grass, growing in the said close,

and with the said cattle tearing up, eating off, and pulling up, plucking off, consuming, spoiling, biting off, topping and destroying the spring wood and underwood in the said first count mentioned, and growing and being in the said close, and breaking down, throwing down, and destroying the said hedge and fence in the said first count mentioned, growing, standing and being round and upon the said close, and as to the breaking and entering the said close in the said last count of the said declaration mentioned, and in which, etc., and with the said cattle in the said last count mentioned, treading down, depasturing, eating up, biting off, tearing off, topping, consuming, and destroying the spring wood and underwood in the said last count mentioned, growing and being in the said last mentioned close, above supposed to have been committed by the said defendant, he, the said defendant, by leave of the court here, for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action against him, because he says that the said close in the said first count of the said declaration mentioned, and in which, etc., and the said close in the said last count of the said declaration mentioned, and in which, etc., now are, and at the said several times when, etc., were one and the same close, and not other or different closes. And the said defendant further saith, that he, the said defendant, before and at the said several times, when, etc., was lawfully possessed of a certain close called ——— with the appurtenances, situate, lying and being in the town aforesaid, in the county aforesaid, and contiguous and next adjoining to the said close of the said plaintiff, in which, etc.; and that the said plaintiff and all other the tenants and occupiers of the said close, in which, etc., for the time being, from time whereof the memory of man is not to the contrary, have repaired and amended, and have used and been accustomed to repair and amend, and of right ought to have repaired and amended, and the said plaintiff before and after the said several times, when, etc., of right ought to have repaired and amended, and still of right ought to repair and amend, the hedge and fence between the said close of the said

defendant, and the said close, in which, etc., when and as often as occasion hath required, and shall or may require, to prevent cattle lawfully feeding and depasturing, or being in the said close of the said defendant, from erring or escaping thereout, through the defects and insufficiency of the said hedge and fence into the said close, in which, etc., and doing damage there. And the said defendant further saith, that the said hedge and fence before and at the said several times, when, etc., were ruinous, prostrate, fallen down, and in great decay, for want of needful and necessary making, repairing and amending thereof. By means whereof, the said cattle in the said first and last counts of the said declaration mentioned, at the said several times, when, etc., then lawfully feeding and depasturing in the said close of the said defendant, without the knowledge of the said defendant, and against his will, erred and escaped thereout into the said close, in which, etc., through the defects and insufficiency of the said hedge and fence, and eat up, trod down, depastured, consumed and spoiled a little of the grass there growing, and eat up, trod down, depastured, tore up, eat off, pulled up, plucked off, consumed, spoiled, bit off, topped and destroyed a little of the spring wood and underwood there also growing in the said first and last counts respectively mentioned, and in passing through the said hedge and fence the said cattle, at the said time, when, etc., in the said first count mentioned, necessarily and unavoidably a little broke down, threw down and destroyed the same, being the said hedge and fence in the said first count mentioned. And on the occasions aforesaid, he, the said defendant, at the said several times, when, etc., as soon as he had notice of the said cattle having escaped into, and being in the said close, in which, etc., as aforesaid, entered into the said close, in which, etc., to drive, and did then and there drive the said cattle from and out of the said close, in which, etc., into the said close of him, the said defendant, and in so doing he, the said defendant, at the said several times, when, etc., did necessarily and unavoidably with his feet in walking, tread down, trample upon and spoil a little of the grass there also growing, doing no unnecessary damage to the said plaintiff on

the occasions aforesaid, and as he lawfully might for the cause aforesaid; which are the said several supposed trespasses in the introductory part of this plea mentioned, and whereof the said plaintiff hath above complained against him, the said defendant. And this, etc. (conclude with a verification). Burr. App. 369, §667; 3 Chit. Pl. 1103.

II. Replications.

A. *Replication to Plea of Escape of Cattle Through Defective Fence.*

And the said plaintiff, as to the said plea of the said defendant, by him (secondly) above pleaded, as to the said several trespasses in the introductory part of that plea mentioned, and therein attempted to be justified, says, that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says, that the said banks, mounds and fences, between the said closes of the said defendant, and the said close or piece or parcel of land of the said plaintiff, before and at the said several times when, etc., in the said plea of the said defendant, and in the said declaration above respectively mentioned, at, etc., aforesaid, were well and sufficiently maintained and repaired to prevent cattle feeding and being in the said close of the said defendant, from escaping from and out of the same into the said close of the said plaintiff, and that the said cattle of the said defendant in the said second plea mentioned, at the said several times when, etc., were wild, ungovernable and unruly, and used to break down banks, mounds and fences in good repair, and that the said cattle of the said defendant, at the said several times when, etc., at, etc. (the venue), aforesaid, through their said wild, ungovernable, and unruly disposition, broke down the said mounds, banks, and fences, between the said close of him, the said plaintiff, and the said close of the said defendant, the same close being well and sufficiently maintained and in good repair, as aforesaid, and through the breach of the said banks, mounds and fences so made by the said cattle of the said defendant, as aforesaid, the said cattle, at the said several times when, etc., entered

into the said close of the said plaintiff, and eat up the grass and herbage of the said plaintiff then growing there, and did damage there, in manner and form as the said defendant hath above, in his said (second) plea in that behalf alleged; without this, that the said cattle, so being in the said close or piece or parcel of land of the said plaintiff as aforesaid, a little before the said several times when, etc., in the said (second) plea mentioned, and against the will of the said defendant, and without his knowledge or consent escaped from the said close, or piece or parcel of land of the said defendant, through the defects and insufficiency of the said banks, mounds, and fences, between the said close of the said defendant and the said close, or piece or parcel of land of the said plaintiff, as the said defendant, hath above in his said second plea in that behalf alleged. And this he, the said plaintiff, is ready to verify. Wherefore he prays judgment and his damages by him sustained, by reason of the committing of the said trespasses, to be adjudged to him, etc.

E. F., plaintiff's atty.

Burr. App. 379, §693; 3 Chit. Pl. 1210.

B. Replication to Plea of Distress, Damage Feasant, That Defendant Turned Cattle Into Locum in Quo.

Because he says, that just before the said time when, etc., the said cattle in the said declaration mentioned, were wrongfully turned and driven by the said defendant, from and out of the said highway, into and upon the said close, or piece or parcel of land, in which, etc., and upon that occasion, and by means and in consequence thereof, the said cattle were, at the said first time, when, etc., in the said close, in which, etc., depasturing on the grass there then growing, and doing damage there, in manner and form as the said plaintiff hath above thereof complained against him, the said defendant. And this, etc. (Conclude with a verification.) Burr. App. 383, §701; 3 Chit. Pl. 1210.

C. Replication to Plea of Distress, Damage Feasant, Defect of Fences.

Because he says, that the said close in the said second plea mentioned, be-

fore and at the said time when, etc., did lie, and still doth lie contiguous and next adjoining to a certain common and public highway of the people, in the town aforesaid, and that the said defendant and all other the tenants and occupiers of the said close in which, etc., with the appurtenances, for the time being, from time, etc. (here state the obligation to repair, and the defect in the fences, and that the plaintiff's cattle being driven along the way, thereby escaped into the close, and then proceed as follows): and remained and continued in the said close, in which, etc., until the said defendant at the same time when, etc., in the said first count mentioned, and before the said plaintiff could drive the said cattle from and out of the said close, in which, etc., of his own wrong, seized, took and drove away the said cattle, and impounded the same, and kept and detained the same so impounded for the said space of time in the said first count mentioned. And this, etc. (Conclude with a verification.) Burr. App. 383, §700; Yates' Forms 591.

III. Rejoinder, That Cattle Escaped by Defect of Fences.

Because he says, that the said cattle of the said defendant escaped out of the said common or waste, in the said (second) plea in that behalf mentioned, into the said close in which, etc., called, etc., through the defect of the said fences, in the said (second) plea in that behalf mentioned, in manner and form as the said defendant hath above in his said (second) plea in that behalf alleged, and not through any breach of the said fence, occasioned as in the said replication to the said (second) plea mentioned. And of this he, the said defendant, puts himself upon the country. Burr. App. 392, §724; 3 Chit. Pl. 1233.

TRESPASS ON THE CASE.—See CASE (THE ACTION OF TRESPASS ON THE).

TRIAL.

- I. Notice of Trial, 1223
- II. Countermand of Notice of Trial, 1223
- III. Order for Trial, 1223
- IV. Order for Trial and Assessment of Damages Contingent on Issue of Law, 1223

V. Notice of Motion To Strike Cause From Calendar for Not Serving Papers, 1223

VI. Order To Strike Cause From Calendar, 1223

VII. Order Denying Motion To Strike From Calendar, 1223

CROSS-REFERENCE:

CONTINUANCE:

Affidavit To Move for Postponement on Account of Absence or Sickness of Witness;

Affidavit To Move for Postponement on Account of Absence of Plaintiff;

Affidavit by Defendant to His Expected Absence in Consequence of Acts of Plaintiff;

Order Postponing Trial.

I. Notice of Trial.

Sir: Please to take notice, that the above entitled cause will be brought to trial, at the next circuit court appointed to be held in and for the county of (Richmond), at the court house, in the town of (Richmond), in the said county (or, if in the county of New York, "at the next circuit court, appointed to be held in and for the city and county of New York, at the City Hall in the city of New York"), on the (second Monday of May), next, (or instant), at 10 o'clock in the forenoon of the same day. Dated, this _____ day of April, 1846. Yours, etc.,

E. F., attorney for plaintiff.

To G. H., esquire.

Defendant's attorney.

Burr App. 200, §382.

II. Countermand of Notice of Trial.

Sir: I hereby countermand the notice of trial heretofore given you in this cause. (Dated, etc.) Burr. App. 217, §442.

III. Order for Trial.

(After entering the pleadings to issue, proceed as follows):

Therefore the issue (or issues), above joined, is (or are), ordered by the said supreme court, to be tried at the circuit court, appointed to be held at the (city hall in the city of New York, in and for the said city and county of New York), (or at the court house in the town of _____, in and for the county of _____, aforesaid), on the (second Monday of November) next. Burr. App. 82, §157.

IV. Order for Trial and Assessment of Damages Contingent on Issue of Law.

Therefore the issue (or issues) above joined between the parties aforesaid, to be tried by the country, is (or are) ordered by the said supreme court, etc. (as in ordinary form, III.). And it is further ordered that the jury who shall try the said issue, also inquire what damages the said plaintiff hath sustained by reason of the premises, whereof the said parties have put themselves upon the judgment of the court, if judgment shall happen to be thereupon given for the said plaintiff against the said defendant. Burr. App. 84, §160.

V. Notice of Motion To Strike Cause From Calendar for Not Serving Papers.

Sir: Please to take notice, that upon the affidavit with a copy of which you are herewith served, this court will be moved on the (fifteenth day of May) instant (the earliest practicable day in term for hearing non-enumerated motions), at the (city hall in the city of New York,) that this cause be stricken from the calendar, and that judgment be rendered in favor of the (defendant), with costs. Dated, etc. Yours, etc., G. H., atty for (def.)
To E. F., esq., Atty for (Plff.)

Burr. App. 217, §138.

VI. Order To Strike Cause From Calendar (a).

On reading and filing an admission of due service of notice of motion in this cause, and on motion of Mr. J., of counsel for the plaintiff, no one appearing to oppose, ordered, that this cause be stricken from the calendar of this court with costs, and that the plaintiff have judgment. Burr. App. 468, §951.

Order To Strike Cause From Calendar (b).

On reading and filing, etc., and on motion of M. H., of counsel for defendant, and after hearing counsel for the plaintiff, in opposition, ordered, that this cause be stricken from the calendar of this court, with costs. Burr. App. 468, §952.

VII. Order Denying Motion To Strike From Calendar.

A motion having been made by Mr. L. on the part of the defendants to strike this cause from the calendar.

and after hearing counsel in opposition, ordered, that the motion be denied (without costs.) Burr. App. 468, §553.

TROVER AND CONVERSION.

I. Declarations, 1224

- A. *For Promissory Note*, 1224
- B. *For Goods, Etc.*, 1224

II. Complaints, 1225

- A. *For Conversion*, 1225
- B. *For Conversion of Note*, 1226
- C. *For Not Returning Watch*, 1226
- D. *By Administrator*, 1226
- E. *By Assignee After Conversion*, 1226
- F. *For Conversion of Bond*, 1227
- G. *Against Fraudulent Buyer*, 1227
- H. *For Goods Received Contrary to Statute*, 1227

III. Answers, 1227

- A. *Denial of Bailment*, 1227
- B. *Denial of Conversion*, 1227
- C. *Denial of Detention*, 1227
- D. *Denial of Assignment*, 1227
- E. *Denial of Ownership*, 1228
- F. *Lien on Goods by Pledge*, 1228

CROSS-REFERENCES:

ARREST IN CIVIL CASES:

Capias in Trover.

GENERAL ISSUE AND GENERAL DENIAL:

Plea of Not Guilty in Case and Trover;

Plea of Not Guilty in Case and Trover, Several Defendants.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias for Plaintiff in Trover;
Capias Ad Satisfaciendum in Trover.

VERDICT:

Postea for Plaintiff as to One Defendant, Not Guilty in Trover.

WAREHOUSEMEN:

Complaint Against Warehouseman for Refusal To Deliver.

I. Declarations.

A. *Declaration in Case in Trover for Promissory Note.*

A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea of trespass on the case: For that whereas the said plaintiff, heretofore, to-wit, on the ——— day of ———, in the year one thousand eight hundred and ———, at (the city and in the county of New York), aforesaid, was lawfully possessed as of

his own property of a certain promissory note in writing, made and drawn by one I. J., whereby the said I. J. promised to pay to the said plaintiff, or his order, a certain sum of money, to-wit, the sum of (five hundred) dollars, at a certain time therein mentioned and now past (or otherwise, according to the description of the property), of great value, to-wit, of the value of (five hundred) dollars (and then and still being due and unpaid), and being so possessed thereof, the said plaintiff afterwards, to-wit, on the day and year above mentioned, at the place aforesaid, casually lost the said promissory note (or as the property may be), out of his possession; and the same, afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, came to the possession of the said defendant by finding; yet the said defendant well knowing the said promissory note (or as above) to be the property of the said plaintiff, and of right to belong and appertain to the said plaintiff, has not as yet delivered the said promissory note (etc.), or any part thereof, to the said plaintiff, although often requested so to do, and has hitherto wholly refused so to do; and afterwards, to-wit, on the same day and year last aforesaid, at the place aforesaid, converted and disposed of the said promissory note, etc., to his own use; to the damage of the said plaintiff of (one thousand) dollars, and thereof the said plaintiff brings suit, etc.

E. F., plaintiff's attorney.

Burr. App. 320, §588; 2 Chit. Pl. 836.

B. *Declaration in Case in Trover for Goods, Etc.*

Supreme court. Of (October) term, in the year one thousand eight hundred and (forty-five). County, ss.: A. B., plaintiff in this suit, by E. F., his attorney, complains of C. D., defendant in this suit, being in custody, etc., of a plea of trespass on the case: For that whereas the said plaintiff heretofore, to-wit, on, etc., at, etc. (the venue), was lawfully possessed, as of his own property, of certain (cattle, deeds, bonds, bill of exchange, promissory notes, bank notes, securities for money), goods and chattels, to-wit, ten horses, ten mares, etc. (stating the different description of the cattle), and a certain indenture of release, bearing date the ——— day of ———, pur-

porting to be made between I. K. of the one part and L. M. of the other part, and purporting to be a conveyance from the said I. K. to the said L. M., of certain tenements therein mentioned; and a certain other deed purporting to be a mortgage of certain tenements by the said I. K. to the said L. M., and of a certain indenture of lease bearing date, etc., and made between one N. O. of the first part and one P. Q. of the other part, by which said last mentioned indenture, he the said N. O. demised to the said P. Q. certain tenements therein mentioned, for a certain term therein also mentioned, and yet unexpired; and a certain writing obligatory, commonly called a bond, sealed with the seal of one R. S., whereby the said R. S. became bound to the said plaintiff in the penal sum of _____ dollars; and then and still being in full force; and a certain bill of exchange in writing, made and drawn by one T. U. upon, and accepted by, the said defendant, bearing date the _____ day of _____, whereby the said T. U. requested the said defendant _____ months after the date thereof to pay to the said plaintiff, or his order, the sum of _____ dollars, and then and there still being due and unpaid; and a certain promissory note in writing, bearing date the _____ day of _____, made and drawn by one W. X., whereby he the said W. X. promised to pay to the said plaintiff, or his order, a certain sum of money, to-wit, the sum of _____ dollars, at a certain time therein mentioned and now past, and then, and still being due and unpaid; and divers, to-wit (ten), notes of the president, directors and company of the bank of _____, commonly called bank notes, for the payment of the sum of (five) dollars each; and divers, to-wit (twenty), pieces of the current coin of this state called eagles (or "half eagles, dollars, half dollars," etc.), and divers, to-wit, (twenty), tables (twenty), chairs, etc. (specifying the goods and avoiding any repetition of the same articles, and describing each as generally as possible, omitting the quality, as "mahogany," "silver," etc.), of great value, to-wit, of the value of _____ dollars of lawful money of the United States of America. And being so possessed thereof, he the said plaintiff, after-

wards, to-wit, on the day and year first above mentioned, at, etc. (the venue), aforesaid, casually lost the said cattle, deeds, bonds, bills of exchange, promissory notes, bank notes, securities for money, and money, goods and chattels out of his possession; and the same afterwards, to-wit, on the day and year (first) aforesaid, at, etc. (the venue), aforesaid, came to the possession of the said defendant by finding. Yet the said defendant, well knowing the said cattle, deeds, bonds, bills of exchange, promissory notes, bank notes, securities for money, money, goods and chattels to be the property of the said plaintiff, and of right to belong and appertain to him, but contriving and fraudulently intending, craftily and subtly, to deceive and defraud the said plaintiff in this behalf, hath not as yet delivered the said cattle, deeds, bonds, bills of exchange, promissory notes, bank notes, securities for money, money, goods and chattels, or any or either of them, or any part thereof, to the said plaintiff, although often requested so to do, and hath hitherto wholly refused so to do; and afterwards, to-wit, on the day and year last aforesaid, at, etc. (the venue), aforesaid, converted and disposed of the said cattle, deeds, bonds, bills of exchange, promissory notes, bank notes, securities for money, money, goods and chattels to his own use (if a second count be inserted for the same property, the description should not be repeated, but the declaration should for "other cattle, goods and chattels, of the like description, quality, quantity and value, as the said cattle, goods and chattels in the first count mentioned"). To the damage of the said plaintiff of _____ dollars (a sum sufficient to cover the real damage), and therefore he brings his suit, etc.

E. F., attorney for plaintiff.

Burr. App. 321. 4000; 2 Chit. Pl. 835; Till. Forms 435.

II. Complaints.

A. Complaint for Conversion.

I. That before and until the time hereinafter mentioned, the plaintiff was lawfully possessed of (even briefly designate the goods, or, where he was not in possession, say was entitled to the immediate possession of, designating the goods), his property, of the value of _____ dollars.

II. That on the _____ day of

_____, 18—, at _____, the defendant then being in possession of said goods, unlawfully converted and disposed of the same to his own use, to the plaintiff's damage _____ dollars. 1 Abb. Forms 457.

B. Complaint for Conversion of a Promissory Note.

I. That on the _____ day of _____, 18—, at _____, the plaintiff made his promissory note, of which the following is a copy: (or his promissory note dated on that day, whereby he promised to pay _____ dollars to the order of M. N., _____ months from date), which note was made and delivered by the plaintiff to M. N., without consideration, and for his accommodation, and with the special purpose and agreement between the plaintiff and said M. N. that it should be offered by said M. N. to the O. P. bank for discount, and the proceeds thereof, if any, should be applied by said M. N. to the payment of a certain other note theretofore made by the plaintiff for the accommodation of said M. N., dated (etc., describing note), and that otherwise it should be returned to this plaintiff.

II. That said first mentioned note was thereafter offered by said M. N. to the O. P. bank for discount, who refused to discount the same, and returned it to the said M. N., whereupon the plaintiff became entitled to the possession thereof (or state other circumstances showing failure in the intended appropriation of the note, as the fact was).

III. That thereafter, but before the maturity of the note, the defendant W. X., without the knowledge or consent of the plaintiff or of M. N., unlawfully took said note from the possession of M. N., and delivered it to the defendant Y. Z.; and that the defendants thereupon wrongfully converted and disposed of it to their own use, by transferring it to a purchaser, in good faith for value, before its maturity (or converted and disposed of it to their own use, by transferring it to a purchaser, in good faith for value, before its maturity (or converted and disposed of it to their own use, whereby the plaintiff was compelled to pay), to the damage of the plaintiff _____ dollars. 1 Abb. Forms 459.

C. Complaint Against Watchmaker for Not Returning Watch.

(Allege delivery and undertaking to repair and redeliver.)

III. That after a reasonable time for the repair of said watch, and on or about the _____ day of _____, the plaintiff requested the defendant to redeliver the same; but he refused so to do, to the plaintiff's damage _____ dollars. 1 Abb. Forms 403.

D. Complaint for Conversion by Administrator.

I. That before and until the time hereinafter, one M. N. was lawfully possessed of (very briefly designate the goods), (or was entitled to the immediate possession of, designating the goods, etc.), the property of the said M. N., of the value of _____ dollars.

II. That on the _____ day of _____, 18—, the same came into the possession of the defendant, who, though on the _____ day of _____, 18—, requested so to do by said M. N. (or by the plaintiff), would not deliver the same to him, but then and ever since wrongfully detained the same.

III. That thereafter and before this action (or on the _____ day of _____, 18—), said M. N. died intestate, and on the _____ day of _____, 18—, letters of administration upon the estate of said M. N., deceased, were duly issued and granted to the plaintiff by the surrogate of the county of _____, of this state, appointing the plaintiff administrator of all the goods, chattels and credits which were of said deceased, and that the plaintiff thereupon duly qualified as such administrator, and entered upon the discharge of the duties of his said office. 1 Abb. Forms 459.

E. Complaint for Conversion by Assignee After Conversion.

I. That before and until the time hereinafter mentioned, one M. N. was lawfully possessed of (very briefly designate the goods), (or was entitled to the immediate possession of, designating the goods, etc.), the property of the said M. N., of the value of _____ dollars.

II. That on the _____ day of _____, 18—, at _____, the defendant being then in possession of said goods, unlawfully converted and disposed of the same to his own use,

to the damage of said M. N. ——— dollars.

III. That on the ——— day of ———, 18—, said M. N. duly assigned to the plaintiff his claim against the defendant for damages for said conversion. 1 Abb. Forms 458.

F. Complaint for Conversion of a Bond by Assignee After Conversion.

I. That in or about the month of ———, 18—, at ———, one M. N. being the owner of a bond, a copy of which is annexed as a part of this complaint, by his agent, at the request of the defendant, deposited it with the defendant for the purpose of enabling him to ascertain the value thereof, upon an agreement between him and said M. N., that on ascertaining the value, he would either buy the same from the said M. N., and pay him the value thereof, or would return it to him upon demand.

II. That after a reasonable time for ascertaining the value thereof, and on the ——— day of ———, 18—, at ———, said M. N. duly demanded from the defendant the said bond, or the value thereof; but the defendant, though admitting that it was in his custody or under his control, refused either to return it or to pay its value to the said M. N., to his damage ——— dollars.

III. That on the ——— day of ———, 18—, at ———, the said M. N. duly assigned to the plaintiff the said bond, together with all his right of action against the defendant and all other persons, to recover its value, or its possession, or said damages.

IV. That the value of said bond, at the time of the commencement of this action, was ——— dollars. 1 Abb. Forms 461.

G. Complaint by Seller Against Fraudulent Buyer of Goods for Damages for Conversion.

I. That on the ——— day of ———, 18—, at ———, the defendant, with intent to deceive and defraud the plaintiff by inducing the plaintiff to sell goods for him, falsely and fraudulently represented to the plaintiff that he was solvent, and worth ——— dollars over all his liabilities (or otherwise, as the representations were).

II. That the plaintiff, relying on said representations, was thereby induced to sell (and deliver) to him (briefly designate the goods), of the value of ——— dollars.

III. That the said representations were false in that (stating what respect), and were then known by the defendant to be so.

IV. That the defendant, having so obtained from the plaintiff the possession of said goods, unlawfully converted and disposed of them to his own use, to the damage of the plaintiff ——— dollars. 1 Abb. Forms 459.

H. Allegation in Complaint for Goods Received Contrary to Statute.

That on or about the ——— day of ———, 18—, the defendant received (ten shares of stock of the ——— company), of the value of ——— dollars, the property of the plaintiff, as (security for a usurious loan made by the defendant to the plaintiff, of the sum of ——— dollars, for ——— months, on interest at the rate of ——— per cent. per annum), and that said (stock) was converted by the defendant contrary to the provisions of the statute ("Of the Interest on Money"), to the plaintiff's damage ——— dollars. 1 Abb. Forms 467.

III. Answers.

A. Answer, Denial of Bailment.

That the plaintiff never received the plaintiff's goods mentioned in the complaint, as alleged. 2 Abb. Forms 113.

B. Answer, Denial of Conversion.

That the defendant did not convert said goods to his own use (nor refuse to deliver them to the plaintiff). 2 Abb. Forms 119.

C. Answer, Denial of Detention.

That the defendant did not, nor does he, detain the said goods (or deeds), or any or either of them, as alleged. 2 Abb. Forms 119.

D. Answer, Denial of Assignment of Cause of Action.

Denies that (he has any knowledge or information sufficient to form a belief that) the said M. N. and O. P. ever assigned to the plaintiff their right, title and interest in and to the (truck, and the contents thereof mentioned in the complaint, or in and to any claims, demands or causes of action arising to said M. N. and O. P., or either of them, for the alleged de-

tention or loss of said (trunk and contents). 2 Abb. Forms 120.

E. Answer, Denial of Plaintiff's Ownership.

That at the time of the alleged conversion the plaintiff was not the owner, nor entitled to the immediate possession, of the goods mentioned in the complaint. 2 Abb. Forms 119; Brevoort v. Brevoort, 8 Jones & S. (N. Y.) 211; Davis v. Hoppock, 6 Duer. (N. Y.) 254.

F. Answer, That Defendant Has Lien on Goods by Pledge.

That it was agreed between the plaintiff and the defendant, in consideration of the defendant's advancing to the plaintiff ——— dollars, that the defendant should have a lien on the said goods and deeds until repayment thereof, with interest; that the defendant advanced to the plaintiff ——— dollars, but the plaintiff has not repaid the same, with interest. Wherefore the defendant detained (and still detains) the said goods and deeds. 2 Abb. Forms 119.

TRUSTS AND TRUSTEES.

I. Bills, 1228

- A. *For Execution of Trust*, 1228
- B. *Payment of Legacy and Accounting*, 1229
- C. *Praying Appointment of New Trustee*, 1230
- D. *Praying for Discharge of Trustee*, 1230

II. Answer, Statement, Acquiescence of Cestui Que Trust, 1231

III. Decrees, 1231

- A. *For Scheme Regulating Charity*, 1231
- B. *Order Adopting Scheme*, 1231
- C. *Extract From Scheme Constituting Charity*, 1232
- D. *For Account and Inquiry as to Trust Funds*, 1232
- E. *To Appoint New Trustees*, 1232
- F. *For Costs in Suit To Obtain Instructions*, 1233

IV. Answers (Code), 1233

- A. *By Trustee, Declines To Act*, 1233
- B. *Denial of Having Acted*, 1233
- C. *Denial of Trusteeship*, 1234

CROSS-REFERENCES:

ACCOUNT AND ACCOUNTING:

Bill by Administrator Against Trustee.

ANNUITIES:

Bill for Dower and Annuity Against Executors, Devisees in Trust.

BANKRUPTCY:

Appointment of Trustee by Creditors; Appointment of Trustee by Referee.

CREDITORS' SUITS:

Bill in Behalf of Themselves and All Other Creditors, etc.; Complaint Against Debtor and His Trustee, To Reach Trust Fund or Its Income.

INSURANCE:

Complaint on Life Policy by Assignee in Trust for Wife.

PRAYER FOR RELIEF:

Prayer of Bill To Carry Trusts Into Execution and To Ascertain Rights of Parties.

I. Bills.

A. *Bill for Payment of Legacies and Execution of Trust.*

Humbly complaining, sheweth unto your honors your orator A. B., of, etc., that W. S., late of, etc., duly made and published his last will and testament in writing, bearing date on or about ———, and thereby amongst other bequests, gave to his nephews and nieces, the children of his late sister, M. A., the sum of \$——— each, to be paid to them as they should respectively attain the age of twenty-one years, and appointed E. T. F., of, etc., the defendant hereinafter named, the sole executor of his said will, as in and by the said will, or the probate thereof, when produced will appear. And your orator further sheweth that the said E. T. F., soon after the death of the said testator, duly proved the said will in the appropriate court, and hath since possessed himself of the personal estate and effects of the said testator to an amount much more than sufficient for the payment of his just debts, funeral, and testamentary expenses and legacies. And your orator further sheweth that after the death of said testator, your orator intermarried with A. A., who was the niece of the said testator, and one of the children of the said M. A., in the said will named, and by virtue of said intermarriage your orator, in right of his said wife, became entitled to demand and receive the aforesaid bequest of \$———. And your orator further sheweth that your orator's said wife lived to attain her age of twenty-

one years, and that she hath lately departed this life, and that neither your orator nor his said wife received any part of the said legacy. And your orator further sheweth, that, having obtained letters of administration to his said wife, he has repeatedly applied to the said E. T. F. for payment of the said legacy and interest thereon from the time of his said late wife's attaining her age of twenty-one years, and your orator hoped that such, his reasonable requests, would have been complied with, as in justice and equity they ought to have done. But now so it is, etc. To the end, therefore, that, etc.

And that an account may be taken of what is due and owing to your orator for the principal and interest of the said legacy, and that the said defendant may be decreed to pay the same to your orator, and if the said defendant shall not admit assets of the said testator sufficient to answer the same, then that an account may be taken of the estate and effects of the said testator, which have been possessed or received by the said defendant, or by any other person by his order or to his use, and that the same may be applied in due course of administration. (And for further relief.) May it please your honors, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2038.

B. Bill for Payment of Legacy and Accounting.

Humbly complaining, show unto your honors the plaintiffs E. H., J. H., T. H., and M. A. H., infants under the age of twenty-one years, by J. E., of, etc., their next friend, that E. H., the elder, late of, etc., but now deceased, duly made and published his last will and testament in writing, bearing date, etc., whereby he directed that W. T., of, etc., and E. B., of, etc., the defendants hereinafter named, and C. G. of, etc., who were the trustees and executors in his said will named, should, out of the moneys which should come to their hands in manner therein mentioned, lay out and invest in or upon government or real securities at interest the sum of \$—— upon trust, etc. (The trustees were to pay the dividends to E. H., the testator's wife, during her life or until her second marriage, and after her decease or second marriage, the whole of the div-

idends to be applied by the trustees for the maintenance and education of testator's grandchildren, the plaintiffs, to whom the principal was to be transferred, to the grandsons at twenty-one, and to the granddaughters at twenty-one or marriage), as in and by, etc. And the plaintiffs further show that the said testator departed this life in or about the month of ——, without having in any manner revoked or altered the said will, except by a codicil bearing date, etc., which did not relate to or affect the said trusts of the said sum of \$——. And the plaintiffs further show unto your honors that W. T. and E. B., and the said C. G. duly proved the said testator's will, and acted in the trusts thereof, and out of the moneys which came to their hands from the estate and effects of the said testator, in or about, etc., appropriated the sum of £——, in satisfaction of the aforesaid legacy in the purchase of the sum of £—— 3 per cent. consolidated bank annuities, and the said sum of stock is now standing in their names in the books of the governor and company of the Bank of England. And the plaintiffs further show that the said C. G. has departed this life, and that the said E. H., on or about, etc., intermarried with and is now the wife of the said J. E., whereupon the interest of the said E. H., in the said sum of £—— 3 per cent. consolidated bank annuities wholly ceased. And the plaintiffs further show that the said defendants paid to the said J. E. and E., his wife, the year's dividends which became due on the said sum of stock on the —— day of ——, as well for the interest of the said E. H. in the said stock as for the maintenance and education of the plaintiffs up to that time; but the said defendants have retained in their hands the subsequent dividends which have accrued due on the said stock, and have made no payments or allowances thereout for the maintenance or education of the plaintiffs. And the plaintiffs further show that some proper persons or persons ought to be appointed as the guardians or guardians of the plaintiffs, with suitable allowances for their maintenance and education for the time past since the said —— day of ——, and for the time to come, and that the said sum of stock ought

to be secured in this honorable court. To the end therefore, etc.

And that the said defendants may answer the premises, and that some proper person or persons may be appointed the guardian or guardians of the plaintiffs, with suitable allowances for their maintenance and education for the time past since the said _____ day of _____, and for the time to come, and that the said defendants may account for the dividends of the said trust stock which have accrued due since the said _____ day of _____, and may thereout pay the allowances which shall be made for the maintenance and education of the plaintiffs since the said _____ day of _____, and may pay the residue thereof into this honorable court for the benefit of the plaintiffs; and may also transfer the said sum of £_____ 3 per cent. consolidated bank annuities into the name of the accountant-general of this honorable court, to be there secured for the benefit of the plaintiffs, and such other persons as may eventually be interested therein. (And for further relief.) May it please, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2039.

C. Bill Praying for Appointment of New Trustee.

Humbly complaining, show unto your honors, your orators and oratrixes, J. M. P., of, etc., and E., his wife, and A. P. and C. P., infants under the age of twenty-one years, by the said J. M. P., their father and next friend, and S. N. M., of, etc. (the other trustees under the settlement), that by certain indentures of lease and release bearing date respectively, etc., the release being of three parts, and made or expressed to be made between, etc. (stating the indenture of release). But the said indenture of release contained no power or authority to appoint a new trustee in the place or stead of either of the said trustees therein named, who should decline to act in the said trusts, or be desirous to be removed therefrom, as in and by the said indentures, etc. And your orators and oratrixes further show unto your honors, that the said intended marriage was soon afterwards had and solemnized between your orator J. M. P., and your oratrix E. P.; and that your orator and oratrix,

A. P. and C. P., are the only children of the said marriage. And your orators and oratrixes further show, that the said defendant, I. P. L., declines to act in the trusts of the said indenture, and is desirous to be discharged therefrom, but by reason that no power is reserved in the said indenture for the appointment of a new trustee, your orators and oratrixes are advised that he cannot be discharged from such trusts, nor any new trustee appointed without the aid of this honorable court, to the end, therefore, that the said defendant, I. P. L., may upon his corporal oath, etc.

And that the said defendants may answer the premises, and that it may be referred to one of the masters of this honorable court to appoint a new trustee under the said marriage settlement, in the place and stead of the said defendant; and that the said defendant may be directed to join in such instrument or instruments as may be necessary for conveying or releasing the said trust premises to your orator S. N. M., and such new trustee upon the trust of the said settlement; and that thereupon the said defendant may be discharged from the trusts of the said indenture. (And for further relief.) May it please, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2062.

D. Bill Praying for Discharge as Trustee.

To the honorable the justices of the supreme judicial court:

Respectfully show the petition of J. I. B., of B., in the county of S., esquire, that by force of an indenture recorded with Suffolk deeds in Lib. 627, fol. 291, he was substituted in the place and stead of E. A. B., esquire, to be trustee under two certain indentures made by M. A. T., of said B., single woman, and recorded respectively with Suffolk deeds in Lib. 574, fol. 229, and Lib. 618, fol. 186; that as such trustee he holds certain real estate in said B., and also certain personal property upon the trusts set forth in said two original indentures, all which said indentures are herewith submitted to the court, that after making said two original indentures, said M. A. T. intermarried with and is now the wife of C. M. de los S. B., secretary of legation to her catholic majesty, the queen of Spain, and now resident of W., in

the district of C.; that there is no person, to the knowledge of the petitioner, interested in said trust property and estate, except said C. M. de los S. B. and M. A. his wife; that, in the event of the death of said M. A. without children, and without having exercised the power of appointment given her by said indenture, her collateral relations, who would then be her heirs-at-law, may become interested therein; that she has now living a mother and three sisters, viz., M. M. B., wife of E. A. B. aforesaid, now residing in said B.; A. T., single woman, a member of the family of said E. A. B., and also residing in said B.; E. F. R., wife of H. G. R., junior, of B., in the state of M.; and E. T. R., being now comorant at said B., in the family of said E. A. B.; and M. S. P., a minor, wife of R. T. P., esquire, both now absent in Europe, said R. T. P. having been late a resident in said B.; that said M. A. has requested the petitioner to transfer said trust property and estates to a new trustee, and he is desirous so to do.

Wherefore the petitioner prays the honorable court that due notice may be ordered to all persons, and that he may be discharged from said trust, and that such order and decree may be passed as to the appointment of a new trustee, either with or without bonds for the faithful performance of said trust, and as to the conveyance and transfer of said trust property and estates as to the court may seem just and equitable, to the end that the petitioner, complying with and fulfilling said order and decree on his part may be as fully and effectually released and discharged from all liability in the premises as if he had never assumed said trust. And as in duty bound will ever pray. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2062; *Bowditch v. Banuelos*, 1 Gray (Mass.) 220.

II. Statement in Answer of Trustee, Acquiescence of Cestui Que Trust.

I consented to sell the said ——— bank annuities, and did sell the same, and paid and applied the produce thereof, at the special instance and request of the plaintiff (as well as of the defendant), in, etc.

(Set forth the correspondence, docu-

ments, or admissions tending to establish this allegation.)

I claim to have the interest in the said ——— applied in or towards satisfying any sum of money which I may be called upon or be bound to pay in respect of the said sale and application of the said trust fund. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2144.

III. Decrees.

A. Decree for Scheme for Regulating Charity.

1. Let a scheme for the future regulation and management (administration) of the charity in the pleadings mentioned, and the application of the present and future income thereof be settled by, etc.; 2. And let new trustees be appointed for the management (administration) of the said charity, and of the estates (funds) and property thereof; and let provision be made in the said scheme for the future appointment of trustees; and let the following inquiries and account be taken and made, that is to say: 3. An inquiry of what the property of the said charity consists, and where the same is situate, and what is the income and annual value thereof, and how, and by whom, and under and upon what terms, rents, and conditions the same and every part thereof is let, and is now held; 4. An account of the rents and profits of the charity estates received by the defendants or by any other person, etc.; and of the application thereof from the ——— day of ———, the date of the filing the information in this cause. Adjourn, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2239; *Attorney General v. Hæbester*, 1 Selon Dec. (Eng. ed. 1862) 342, 343.

B. Order Adopting New Scheme Filed.

Let the scheme dated, etc., which has been approved (and signed) by the, etc., and filed in the, etc., of this court, be the scheme for the (future) regulation and management (administration) of the charity in, etc., mentioned, and the estates (funds or property), and for the application of the income (collection of the objects thereof) required, and let the several persons in the said scheme named be appointed trustees of the said charity). Directions to tax and pay costs and expenses. 3 Dan. Ch. Pl. & Pr. (Per-

kins' ed.) 2220; 1 Seton Dec. (Eng. ed. 1862) 347.

C. Extract From Scheme Constituting Charity as to Appointment of Trustees.

1. The full number of the trustees of the charity shall be 12, and A. B., of, etc., and, etc., shall be the first trustees; 2. It shall be lawful for any trustee to resign his office by a notice in writing, given to the clerk of the charity, to be appointed as hereinafter mentioned, and independently of death or resignation, the office of any (trustee who shall become incapable to act, or shall wholly cease to act, for the period of two years, or shall become bankrupt, or take the benefit of any act for the relief of insolvent debtors, or, except as to any of the above-named persons now residing at a greater distance, shall cease to reside within the county of W., shall ipso facto become vacant; 3. Whenever the number of trustees shall be reduced to or below five, the surviving or continuing trustee shall apply in chambers to the judge of the court of chancery, to whose court these causes may be attached for the appointment of new trustees, and so many new trustees shall be appointed by such judge as may be necessary to make up the original number of twelve trustees, and directions shall thereupon be given for vesting the property of the charity, other than government stock (in the whole body of trustees as newly constituted by virtue of such appointment). 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2221; 1 Seton Dec. (Eng. ed. 1862) 348.

D. Decree for Account and Inquiry as to Trust Funds Under Two Settlements.

It is ordered that "the decree, dated, etc., be varied; and it is further ordered and decreed that it be referred to, etc., to take the following account and make the following inquiry, that is to say: 1. An account of the trust funds and property come to the hands of the plaintiff as trustee under each of the indentures of settlement, dated respectively, etc., in the pleadings mentioned, either solely or jointly with his co-trustee or co-trustees, under the said indentures respectively; 2. An inquiry, whether the said trust funds and property are now in the possession of the

trustees respectively, and whether in the same state of investment as at the time when such trust funds and property came into the hands of the said trustees, or in any other and what state of investment; but such account and inquiry respectively are not to extend to the income of the said trust funds and property." So much of the decree as directs the taxation and payment and apportionment of costs to be reversed; reserve the consideration of the costs of suit, and of the account and inquiry hereby directed; costs of appeal to be costs in the cause. Adjourn, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2299; 2 Seton Dec. (Eng. ed. 1862) 751.

E. Decree To Appoint New Trustees.

The defendant B., by his answer (or counsel), declining to act in the trusts of the testator's will (or vested in him by the articles of settlement, or indenture), dated the ——— day of ———, in the pleadings mentioned, and desiring to be discharged therefrom (this court doth hereby) appoint D. and E. (or let two or more proper persons be appointed) trustees of the said will (or articles, etc.), in his place (jointly with C., the continuing trustee); and let the defendant B. (and C.) convey, assign and transfer) the trust estate (funds, property, and securities) vested in him (or them) by the said will (or articles, etc.), and the £——— standing in the name of, etc., in the books of the bank of ———, as in the pleadings mentioned or the residue thereof after payment of the costs, hereinafter mentioned, so as to vest the same in the said D. and E. (or the trustees so to be appointed, if so, jointly with the said C.), upon the trusts mentioned in (or declared by) the said will (or articles, etc.), or such of them as are now subsisting or capable of taking effect (or subject to the trusts mentioned in the said will dated, etc., or articles, etc.), concerning the same, etc. (If stock, add, and they are to declare the trusts thereof accordingly); and let such conveyance (or assignment, or declaration) be settled by the judge (or court, or master). (If no infants or married women, in case the parties differ; if deeds in defendants' hands, and let the defendant B. deliver to such new (and continuing) trustees upon oath,

all deeds and writings in his custody or power, relating to the said trust estates, etc.; if trustee to have his costs, tax the defendant B. his costs of this cause (suit), as between solicitor and client; and let defendant B. (and the said C.) be at liberty to raise and retain the same out of the said trust estate, or funds, etc.) Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2303; 2 Seton Dec. (Eng. ed. 1862) 778.

F. Decree for Costs in Suit by Trustee To Obtain Instructions, as Between Solicitor and Client, Charging It on Different Funds.

"It is further ordered, adjudged, and decreed, that all the costs in this suit, including counsel fees, shall be paid out of the property in controversy in the cause, and as the different parties having different interests therein have waived all right of appeal from this decree, and have seen and examined the charges for counsel fees and services made and presented by the respective counsel, and made no objection thereto, and have agreed as to the mode of apportioning the costs and charges upon the property in controversy, it is further ordered, by the consent of the parties, there be paid to S. E. S., esquire, as solicitor and counsel for the plaintiff, for costs and counsel fees, nine hundred sixty dollars twenty-two cents; to C. C., esquire, as solicitor and counsel for W. C. J., for costs and counsel fees, one thousand and seventy-nine dollars thirty-two cents; to R. S. S., esquire, as guardian ad litem of J. Q. A. J., for costs, counsel fees, and services for other defendants, nine hundred and twenty-nine dollars thirty-two cents; to F. E. P., esquire, as guardian ad litem and counsel for M. A. J. and L. C. J., for costs and counsel fees, three hundred and four dollars thirty-two cents; to R. H. D., junior, esquire, as counsel for M. C. A., for costs and counsel fees, two hundred and eleven dollars and eighty-two cents; to C. W. T., esquire, as solicitor for M. C. A., one hundred dollars; amounting in the whole to the sum of three thousand five hundred and eighty-five dollars; and that the said plaintiff, when he pays the said costs, shall pay out of the following funds their respective shares of said costs, as follows, to-wit, from the capital of the

trust funds held by him under the eighth clause of said will, seventeen hundred and twenty-three dollars ninety cents; from the interest of the same, two hundred and forty-eight dollars twenty-five cents; from the interest of said twenty thousand dollars bequeathed by the tenth clause of said will, one thousand and one dollars sixty-five cents; from the proceeds of real estate, being stocks in Massachusetts, held by plaintiff as trustee under the thirteenth clause of said will, four hundred nineteen dollars seventy cents; from the income of the same sixty dollars forty-six cents; from the annuity payable to said M. C. A., one hundred and thirty-one dollars five cents.

By the court.

_____, clerk.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2302; Adams v. Johnson, C. C. (U. S.) Mass. Oct. 7, 1861.

In Equity.

IV. Answers (Code).

A. Answer by Trustee That He Declines To Act.

Admits that he declines to act in the trusts of said settlement, and is desirous of being discharged therefrom. Defendant further says, that he is ready to convey and release said trust premises to the plaintiff, and to such new trustee as may be appointed by the court, on being indemnified in that behalf, and paid all his costs and expenses. 2 Abb. Forms 166.

B. Answer by Trustee With Denial of Having Acted.

I. The defendant, admitting that said (testator) left the will described in the complaint, says that he absolutely refused to accept or intermeddle with said trust, or in any way concern himself therein.

II. He further says that he never entered on said trust estate or received any of the rents and profits thereof.

III. That M. N., who has received said rents and profits, had no power or authority from this defendant to do so, and never accounted to this defendant therefor.

IV. That this defendant is desirous and ready to be discharged from said trust, and to do any act the court shall direct for that purpose, he being indemnified and having his costs. 3 Abb. Forms 166.

C. *Answer, Denial of Trusteeship.*

That since the expiration of the said first year (or, after the ——— day of ———, 18——), he has not been a trustee of said company, and has not in any way managed the affairs or concerns of said company as such. 2 Abb. Forms 157.

UNITED STATES COURTS.**CROSS-REFERENCES:****COSTS:**

Amplavit of Disbursements, United States Supreme Court;
Order Allowing Costs, United States Supreme Court.

REMOVAL OF CAUSES:

Notice of Motion for Removal of Cause;
Order To Show Cause on Motion To Remove Cause;
Petition for Removal Into United States District Court;
Security Offered by Petitioner on Removal;
Order Removing Cause to United States District Court.

USE AND OCCUPATION.**I. Declarations, 1234**

- A. *For Board and Lodging, 1234*
- B. *For Use and Occupation of Lodging, 1235*
- C. *For Use and Occupation of Dwelling, 1235*
- D. *For Hire of Horses and Carriages, 1236*
- E. *For Necessities, 1236*

II. Complaints, 1237

- A. *Use and Occupation, General Form, 1237*
- B. *For Fixed Rent, 1237*
- C. *For Lodgings, 1237*
- D. *For Board and Lodgings, 1237*
- E. *For Pasturing, 1237*
- F. *For Hire of Furniture, With Damages, 1237*
- G. *Against Hirer of Furniture for Negligence, 1237*
- H. *For Hire of Piano, Damage for Not Returning, 1238*
- I. *For Hire of Horses and Carriages, 1238*
- J. *For Deceit on a Different Journey, 1238*

CROSS-REFERENCES:**LANDLORD AND TENANT:**

Declaration for Rent on Demise, and Use and Occupation.
Denial of Use and Occupation.

REFERENCES:

Order of Reference To Take Testimony; as to Value of Use and Occupation, in Action for Specific Performance.

I. Declarations.**A. Declaration, Common Counts for Board and Lodging.**

And whereas also the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiff in the further sum of ——— dollars, of like lawful money as aforesaid,* for certain rooms, apartments and furniture of the said plaintiff, before that time used and enjoyed by the said defendant, and at his special instance and request, and by the permission of the said plaintiff; and for meat, drink, fire, candles, attendance, and other necessities by the said plaintiff before that time found and provided for the said defendant, and at his like special instance and request; and being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money, when he the said defendant should be thereunto afterwards requested.

And whereas also, afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, in consideration that the said plaintiff at the like special instance and request of the said defendant,* had before that time permitted the said defendant to use and enjoy, and that he the said defendant had accordingly used and enjoyed certain other rooms, apartments and furniture of the said plaintiff; and also, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time found and provided other meat, drink, fire, candles, attendance and necessities for the said defendant, he the said defendant undertook, and then and there faithfully promised the said plaintiff to pay

to him so much money, etc. Burr. App. 253, §514.

B. Declaration, Common Counts for Use and Occupation of Lodging.

For the use and occupation of certain rooms and apartments in and parcel of a certain dwelling house of the said plaintiff, with the appurtenances by the said defendant, for a long space of time before then elapsed, had, held, used, occupied, possessed and enjoyed, by the sufferance and permission of the said plaintiff, and at the special instance and request of the said defendant (together with certain household furniture, linen and other necessities, goods and chattels of the said plaintiff therein being); and being so indebted, etc. (as in I, C, to the second *, and then as follows): certain other rooms and apartments in and parcel of a certain other dwelling house of the said plaintiff, with the appurtenances, and that the said defendant, according to that permission, had held, used, occupied, possessed and enjoyed the same (together with certain other household furniture of the said plaintiff, therein being), for a long time before then elapsed; the said defendant then and there undertook, etc. Burr. App. 252, §513.

C. Declaration, Common Counts for Use and Occupation of Dwelling.

For that whereas the said defendant on the _____ day of _____, in the year of our Lord one thousand _____, at _____, to-wit, at the city and in the county of _____ aforesaid, was indebted to the said plaintiff in the sum of (eight hundred) dollars, lawful money of the United States of America, for the use and occupation of a certain dwelling house, store, shop, rooms, buildings, lands and premises, with the appurtenances (or of a certain messuage, buildings, farm, lands and premises, with the appurtenances, or as the case may be) by the said defendant for a long time before then elapsed, had, held, used, occupied, possessed and enjoyed by the sufferance and permission of the said plaintiff, and at the special instance and request of the said defendant; and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to-wit, on the same

day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to-wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant,* permitted the said defendant to have, hold, use, occupy, possess and enjoy,* a certain other dwelling house, store, shop, rooms, buildings, lands and premises (or as the case may be), with the appurtenances, and that the said defendant, according to that permission, had, held, used, occupied, possessed and enjoyed the same for a long time before then elapsed; the said defendant then and there undertook and faithfully promised the said plaintiff well and truly to pay to the said plaintiff so much money as the said plaintiff reasonably deserved to have of the said defendant for the same, when the said defendant should be thereunto afterwards requested. And the said plaintiff avers that the said plaintiff therefor reasonably deserved to have of the said defendant for the same the further sum of (eight hundred) dollars, of like lawful money as aforesaid, to-wit, at the place aforesaid: Whereof the said defendant afterwards, to-wit, on the same day and year, and at the place aforesaid, had notice.

And whereas also the said defendant afterwards, to-wit, on the same day and year, and at the place aforesaid, was indebted to the said plaintiff in the further sum of (eight hundred) dollars, of like lawful money as aforesaid, for divers goods, wares and merchandises by the said plaintiff before that time sold and delivered to the said defendant, and at the like special instance and request of the said defendant: And in the further sum of (eight hundred) dollars, of like lawful money as aforesaid, for the work and labor, care and diligence of the said plaintiff, by the said plaintiff, before that time done, performed and bestowed in and about the business of the said defendant, and for the said

defendant, and at the like request of the said defendant: And in the further sum of (eight hundred) dollars, of like lawful money as aforesaid, for so much money before that time lent and advanced by the said plaintiff to the said defendant, and at the like request of the said defendant: And for other money by the said plaintiff, before that time paid, laid out and expended for the said defendant, and at the like request of the said defendant: And for other money by the said defendant, before that time had and received to and for the use of the said plaintiff: And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to-wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear, and indebted to the said plaintiff in the further sum of (eight hundred) dollars, of like lawful money as aforesaid: And being so found in arrear, and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.) hath not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plain-

tiff, the said defendant hath hitherto altogether refused, and still doth refuse, to the damage of the said plaintiff of (eight hundred) dollars, and therefore the said plaintiff brings suit, etc.

E. F., plaintiff's attorney.

Burr. App. 251, §512; 2 Chit. Pl. 40.

D. *Declaration, Common Count for Hire of Horses and Carriages, Etc.*

For the use and hire of divers horses, mares and geldings, bridles, saddles and harness, and divers carts, wagons, chaises and other carriages (or [of certain lighters and other vessels], or of certain plate, linen, china, furniture, goods and chattels); by the said plaintiff, before that time, let to hire, and delivered to the said defendant, and at his special instance and request, and by the said defendant, under and by virtue of that letting to hire, before then had and used. And being so indebted, etc. (as in last form to the *, and then as follows): had before that time let to hire and delivered to him the said defendant, divers other horses, mares and geldings, bridles, saddles and harness, and divers other carts, wagons, chaises and other carriages (or certain other lighters and other vessels, or certain plate, linen, china, furniture, goods and chattels); and that the said defendant had, under and by virtue of the said last mentioned letting to hire, before then had and used the same, he the said defendant undertook, etc. (as in last form to the end). Burr. App. 250, §510; Till. Forms 287.

E. *Declaration, Common Counts for Necessities Provided for Defendant.*

And whereas also, etc. (see I, C), for meat, drink, washing, lodging and other necessities by the said plaintiff, before that time found and provided for the said defendant, and at his special instance and request; and being so indebted, etc. (as in I, A, to the second *, and then as follows): had, before that time found and provided other meat, drink, washing, lodging and necessities for the said defendant, he the said defendant undertook, and then and there faithfully promised the said plaintiff to pay him so much money, etc. (as in the ordinary quantum meruit count). Burr. App. 253, §515.

II. Complaints.**A. Complaint in Action for Use and Occupation, General Form.**

I. That the defendant occupied the house and lot of the plaintiff, No. _____ street, in _____ (or otherwise describe the land), by permission of the plaintiff, as his tenant, from the _____ day of _____, 18—, until the _____ day of _____, 18—.

II. That the use of the said premises for that period was reasonably worth _____ dollars.

III. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 195.

B. Complaint for Fixed Rent.

I. That on the _____ day of _____, 18—, at _____, the defendant hired from the plaintiff the (first floor of the warehouse), No. _____ street, in _____, at the (yearly) rent of _____ dollars, payable (on the first day of every month).

II. That the defendant occupied the said premises from the _____ day of _____, 18—, to the _____ day of _____, 18—.

(Or where the defendant had abandoned possession: II. That the defendant took possession of and occupied the said premises under said agreement.)

III. That the sum of _____ dollars, being the part of said rent due on the first day of _____, 18—, is still unpaid. 1 Abb. Forms 196.

C. Complaint for Lodgings.

(As in II, A, or II, B, substituting): rooms in and part of the house of the plaintiff at _____ (and if furnished, add: together with furniture, linen and other household necessities of the plaintiff, which were therein); by the plaintiff's permission as his tenant, from, etc. 1 Abb. Forms 197.

D. Complaint for Board and Lodging.

I. That from the _____ day of _____, 18—, until the _____ day of _____, 18—, the defendant occupied certain rooms in and part of the house, No. _____ street, _____, by permission of the plaintiff, and was furnished by the plaintiff, at his request, with food, attendance, and other necessities.

II. That in consideration thereof,

the defendant promised to pay _____ dollars (or the same were reasonably worth the sum of _____ dollars).

III. That the defendant has not paid the same. 1 Abb. Forms 205.

E. Complaint for Pasturing.

(As in II, A, or II, B, substituting): the pasture of the plaintiff in _____, by his permission, as his tenant, for the grazing of his cattle (or horses, etc.) from, etc. 1 Abb. Forms 196.

F. Complaint for Hire of Furniture, etc., With Damages for Ill-Use.

First: For a first cause of action:

I. That on the _____ day of _____, 18—, at _____, the defendant hired from the plaintiff household furniture, plate, pictures, and books, the property of the plaintiff, to-wit (describe or enumerate the articles, or refer to a schedule annexed); for the space of _____ then next ensuing, to be returned by him to the plaintiff at the expiration of said time, in good condition, reasonable wear and tear thereof excepted.

II. That he promised to pay the plaintiff for the use thereof _____ dollars (in equal quarterly payments, on the _____ days of _____ thereafter).

III. That no part thereof has been paid (except the sum of _____, etc.)

Second: For a second cause of action:

I. This plaintiff further states that the value of the property so hired by the defendant, as above alleged, was _____ dollars.

II. That the defendant, not regarding the said undertaking to return the same in good condition, took so little care thereof that through his negligence, carelessness and ill-use, the same became broken, defaced and damaged beyond the reasonable wear thereof, and in that condition were returned to the plaintiff, to his damage _____ dollars. 1 Abb. Forms 198.

G. Complaint Against Hire of Furniture, etc., for Negligence.

I. That on the _____ day of _____, 18—, at _____, the defendant hired and received of the plaintiff certain goods (very briefly designating them), of the value of _____ dollars, for the period of _____ then next, at the sum of _____ dollars.

II. That the defendant, not regarding his duty in that behalf, did not

take due and proper care of the said goods, or use the same in a reasonable or proper manner during the said time, but took so little care of the said goods that they became injured and deteriorated in value, to the plaintiff's damage _____ dollars. 1 Abb. Forms 404.

H. *Complaint for Hire of Pianoforte With Damages for Not Returning It.*

First: For a first cause of action:

I. That on the _____ day of _____, 18—, at _____, the defendant hired from the plaintiff one pianoforte, the property of the plaintiff, for the space of (six) months, then next ensuing, to be returned to this plaintiff at the expiration of said time in good condition, reasonable wear excepted, for the use of which he promised to pay this plaintiff a reasonable sum.

II. That _____ dollars was a reasonable sum for the hire of the same; which sum, on the _____ day of _____, 18—, became due from the defendant to the plaintiff.

III. That no part of the same has been paid (except the sum of _____).

Second: And for a second cause of action:

I. The plaintiff further states that the value of the pianoforte so hired by the defendant, as above alleged, was _____ dollars, and that the defendant, not regarding his said undertaking to return the same to this plaintiff, has not returned the same, although he was, on the _____ day of _____, 18—, at _____, requested by the plaintiff so to do, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 197.

I. *Complaint on an Account for Hire of Horses, Carriages, Etc.*

I. That between the _____ day of _____, 18—, and the _____ day of _____, the defendant hired from the plaintiff horses, carriages, and saddles, for which he owes the plaintiff on an account thereof, the sum of _____ dollars, which was payable on the _____ day of _____.

II. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Forms 197.

J. *Complaint for Driving on Different Journey From That Agreed and for Negligence.*

I. That on the _____ day of _____, at _____, the defendant hired and received from the plaintiff a horse (and carriage) of the plaintiff, of the value of _____ dollars, to drive from _____ to _____, and not elsewhere.

II. That the defendant, in violation of the agreement, performed a different journey than that aforesaid, and drove said horse (and carriage) from _____ to _____.

III. That he did not take proper care of said horse (and carriage), but so negligently drove and managed the same that (the carriage was broken), to the plaintiff's damage _____ dollars. 1 Abb. Forms 404.

USURY.

I. Plea of Usury, 1238

II. Replication to Plea of Usury, 1239

III. Answers, 1239

A. *In Loan*, 1239

B. *In Making Note*, 1239

C. *Bill Given To Secure Usurious Contract*, 1240

D. *Usury in Transfer of Accommodation Note*, 1240

CROSS-REFERENCES:

ILLEGALITY, HOW PLEADED:

Answer, Usury by Antedating Secrecy.

TROVER AND CONVERSION:

Complaint for Goods Received Contrary to Statute.

I. Plea in Assumpsit of Usury.

And the said C. D., defendant in this suit, by S. G. R., his attorney, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that before the making of the said bill or exchange in the said first count mentioned, to-wit, on the twenty-first day of December, one thousand eight hundred and twenty-nine (day of contract, or about it), at, etc. (venue), aforesaid, it was corruptly and against the form of the statute in such case made and provided, agreed by and between the said E. F. (the acceptor) and one G. H., that he the said G. H. (here

state the usurious agreement as thus): should lend and advance to the said E. F. a certain sum of money, to-wit, the sum of seven hundred and fifty dollars in manner following, that is to say, part thereof, to-wit, two hundred and fifty dollars, on the day and year last aforesaid, and the residue thereof, to-wit, five hundred dollars, at a certain time, to-wit, on the thirty-first day of December then next, and that he the said G. H. should forbear and give day of payment of the said sums of two hundred and fifty dollars, and five hundred dollars from the times of lending and advancing the same, until and upon a certain other time, to-wit, the tenth day of April, one thousand eight hundred and thirty, and that for the forbearing and giving day of payment of the said sums of two hundred and fifty dollars and five hundred dollars as aforesaid, the said E. F. should give and pay to the said G. H. a certain sum of money, to-wit, the sum of two hundred and fifty dollars, and that for securing the re-payment of the said sums of two hundred and fifty dollars and five hundred dollars, so to be lent and advanced as aforesaid, together with the said further sum of two hundred and fifty dollars, on the said tenth day of April, in the year last aforesaid, the said defendant should make and draw and endorse, and the said E. F. should accept the said bill of exchange in the said (first) count mentioned, and that the said E. F. should deliver the same to the said G. H.; and the said defendant further saith that in pursuance and in part performance of the said corrupt and unlawful agreement, the said defendant, afterwards, to-wit, on the said twenty-first day of December, to-wit, at, etc. (venue), aforesaid, made and drew and endorsed, and the said E. F. then and there accepted the said bill of exchange, and the said E. F. then and there delivered the said bill of exchange so made and endorsed, and accepted as aforesaid, to the said G. H. on the terms aforesaid, and that in further pursuance of the said corrupt and unlawful agreement, the said G. H. afterwards, to-wit, on the day and year last aforesaid, at, etc. (venue), aforesaid, did lend and advance to the said E. F. the sum of two hundred and fifty dollars, part of the said sum of seven hundred and fifty dollars; and after-

wards, to-wit, on the thirty-first day of December, in the year one thousand eight hundred and twenty-nine, aforesaid, at, etc. (venue), aforesaid, did lend and advance to the said E. F. the said further sum of five hundred dollars; and the said defendant further saith that the said sum of two hundred and fifty dollars so agreed to be given and paid by the said E. F. to the said G. H. for such loan and forbearance as aforesaid, and so secured as aforesaid, exceeds the rate of seven dollars for the forbearing of one hundred dollars for a year, contrary to the statute in such case made and provided, whereby and by force of the statute in such case made and provided, the said bill of exchange was and is wholly void; and this he the said defendant is ready to verify. Wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, etc. Burr. App. 346, §635; Yates' Forms 284.

II. Replication to Plea of Usury.

And the said plaintiff, as to the said plea of the said defendant by him (secondly) above pleaded, says that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he says that there was no such usurious agreement or usurious consideration, as the said defendant hath above in his said plea in that behalf alleged. And thus he the said plaintiff prays may be inquired of by the country, etc. Burr. App. 376, §681.

III. Answers.

A. Answer, Usury in Loan.

That the loan alleged in the complaint was made to the defendant by the plaintiff on the corrupt and unlawful agreement between them, that the plaintiff should reserve and secure to himself, and the defendant would pay to him, for the use of said sum, a greater sum than at the rate of seven per centum per annum; to-wit (here state interest or compensation agreed on; and payment of it, if it has been paid). 2 Alb. Forms 67.

B. Answer, Usury in Making Note (a).

I. That the note mentioned in the complaint was made and delivered in

the plaintiffs upon the usurious agreement between the defendant and the plaintiffs, that the defendant should pay the plaintiffs, and that the plaintiffs should reserve and secure to themselves, for the loan of money, a greater sum than at the rate of seven per cent. per annum, to-wit, at the rate of _____ per cent. per annum (besides a commission of _____ per cent. on the face of said note).

II. That said sum was deducted and reserved from the amount of said note by the plaintiffs, and the balance only paid to this defendant; that is to say, that this defendant agreed to pay, and the plaintiffs agreed to receive, _____ dollars for said loan, the plaintiffs reserving and securing to themselves for the loan of money on said note, until the maturity thereof, _____ dollars. 2 Abb. Forms 70.

Answer, Usury in Making Note (b).

I. That he gave to the plaintiff the note mentioned therein, in pursuance of a mutual agreement between the plaintiff and defendant, that the plaintiff should lend the defendant the sum of _____ dollars from the _____ day of _____, 18—, until the _____ day of _____, 18— (or until demand), upon interest at the rate of _____ per cent. per annum (or _____ cents per day on each one hundred dollars).

II. That the defendant received from the plaintiff _____ dollars only, as consideration for the said note; the plaintiff retaining _____ dollars, as interest thereon. 2 Abb. Forms 71.

C. Answer, Bill Was Given to Secure Performance of Usurious Contract.

J. That before the making of the said bill, and on the _____ day of _____, 18—, at _____, it was corruptly agreed by and between the said (acceptor) and one M. N., that he the said M. N. (here state the usurious agreement).

II. That for securing the repayment of the said sum so to be lent, it was further agreed that the said defendant should make, and draw, and indorse, and the said (acceptor) should accept, the said bill, and that the said (acceptor) should deliver the same to the said M. N.

III. That in pursuance, and in part performance of the said corrupt and unlawful agreement, the said defendant afterwards made, and drew and indorsed, and the said (acceptor) then and there accepted the said bill of exchange, and delivered the said bill of exchange so made, and indorsed, and accepted, as aforesaid, to the said M. N. on the terms aforesaid; that in further pursuance of the said corrupt and unlawful agreement, the said M. N. afterwards lent and advanced to the said acceptor the sum of _____ dollars, and afterwards said further sum of _____ dollars (according to the agreement stated above). 2 Abb. Forms 72.

D. Answer, Usury in Transfer of Accommodation Note.

I. That on the _____ day of _____, 18—, the defendant made the note mentioned in the complaint, and without consideration delivered the same to one M. N., as his agent, to have the same discounted for the defendant (or to one M. N., as an accommodation note for the benefit of said M. N.).

II. That said M. N. thereafter delivered said note to one O. P., as the agent of said _____, without consideration, to have the same, etc. (alleging purpose as above).

III. That said O. P. delivered said note to one Q. R., as collateral security for the payment of a loan made by Q. R. to O. P., the sum of _____ dollars, and payable on the _____ day of _____, 18—.

IV. That upon said loan, and at or before so pledging said note, said O. P. and Q. R. had agreed that said Q. R. should reserve, and O. P. should pay, interest on such loan at the rate of _____ per cent. per annum. 2 Abb. Forms 71.

Indictment for Vagrancy.

For that, having no possible means of support, he did unlawfully fail, refuse, and neglect to apply himself to some honest calling, and did loiter around drinking saloons and gambling houses." *Brown v. State*, 2 Lea (Tenn.) 158.

VENDITION EXPONAS.—See ADMIRALTY; JUDGMENTS AND DECREES, ENFORCEMENT OF.

VENDOR AND PURCHASER.

I. Declarations, 1242

- A. *Common Count for Freehold Sold*, 1242
- B. *Common Count for Leasehold Sold*, 1242
- C. *Against Vendor for Not Making Good Title*, 1242

II. Complaints, 1243

- A. *For Consideration Money*, 1243
- B. *For Repayment of Deposit on Contract Unfulfilled*, 1243
- C. *For Breach of Contract, Purchaser Against Vendor*, 1244
- D. *For Not Conveying, and for Redelivery of Securities*, 1244
- E. *Averment of Defendant's Rescission as Excuse for Non-performance*, 1245
- F. *On Land Contract for Not Purchasing*, 1245
- G. *Against Purchaser for Deficiency on Re-sale*, 1246
- H. *Averment, False Representations Prevented Fulfillment*, 1246
- I. *On Grantee's Covenant To Build*, 1246
- J. *On Covenant Against Nuisance*, 1247
- K. *On Covenant To Maintain Fence*, 1247
- L. *By Vendor Against Executor*, 1247

CROSS-REFERENCES:

ANSWERS:

- Answer, That Defendant Is a Bona Fide Purchaser Without Notice;
- Answer, That the Delivery Was in Escrow.

BONDS:

- Answer, Failure of Consideration of Bond for Purchase Money.

FRAUD AND DECEIT:

- Declaration for Deceitfully Selling Land for Greater Quantity Than it Was;
- Complaint for Fraudulently Selling Tract of Land for More Than it Was.

INHERITANCE:

- Decree in Favor of Heirs, Declaring Void Deed Obtained of Their Ancestor by Imposition.

INJUNCTIONS:

- Injunction Against Violation of Covenant To Build.

INTERPLEADER:

- Statements in Bill by Purchaser Against Different Persons Claiming Payment.

MORTGAGES:

- Complaint by Assignee Against Mortgagor, Mortgagee Who Guaranteed Payment, Grantee of Equity of Redemption Who Assumed Mortgage, and Junior Incumbrancers.

PERFORMANCE:

- Plea in Excuse of Non-Performance, Non-payment of Purchase Price.

REFORMATION:

- Bill for Reformation of Conveyance Correcting Boundary.

REVIVOR:

- Bill in Nature of Bill of Revivor, Devisee Against Vendee for Specific Performance.

SPECIFIC PERFORMANCE:

- Bill for Specific Performance by Vendor Against Vendee, Title in Question;
- Bill Praying Specific Performance by Vendee Against Vendor;
- Bill for Specific Performance by Vendee Against Vendor and Subsequent Purchaser;
- Bill by Vendor Against Administrator and Minor Children;
- Order To Inquire if Good Title Can Be Made;
- Decree, Declaration of Right on Bill by Vendor, and Inquiry;
- Decree, Where Title Accepted Subject to Requisitions and Compensation;
- Decree on Bill by Vendor To Enforce Contract of Sale;
- Decree, Where Title Accepted at the Hearing;
- Decree on Bill by Purchaser;
- Decree, Purchaser Having Waived Title, Indemnity Against Mortgage;
- Order for Inquiry, if Part, to Which Title Not Shown, Is Material;
- Decree, Voluntary Settlement Set Aside in Favor of Purchaser;
- Decree, Abatement of Price for Deficiency;
- Decree, Abatement of Price for Delay;
- Decree, With Inquiry, if Leases Tendered for Execution Are Proper;
- Decree on Bill by Intended Lessee;
- Decree, Direction for Lease To Contain Particular Covenant;
- Decree for Specific Performance of Agreement To Execute Mortgage;
- Decree Against Specific Performance, Causes Stated;

Complaint for Specific Performance,
Vendor Against Purchaser;

Complaint for Specific Performance
on an Exchange, Parties Having
Taken Possession.

SUBROGATION:

Substance of Complaint for Subro-
gation by Purchaser, Where Prev-
ious Foreclosure Was Set Aside;

Substance of Complaint for Subro-
gation by Vendor of Land Subject
to Mortgage, Compelled To Pay.

WARRANTY:

Declaration for Breach of Covenant
of Good Title;

Complaint on Covenant Against In-
cumbrances on Real Property;

Complaint on Covenant, Conveyance
To Be Subject to Specified Incum-
brance;

Complaint on a Covenant for Quiet
Enjoyment;

Complaint on Covenant of Seizin or
of Power To Convey;

Complaint on Covenant of Warranty
of Title;

Complaint on Covenant of Warranty
for Deficiency in Quantity.

I. Declarations.

A. *Declaration, Common Count for Freehold Estate Sold and Con- veyed.*

And whereas also, the said defend-
ant afterwards, to-wit, on the same day
and year last aforesaid, and at the place
aforesaid, was indebted to the said
plaintiff in the further sum of (one
thousand) dollars, of like lawful money,
* in a certain (other) messuage or ten-
ement, and premises, with the appur-
tenances, of the said plaintiff, before
that time bargained, sold and released
by the said plaintiff to the said def-
endant, and at his special instance
and request. And being so indebted
he, the said defendant, in consideration
thereof, afterwards, to-wit, on the same
day and year last aforesaid, and at
the place aforesaid, undertook, and then
and there faithfully promised the said
plaintiff, well and truly to pay him,
the said plaintiff, the said sum of
money last above mentioned, when the
said defendant should be thereunto aft-
erwards requested.

And whereas also, afterwards, to-wit,
on the same day and year last afore-
said, and at the place aforesaid, in con-
sideration that the said plaintiff, at the
like special instance and request of
the said defendant, * had before that

time bargained, sold and released to
the said defendant a certain other
messuage, or tenement, and premises,
with the appurtenances, of the said
plaintiff, he the said defendant under-
took, and then and there faithfully
promised the said plaintiff, well and
truly to pay to the said plaintiff, so
much money as he therefor reasonably
deserved to have of the said defendant,
when he, the said defendant, should be
thereunto afterwards requested. And
the said plaintiff avers, that he there-
for reasonably deserved to have of
the said defendant the further sum of
(one thousand) dollars, of like lawful
money, to-wit, at the place aforesaid;
whereof the said defendant, afterwards,
to-wit, on the same day and year last
aforesaid, there had notice. Burr. App.
249, §508.

B. *Declaration, Common Count for Leasehold Estate Sold and As- signed.*

(As in the last form to the first *,
and then as follows): for a certain
messuage, lands and tenements, with
the appurtenances, of the said plaintiff,
before that time bargained, sold and
assigned by the said plaintiff to the
said defendant, and at his special in-
stance and request, for the remainder
of a certain term of years then to
come and unexpired therein. And being
so indebted, etc. (as in last form to
the second *, and then as follows): had
before that time, bargained, sold and
assigned to the said defendant a cer-
tain other messuage or tenement, and
premises, with the appurtenances, of
the said plaintiff, for the remainder of
a certain term of years then to come
and unexpired therein, he, the said def-
endant, undertook, etc. (as in last
form to the end). Burr. App. 250,
§509; Till. Forms 282.

C. *Declaration Against Vendor for Not Making Good Title.*

For that whereas the said defend-
ant, heretofore, to-wit, on, etc. (day
of sale or about it), at, etc. (venue)
caused to be put up and exposed to
sale, by public auction, certain prem-
ises, to-wit, _____ (describe the
premises shortly, as in the particulars
of sale), upon and subject to the fol-
lowing amongst other conditions, that
is to say (here set out the conditions
which may have any reference to the
plaintiff's claim, as they appear in the
particulars of sale, but in the past

tense, as thus): that the purchaser should pay to the vendor or his agent, a deposit of _____ per cent. in part of the purchase-money, and should likewise pay one-half of the auction duty, and should also pay the remainder of the purchase-money, and complete the purchase on or before the _____ day of _____ then next, and that a good title should be made out at the expense of the vendor, and upon payment of the remainder of the purchase-money, a proper conveyance at the purchaser's expense. And the said plaintiff in fact saith, that on such exposure to sale as aforesaid, to-wit, on the day and year first aforesaid, at, etc. (venue) aforesaid, he the said plaintiff became and was the said purchaser of the said premises, upon and according to the said conditions for a certain price, to-wit, the sum of _____ of lawful money of Great Britain, and then and there paid to the said defendant a large sum of money, to-wit, the sum of _____ as a deposit of _____ per cent. in part of the said purchase-money, and then and there also paid another large sum of money, to-wit, the sum of _____ of like lawful money, as one-half of the said auction duty payable in that behalf. And thereupon afterwards, to-wit, on the day and year first aforesaid, at, etc. (venue) aforesaid in consideration that the plaintiff at the special instance and request of the said defendant, had then and there undertaken, and faithfully promised the said defendant to perform and fulfill all things in the said condition of sale contained, on the said plaintiff's part and behalf, as said purchaser as aforesaid, to be performed and fulfilled: he the said defendant undertook and faithfully promised the said plaintiff to perform and fulfill all things in the said conditions of the sale contained, on the vendor's part and behalf to be performed and fulfilled. And the said plaintiff saith, that although he, on the day and year first aforesaid, and from thence until and upon the said _____ day of _____ then next, at, etc. (venue), aforesaid, was ready and willing to perform and fulfill all things in the said conditions contained on his part and behalf, as such purchaser as aforesaid, to be performed and fulfilled, and to pay the remainder of the said purchase money and to com-

plete the said purchase, whereof the said defendant, on the day and year last aforesaid, there had notice, and was then and there requested by the said plaintiff to make to him a good title to the said premises; yet the said defendant, not regarding his said promise and undertaking, but contriving and fraudulently intending to injure and defraud the said plaintiff in this behalf, did not nor would when he was so requested as aforesaid, or at any time before or since, make or procure to be made to the said plaintiff a good title to the said premises, but hath hitherto wholly neglected and refused so to do, to-wit, at, etc. (venue) aforesaid, contrary to the said condition of sale, and the said promise and undertaking of the said defendant; by reason whereof he the said plaintiff hath been deprived of all the benefits and advantages which would have arisen from the completion of the said purchase, and hath been put to great expense, amounting in the whole to a large sum of money, to-wit, the sum of _____ of like lawful money, in endeavoring to procure such title as aforesaid, and to get the said purchase completed, and hath lost all gains and profits which he might and would otherwise have made and acquired from using and employing the said sums of money so paid by him as deposit and duty as aforesaid, and other moneys provided and kept by him the said plaintiff for the completion of the purchase, to-wit, at, etc. (venue) aforesaid. 2 Chit. Pl. 287.

II. Complaints.

A. Complaint for Consideration Money of a Conveyance.

I. That on the _____ day of _____, 18____, at _____, this plaintiff sold and conveyed to the defendant, at his request, certain premises in the town of _____, known and described as follows: (designate the premises).

II. That the defendant agreed to pay the plaintiff therefor the sum of _____ dollars, on the _____ day of _____, 18____.

III. That no part of the same has been paid (except the sum of, etc.). 1 Abb. Plead. 212.

B. Complaint for Repayment of Deposit on Contract for Purchase of Real Estate, Unfulfilled.

I. That on the _____ day of _____, 18____,

_____, 18____, the said defendants and this plaintiff entered into a contract in writing, subscribed by the defendants, whereby it was mutually agreed that the said defendants should sell to this plaintiff certain leasehold premises known as _____, in _____, for the sum of _____ dollars, to be paid therefor by this plaintiff; that the defendants should make a good title to the said premises, and deliver a deed thereof on the _____ day of _____, 18____; and that the plaintiff should thereupon pay to the said defendants the said sum.

II. That the plaintiff, as a security, as well for the performance of said agreement on his part, as to secure a performance thereof on the part of the said defendants, then and there deposited in the hands of said defendants the sum of _____ dollars as a part of the said purchase money, to be to and for the use of the defendants, and to be retained by them on account of the purchase-money, if the plaintiff should complete his purchase and receive the deed; but to be to and for the use of this plaintiff, and to be returned to him, if the defendants should fail to fulfil their agreement, and give a deed at the time and pursuant to the agreement.

III. That he has always been ready and willing to do and perform everything in the agreement contained on his part, and on the said _____ day of _____, 18____, was ready and willing, and duly offered to the defendants, to accept and take the deed of the premises pursuant to the agreement, and to pay to them the balance of the purchase-money due therefor.

(Or, III. That the plaintiff duly performed all the conditions of said contract on his part.)

IV. That the defendants did not on said _____ day of _____, nor have they at any other time whatsoever, given him a deed of the premises pursuant to the agreement, but refused to do so (or, but have wholly failed so to do, although the plaintiff waited a reasonable time, to-wit, _____ days after said _____, and then offered to receive a deed).

V. And the plaintiff further states, that on the _____ day of _____, 18____, he demanded of the said defendants that they pay to him the sum of _____ dollars he had deposited

with them; but that no part of the same has been paid. 1 Abb. Forms 177.

C. *Complaint for Breach of Contract, Purchaser Against Vendor.*

I. That on the _____ day of _____, 18____, the defendants and the plaintiff entered into a contract in writing, subscribed by the defendants, whereby it was mutually agreed that the said defendants should sell to the plaintiff certain (leasehold) premises known as _____, in _____, for the sum of _____ dollars, to be paid therefor by this plaintiff; that the defendants should make a good title to the said premises (clear of all incumbrances), and deliver a deed thereof on the _____ day of _____, 18____; and that the plaintiff should thereupon pay to the said defendants the said sum.

II. That the plaintiff duly performed all the conditions of said contract on his part (or as in the following form).

III. That the defendants did not on said _____ day of _____, nor have they at any other time whatsoever, given him a deed of the premises pursuant to the agreement, but refused, and wholly failed so to do, to his damage _____ dollars.

Or, III. That there is a mortgage upon the said property, made by _____ to _____, for _____ dollars, which was recorded in the office of _____, on the _____ day of _____, 18____ (or, of which the plaintiff then had notice), and which then was and still is an incumbrance on said title (or any other defect of title); and that the defendant could not, and did not make good title pursuant to his agreement, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 378.

D. *Complaint for Not Conveying, and for Redelivery of Securities.*

First. For a first cause of action.

I. That on the _____ day of _____, 18____, this plaintiff and the defendant entered into an agreement in writing, under their hands and seals, whereby the defendant agreed to sell to the plaintiff the farm the defendant then resided on, in the town of _____, in the county of _____, and containing _____ acres, or thereabouts, for the sum of _____ dollars per acre; and that he would, on the 1st day of _____ then next en-

suings, at the county clerk's office, in the town of _____, between the hours of _____ o'clock in the morning and _____ in the evening, on receiving from the plaintiff the sum of _____ dollars per acre, at his own expense execute a proper conveyance for conveying the fee simple of said premises to this plaintiff free of all incumbrances; and the plaintiff agreed that he would, at the time and place above mentioned, on the execution of such conveyance, pay to the defendant the sum of _____ dollars per acre as aforesaid; and that in said agreement the defendant acknowledged the payment by the plaintiff of \$ _____, in part payment of said premises; and further agreed to take a bond conditioned for the payment of _____ dollars, secured by a mortgage on said premises in payment of _____ dollars of the purchase-money, said bond and mortgage to be payable in one year from said first day of _____, and to bear interest at _____ per cent. per annum; and further agreed to pay this plaintiff, on failure of performance, _____ dollars liquidated damages.

II. That on the (day agreed), at (the place agreed), the plaintiff was ready and willing to fulfil the agreement on his part in all respects (or where a tender was necessary: That on the _____ day of _____, 18____, at _____, the plaintiff was ready and willing to fulfil the agreement on his part in all respects, and then and there offered to the defendant to accept a conveyance of the premises, and tendered to the defendant a bond and mortgage drawn and executed pursuant to the agreement, and the residue of the purchase-money (in cash), and otherwise has duly performed all the conditions of said agreement on his part.

III. That the defendant (refused to convey the said premises, pursuant to the agreement, and he) then could not and cannot now convey a good title to the farm free of all incumbrances, but, on the contrary, the same was and still is subject to various defects and incumbrances, and in particular to a lease made by him to the trustees of the school district for the erection and use of a school house, and to the inchoate right of dower of the wife of one V. B., who is still living; where-

fore the defendant failed to perform his agreement, to the damage of the plaintiff _____ dollars.

Second. And for a second cause of action the plaintiff alleges:

IV. That the payment of _____ dollars hereinbefore stated to have been made by the plaintiff to the defendant, in pursuance of the said agreement, was made by a negotiable promissory note for that amount, made by this plaintiff, payable to the order of one W. H., and indorsed by him, which note was delivered to the defendant, and accepted by him in payment of said sum of _____ dollars; and still remains in his possession.

Wherefore the plaintiff demands judgment against the defendant, 1. For the sum of _____ dollars; and 2. That he be required to cancel and deliver up to the plaintiff said note. 1 Abb. Forms 379.

E. Complaint, Accord of Defendant's Recession, as Excuse for Plaintiff's Non-Performance.

That on the _____ day of _____, 18____, and before the time for the plaintiff to perform the conditions thereof on his part, the defendant gave notice in writing to the plaintiff that he had determined not to take the land; and the defendant abandoned the agreement, and ever since wholly failed to perform it, to the plaintiff's damage _____ dollars. 1 Abb. Forms 381.

F. Complaint on Land Contract, for Not Purchasing.

I. That on the _____ day of _____, 18____, at _____, the plaintiff and the defendant entered into an agreement in writing, under their hands and seals, of which the following is a copy: (copy of the contract).

(Or, I. That on the _____ day of _____, 18____, at _____, the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff (briefly designate the premises), in the town of _____, county of _____, and state of _____, for _____ dollars, payable (specify terms).

II. That on the _____ day of _____, 18____, at _____, the plaintiff tendered (or, was ready and willing, and offered to execute) to the defendant a sufficient deed of the said premises on payment of the said sum

(or otherwise, according to the contract), and still is ready and willing to execute the same; and otherwise has duly performed all the conditions thereof on his part.

III. That the defendant neglected to comply with the terms of the agreement on his part, and wholly failed to pay the purchase-money, to the damage of the plaintiff ——— dollars. 1 Abb. Forms 381.

G. Complaint Against Purchaser for Deficiency on Resale.

I. That this plaintiff, being the owner in fee of twenty-six lots of land at Harlem, in the twelfth ward of the city of New York, once part of the estate of the late C. H., put them up to sale by auction, at the Merchants' Exchange, in the city of New York, on the 25th day of May, 1852; and announced before the commencement of the sale, as a part of the terms of sale, that ten per cent. of the purchase-money was, on the day of sale, to be paid by the purchaser to the plaintiff, G. F. T., and to the auctioneer, A. J. B., the auctioneer's fee of ten dollars on each avenue lot, and five dollars on each street lot; and that if any purchaser failed to make such payments, the lots would be resold, and he be charged with the deficiency.

II. That at the said sale, H. L. F., the defendant, bid in and became the purchaser of eight lots, four on 132d-street, and four on 133d-street, between the 5th and 6th Avenues, being the lots numbered 132, 133, 134, 135, 154, 155, 156, 157, on the map of said sale, for the price of \$471 each lot.

III. That the said defendant did not, on the day of sale, or at any other time, pay ten per cent., or any part of the price bid, or the purchase-money, or auctioneer's fees, or any part thereof.

IV. That in consequence of such neglect of payment, and after previous notice given to the defendant of the time and place of resale, and that he would be charged with the deficiency, the said lots were put up to resale, and resold at the price of \$400 for each lot, making a deficiency of \$568 upon the eight lots. 1 Abb. Forms 382.

H. Complaint, Averment of False Representations by Defendant Which Prevented Plaintiff From Fulfilling.

. That on or about the ——— day of ———, 18——, and before the time for performance on the part of the plaintiff had arrived, the defendant, for the purpose of preventing the plaintiff from being ready to receive the said ———, and pay therefor, falsely and fraudulently represented to the plaintiff that he had sold said ——— to other persons; and that relying on said representations, and solely by reason thereof, the plaintiff did not provide the means, and was not prepared to receive and pay for the same as he otherwise would not have done. 1 Abb. Forms 383.

I. Complaint on Grantee's Covenant To Build.

I. That in consideration that the plaintiff would sell and convey to the defendant a lot of land (very briefly designating it) for the sum of ——— dollars, the defendant, on or about the ——— day of ———, 18——, undertook and promised the plaintiff (by his covenant) that he would erect upon the premises a good brick dwelling house, to be occupied as such, and that he would not erect upon the premises any building that would be a nuisance to the vicinity of the premises.

II. That the plaintiff did accordingly sell and convey to the defendant said premises for said sum, but the defendant has not erected a good brick dwelling-house on the lot, to be occupied as such; but, on the contrary, has suffered it to lie open and uninclosed (or, but, on the contrary, has erected, etc., stating what).

III. That said lot was a part of a considerable tract of land, which the plaintiff laid out into lots and offered for sale for the purpose of the erection of dwelling-houses, requiring each purchaser to covenant to erect a dwelling-house, and that the erection of such dwelling-house on lots sold improved the residue of the lots belonging to the plaintiff, and increased their value and their market price.

IV. That the defendant's violation of this covenant has prevented other lots in the vicinity from becoming valuable to the plaintiff, as they would otherwise have done, and has injuri-

ously affected their condition and hindered the plaintiff from selling them; to his damage _____ dollars. 1 Abb. Forms 346.

J. Complaint on Covenant Against Nuisances, in Deed Executed Only by Grantor.

I. That on the _____ day of _____, 18____, at _____, the plaintiff, by his deed, conveyed to the defendant for a valuable consideration, as well as in consideration of the covenant hereinafter mentioned, a lot of land (very briefly designating it).

II. That said deed contained a covenant on the part of the defendant, the grantee therein, of which the following is a copy: (copy of the covenant against nuisances).

III. That said deed was delivered by the plaintiff to the defendant and by him duly accepted, and he became thereby the owner of the premises, and bound by the covenant aforesaid.

IV. That the defendant has erected, or suffered or permitted to be erected, on said premises, a building occupied in a manner which is a nuisance to the vicinity of the premises, to-wit, a building erected for, and used as a slaughter-house.

V. That the offal and blood in and carried out from said slaughter-house, and the offensive smell created thereby, is a nuisance to the vicinity of the said premises and to the plaintiff, whose house is adjoining; to his damage _____ dollars. 1 Abb. Forms 346.

K. Complaint on Covenant To Maintain Fence.

I. That on the _____ day of _____, 18____, the plaintiff and the defendant then being owners of lands adjoining, made an agreement in writing, under their hands and seals, and thereby the defendant covenanted to erect a fence upon the boundary line between the said lands of the plaintiff and those of the defendant, and to maintain the same and keep the same in constant repair (or, an agreement, of which a copy is hereto annexed, as a part of this complaint).

II. (If there are any conditions on the part of the plaintiff they should be set forth, unless the whole agreement is annexed; and add, that the plaintiff duly performed all the conditions thereof on his part.)

III. That the defendant did not, after the erection of said fence, maintain the same and keep it in continual repair, but, on the contrary, in the month of _____, 18____, he suffered the same to become dilapidated and broken down, and to remain in that condition from that time ever since (or until the _____ day of _____, 18____).

IV. That by means thereof the plaintiff suffered great damage by the injury to his lands and crops thereon, and his garden and fruit trees, by cattle coming through said broken down fence from the defendant's land upon his premises, and that he was compelled to repair and rebuild said fence, in order to protect his land from the cattle coming from defendant's land, to his damage _____ dollars. 1 Abb. Forms 347.

L. Complaint by Vendor Against Executor.

I. That on the _____ day of _____, 18____, the plaintiff and the said (testator) entered into a contract in writing, under their respective hands, of which the following is a copy: (copy of the agreement).

II. That said (testator) died on or about the _____ day of _____, 18____, leaving a last will and testament, by which he devised the said property as follows: (set forth devise).

III. That by said will he appointed the defendant his executor, and by an order of the surrogate of the county of _____, duly made on the _____ day of _____, 18____, at _____, said will was admitted to probate, and the defendant was then appointed and now is the executor thereof.

IV. That on the _____ day of _____, 18____, the plaintiff offered to the defendant to convey the premises to him and the said (other devisees), and fully to perform said contract on his part, and requested the defendant to perform said contract on his part and pay the money then due thereon.

V. That the defendant then wholly refused so to do, and has not performed the contract nor paid any part of said sum, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 348

VERDICT.

I. In General, 1249

- A. *On Verdict for Plaintiff, Assumpsit*, 1249
- B. *One Issue for Plaintiff, Trespass*, 1249
- C. *Several Damages*, 1249
- D. *One Defendant Found Guilty, Trespass*, 1249
- E. *For Plaintiff on Several Issues*, 1249
- F. *For One Plaintiff*, 1250
- G. *Part for Plaintiff and Part for Defendant, Ejectment*, 1250
- H. *For Defendant in Bar*, 1250
- I. *Nul Tiel Record*, 1250
- J. *Default at Trial*, 1250
- K. *One Defendant in Default*, 1250

II. Assumpsit, 1251

- A. *One Issue for Plaintiff in Assumpsit*, 1251
- B. *For Defendant on Non-assumpsit*, 1251
- C. *For Defendant on Non-assumpsit, Default by One Defendant*, 1251

III. Debt, 1251

- A. *For Plaintiff, Not Est Factum*, 1251
- B. *For Plaintiff, Non Est Factum, Default at Trial*, 1251
- C. *For Plaintiff, Non Est Factum, Breaches Assigned*, 1251
- D. *For Defendant, Nil Debet*, 1252
- E. *For Defendant, Non Est Factum*, 1252
- F. *For Defendant, Nul Tiel Record*, 1252

IV. Covenant, 1252

- A. *For Plaintiff, Non Est Factum*, 1252
- B. *For Defendant, Non Est Factum*, 1252

V. Trespass, 1252

- A. *For Plaintiff, Not Guilty*, 1252
- B. *For Defendant, Not Guilty*, 1252

VI. Case, for Defendant, Not Guilty, 1252

VII. Trover, for Plaintiff as to One Defendant, 1253

VIII. Replevin, 1253

- A. *For Plaintiff, Non Detinet*, 1253
- B. *For Defendant*, 1253

IX. Ejectment, 1253

- A. *For Plaintiff*, 1253
- B. *For Defendant*, 1253

X. Special Verdict, Prepared for Settlement, 1253

XI. Special Answers With General Verdict, 1254

XII. Under Code, 1254

- A. *On Single Issue for Plaintiff*, 1254
- B. *On Counterclaim*, 1254
- C. *In Action for Land*, 1255
- D. *Subject to Opinion*, 1255

CROSS-REFERENCES:

DOWER, PROCEEDINGS TO RECOVER:
Verdict in Dower.

EMINENT DOMAIN:
Verdict of Jury in Condemnation Proceedings.

HOMICIDE:

Verdict, Guilty on One Count, Acquittal on the Other;
Verdict Recommending Mercy.

INFANTS:

Verdict for Plaintiff, Plea of Infancy in Assumpsit;
Verdict for Defendant on Several Issues, Infancy, Not Necessities No Ratification.

INSANE PERSONS:

Special Verdict (Return).
Form of Verdict Indorsed on Record.

JUDGMENT RECORDS:

Judgment Record on Verdict in Abatement for Plaintiff;
Judgment Record Where Verdict Has Been Given for Defendant on Plea of Misnomer;
Judgment Record for Plaintiff in Debt;
Record on Verdict After Decision of Issue at Law;
Judgment Record on Special Verdict (Argument in first instance).
Judgment Record on Verdict for Plaintiff in Assumpsit;
Judgment Record on Verdict for Plaintiff With Variations;
Judgment Record on Non Obstante Verdicto;
Judgment Record in Ejectment, Verdict for Plaintiff;
Judgment Record of Indictment and Conviction of Murder (Verdict contained in);
Judgment Record, Conviction of Manslaughter (Verdict contained in);
Judgment Record, Sentence of Imprisonment in the State's Prison.

JUDGMENTS:
Judgment on Verdict for Plaintiff in

Assumpsit Case, Covenant and Trespass;

Judgment on Verdict Subject to Opinion of Court.

LIMITATION OF ACTIONS:

Verdict for Plaintiff on Plea of Statute of Limitations, Action Did Not Accrue;

Verdict for Defendant on Plea of Actio Non Accrevit in Assumpsit;

Verdict for Plaintiff on Plea of Statute of Limitations, Did Promise.

SPECIAL INTERROGATORIES TO JURIES:

Form of Verdict on Special Interrogatories.

TENDER:

Verdict for Defendant on Plea of Tender in Part, Non-assumpsit in Part.

I. General.

A. Postea on Verdict for Plaintiff on Plea of Non-Assumpsit.

(After entry of the order for trial proceed thus): Afterwards, that is to say, on the day and at the place last above mentioned, before ———, esquire, one of the circuit judges of the state of ———, according to the form of the statute in such case made and provided, * come as well the above named plaintiff as the above named defendant, by their respective attorneys above mentioned; and the jurors of the jury, summoned to try the said issue, being called also come; who, to speak the truth of the matters above contained, being chosen, tried and sworn, say upon their oath, * that the said defendant did undertake and promise, in manner and form as the said plaintiff hath above complained against him; and they assess the damages of the said plaintiff, by reason of the premises, over and above his costs and charges, by him about his suit in this behalf expended, to (five hundred) dollars, and for those costs and charges to six cents. Therefore, etc. (Here enter judgment according to the case.) Burr. App. 418, §780.

B. Postea, One Issue for Plaintiff.

One for Defendant in Trespass.

(As in I, A, to the last *), as to the first issue above joined between the said parties, that the said defendant is guilty of the several trespasses laid to his charge in the (first and second) counts of the said plaintiff's declaration, in manner and form as the said plaintiff hath therein complained

against the said defendant; and they assess the damages of the said plaintiff by reason thereof, over and above his costs and charges by him about his suit in this behalf expended, to ——— dollars, and for those costs and charges to six cents. And as to the last issue above joined between the said parties, the jurors aforesaid upon their oath aforesaid, say, that the said defendant is not guilty of the several trespasses laid to his charge in the third and fourth counts of the said plaintiff's declaration, in manner and form as the said plaintiff hath therein complained against him. Burr. App. 423, §804.

C. Postea for Plaintiff, Several Damages as to Defendants.

(As in I, A, to the last *), that the said defendant C. D. is guilty of taking (state what part of the property). And the jurors aforesaid upon their oath aforesaid further say, that the said defendant I. J. is guilty of taking (state what part), and they assess the damages of the said plaintiff by reason of the premises, over and above his costs and charges by him about his suit in this behalf expended against the said defendant C. D. at (two hundred) dollars, and against the said defendant I. J. at (fifty) dollars, etc. Burr. App. 424, §806; Cro. Car. 54.

D. Postea in Trespass Where Defendant Is Found Guilty and Another Is Acquitted.

(As in I, A, to the last *), that the said defendant C. D. is guilty of the trespass (or the several trespasses), above laid to his charge, in manner and form as the said plaintiff hath above complained against him; and they assess the damages of the said plaintiff by reason thereof, over and above his costs and charges by him about his suit in this behalf expended, to ——— dollars, and for those costs and charges to six cents. And the jurors aforesaid, upon their oath aforesaid do further say, that the said defendant K. L. is not guilty of the trespass (or several trespasses) above laid to his charge, in manner and form as the said plaintiff hath above complained against him. Burr. App. 424, §805; Archb. Forms, 148.

E. Postea for Plaintiff on Several Issues.

(As in I, A, to the last *), as to the

first issue above joined between the parties aforesaid, that the said defendant is guilty of the several trespasses above laid to his charge, in manner and form as the said plaintiff hath above complained against him; and as to the last issue above joined between the parties aforesaid, the jurors aforesaid, upon their oath aforesaid, say that the said defendant, at the above mentioned time, when, etc., of his own wrong, and without any such cause as he, the said defendant, hath above in that behalf alleged, assaulted, beat, bruised, wounded and ill-treated the said plaintiff, in manner and form as the said plaintiff hath above complained against him; and they assess the damages, etc. Burr. App. 423, §803.

F. *Postea on Verdict for One Plaintiff.*

(As in ordinary forms to and including the words "say upon their oath," and then as follows): that as to the said A. B. the said C. D. is guilty, etc., and as to the said W. X. and Y. Z. the jurors aforesaid, upon their oath aforesaid, say that the said C. D. is not guilty of the matters above laid to his charge, in manner and form as the said W. X. and Y. Z. have above complained against him. Burr. App. 572, §1119.

G. *Postea on Verdict in Ejectment of Part for Plaintiff and Part for Defendant.*

(As in ordinary forms to and including the words "say upon their oath," and then as follows): as to (describe the part accurately), parcel of the premises above mentioned, that the said C. D. is guilty, etc. And as to the residue of the premises above mentioned, the jurors aforesaid, upon their oath aforesaid, say that the said C. D. is not guilty of the matters above laid to his charge, in manner and form as the said A. B. hath above complained against him. Burr. App. 572, §1120.

H. *Postea on Verdict for Defendant in Bar.*

That the said defendant did not undertake or promise, in manner and form as the said plaintiff hath above complained against him. (If on plea of nil debet, instead of the last clause, say,—“that, the said defendant doth now owe to the said plaintiff the above mentioned sum of _____ dollars, or

any part thereof, in manner and form as the said plaintiff hath above complained against him.” If on a plea of non est factum in debt, or covenant, say,—“that the said writing obligatory (or as it may be) is not the deed of the said defendant, as the said plaintiff hath above in that behalf alleged.” If on plea of not guilty in trespass, say,—“that the said defendant is not guilty of the several trespasses above laid to his charge, in manner and form as the said plaintiff hath above complained against him.” If on not guilty in case or trover, say, “that the said defendant is not guilty of the premises above laid to his charge, in manner and form as the said plaintiff hath above complained against him,”—or otherwise, according to postea. Burr. App. 172, §320.

I. *Postea for Plaintiff, Plea of Nul Tiel Record.*

(As in I, A, to the last *), that there is such a record of the said judgment remaining in the said _____ court before the aforesaid justices thereof, in manner and form as the said plaintiff hath above in that behalf alleged: and they assess the damages, etc. Burr. App. 421, §794.

J. *Default at Trial, Inquest Taken.*

(As in I, A, to the first *), comes the above named plaintiff, by his attorney above mentioned, and the above named defendant, although solemnly required, comes not, but makes default; therefore let the jurors of the jury be taken against him, by his default: and the jurors of the jury, summoned to try the said issue, being called also come; who, to speak the truth of the matters above contained, being chosen, tried and sworn, say, upon their oath, etc. (as in I, A, to the end). Burr. App. 418, §781.

K. *Postea for Plaintiff; One Defendant in Default.*

(As in I, A, to the last *), that the said defendant C. D., did undertake and promise in manner and form as the said plaintiff hath above complained against him; and they assess the damages of the said plaintiff by reason of the premises, as well against the said defendant C. D., as against the above named defendant I. J., over and above his costs and charges by him about his suit, etc. (as in I, A, to the end). Burr. App. 420, §788.

II. In Assumpsit.

A. *Postea, One Issue for Plaintiff, One for Defendant, in Assumpsit.*

(As in I, A, to the last *), as to the first issue above joined between the said parties, that (the said defendant did undertake and promise, in manner and form as the said plaintiff hath above in the first and second counts of the said declaration complained against him); and they assess the damages of the said plaintiff, by reason of the not performing the promises and undertakings above mentioned, over and above his costs and charges, by him about his suit in this behalf expended, to _____ dollars, and for those costs and charges to six cents. And as to the last issue above joined between the said parties, the jurors aforesaid, upon their oath aforesaid, say, that (the said defendant did not within six years next before the exhibiting of the bill of him, the said plaintiff, in this behalf) (or before the commencement of this suit), undertake or promise, in manner and form as the said plaintiff hath above, in the third, fourth and fifth counts of the said declaration, complained against him: (stating the verdict of the jury upon each issue separately, in the negative or affirmative of the pleading which concludes to the country, according as it is pleaded by the plaintiff or defendant) Burr. App. 420, §787; Archb. Forms, 147.

B. *Postea for Defendant on Plea of Non-Assumpsit.*

(After the entry of the order for trial, proceed as follows): Afterwards, that is to say, on the day and at the place last above mentioned, before _____, esquire, one of the circuit judges of the state of New York, according to the form of the statute in such case made and provided, came as well the above named plaintiff, as the above named defendant, by their respective attorneys above mentioned; and the jurors of the jury, summoned to try the said issue, being called, also came; who, to speak the truth of the matters above contained, being chosen, tried and sworn, say upon their oath, that the said defendant did not undertake or promise, in manner and form as the said plaintiff hath above complained

against him. Therefore, etc. enter the proper judgment.) Burr. App. 425, §809.

C. *Postea for Defendant on Plea of Non-Assumpsit, Default by One Defendant.*

(As in II, B, to the *), that the said defendant C. D. did not undertake or promise, in manner and form as the said plaintiff hath above complained against him; and hereupon the said jurors are discharged from inquiring against the said defendant I. J., what damages the said plaintiff hath sustained by reason of the premises above mentioned. Therefore, etc. Burr. App. 426, §815; Till. Forms, 179.

III. Debt.

A. *Postea for Plaintiff, Plea of Non Est Factum in Debt.*

(As in I, A, to the last *), that the above mentioned writing obligatory is the deed of the said defendant, as the said plaintiff hath above in that behalf, alleged; and they assess the damages of the said plaintiff on occasion of the detaining the above debt, over and above his costs and charges by him, about his suit, in this behalf expended, to (six cents), and for those costs and charges to six cents. Burr. App. 420, §789.

B. *Postea for Plaintiff, Plea of Non Est Factum in Debt, Default at Trial, Issue Taken.*

(As in I, A, to the first *), summon the above named plaintiff by his attorney above mentioned, and the above named defendant, although solemnly required, comes not, but makes default; therefore let the jurors of the jury be taken against him by his default; and the jurors of the jury summoned to try the said issue, being called also come, who, to speak the truth of the matters above contained, being chosen, tried and sworn, say upon their oath, that, etc. Burr. App. 421, §792.

C. *Postea for Plaintiff, Non Est Factum in Debt, Breaches Assigned.*

(As in I, A, to the last *), that the above mentioned writing obligatory is the deed of the said defendant, as the said plaintiff hath above in that behalf alleged, and they assess, etc. (as in III, A); and as to the breaches by the said plaintiff above assigned, the jurors aforesaid upon their oath aforesaid, say that (the said defendant did not,

ner would, etc., following the language of the breaches which they find for the plaintiff), and that the said plaintiff should recover his damages therefor; and they assess the damages of the said plaintiff, by reason of the said breaches above assigned, over and above his costs and charges by him, about his suit in this behalf expended, to _____ dollars. Burr. App. 421, §791.

D. Postea for Defendant, Plea of *Nol Debet*.

(As in II, B, to the *), that the said defendant doth not owe to the said plaintiff the above mentioned sum of _____ dollars, or any part thereof, in manner and form as the said plaintiff hath above complained against him. Burr. App. 427, §817.

E. Postea for Defendant, Plea of *Non Est Factum*.

(As in II, B, to the *), that the above mentioned writing obligatory is not the deed of the said defendant, as the said plaintiff hath above in that behalf alleged. Therefore, etc. Burr. App. 427, §816.

F. Postea for Defendant, Plea of *Nol Tiel Record in Debt*.

(As in II, B, to the *), that there is not any record of the said supposed recovery in the said declaration mentioned, remaining in the (supreme court of judicature) aforesaid, before the aforesaid justices thereof in manner and form as the said plaintiff hath above, in his said declaration alleged. Therefore, etc. Burr. App. 427, §818.

IV. Covenant.

A. Postea for Plaintiff on Plea of *Non Est Factum in Covenant*.

(As in I, A, to the last *), that the indenture, (or articles of agreement, or as the instrument declared on, may be), above mentioned, is the deed of the said defendant, in manner and form as the said plaintiff hath above in that behalf alleged; (where breaches have been assigned, continue thus): and as to the breaches by the said plaintiff, above assigned, the jurors aforesaid, upon their oath aforesaid, say, that (the said defendant did not nor would, etc., following the language of the breaches which they find for the plaintiff), and that the said plaintiff should recover his damages therefor; and they assess the damages of the said plaintiff by reason of the premises (or

“of the breaches of covenant above assigned”), over and above his costs and charges, by him about his suit in this behalf expended, to _____ dollars, and for those costs and charges, to six cents. Burr. App. 422, §796.

B. Postea for Defendant on Plea of *Non Est Factum in Covenant*.

(As in II, B, to the *), that the above mentioned indenture (or articles of agreement, etc.), is not the deed of the said defendant, as the said plaintiff hath above in that behalf alleged. Burr. App. 427, §819.

V. Trespass.

A. Postea for Plaintiff on Plea of *Not Guilty in Trespass*.

(As in I, A, to the last *), that the said defendant is guilty of the several trespasses above laid to his charge, in manner and form as the said plaintiff hath above complained against him; and they assess the damages of the said plaintiff, by reason thereof, over and above his costs and charges by him, about his suit in this behalf expended, to _____ dollars, and for those costs and charges to six cents. Burr. App. 423, §801.

B. Postea for Defendant, Plea of *Not Guilty*.

(As in II, B, to the *), that the said defendant is not guilty of the several trespasses above laid to his charge, in manner and form as the said plaintiff hath above complained against him. Burr. App. 428, §822.

VI. Postea for Defendant on Plea of *Not Guilty in Case*.

(After the entry of the order for trial, proceed as follows):

Afterwards, that is to say, on the day and at the place last above mentioned, before _____, esquire, one of the circuit judges of the state of New York, according to the form of the statute in such case made and provided, come as well the above named plaintiff, as the above named defendant, by their respective attorneys above mentioned; and the jurors of the jury summoned to try the said issue, being called, also come; who, to speak the truth of the matters above contained, being chosen, tried and sworn, say upon their oath, * that the said defendant is not guilty of the premises above laid to his charge, in manner and form as the said plaintiff

hath above complained against him. Burr. App. 428, §824.

VII. Postea for Plaintiff as to One Defendant Not Guilty in Trover.

(As in I, A, to the last *), that the said defendant is guilty of the premises above laid to his charge, in manner and form as the said plaintiff hath above complained against him; and they assess the damages of the said plaintiff, by reason thereof, over and above his costs and charges by him, about his suit in this behalf expended, to ——— dollars, and for those costs and charges to six cents. Burr. App. 424, §807.

VIII. Replevin.

A. Postea for Plaintiff, Plea of Non Detinet in Replevin (a).

(As in I, A, to the last *), that the said defendant doth detain the goods and chattels in the declaration of the said plaintiff mentioned and set forth; and they assess the damages which the said plaintiff hath sustained, by reason of the said unjust detention above mentioned, over and above his costs and charges, by him about his suit in this behalf expended, to ——— dollars, and for those costs and charges to six cents. And they assess the value of the goods and chattels in the said declaration above specified, to ——— dollars. Burr. App. 422, §800.

Postea for Defendant on Plea of Non Capt (b).

(As in II, B, to the *), that the said defendant did not take the above mentioned goods and chattels, in manner and form as the said plaintiff hath above complained against him. Burr. App. 427, §820.

B. Postea for Defendant on Assessment of Damages in Replevin.

(As in I, A, to the words "tried and sworn," and then as follows): evidence was given to them thereupon by the above named plaintiff, which being insufficient to maintain the said issue on his part, and the said plaintiff being thereupon solemnly called to produce further evidence to support and maintain the said action, the said plaintiff comes not, but makes default, nor doth he further prosecute his suit against the said defendant.

Whereupon the said jury, at the prayer of the above named defendant, did, on their said oaths, inquire con-

cerning the value of the said goods and chattels, and the damages sustained by the defendant by reason of the detention thereof; and having so inquired, do now here upon their oaths say, that the value of the said goods and chattels is ——— dollars, and that the defendant hath sustained damages by reason of the detention thereof, over and above his costs and charges by him about his defense in this behalf expended, to ——— dollars. Burr. App. 428, §827a. See Yates' Forms 774, 774.

IX. Ejectment.

A. Postea in Ejectment, Verdict for Plaintiff.

Afterwards, that is to say, etc. (as in ordinary postea, to and including the words "say upon their oath," and then as follows): that the said C. D. is guilty of unlawfully withholding the above described premises from the said A. B. and that the said A. B. is well entitled to hold the same in fee (or for his own life, or for the life of one R. S., or for a term of years, etc., as in the declaration), as the said A. B. hath above complained against him; and they assess the damages of the said A. B., by reason of the matters aforesaid, over and above his costs and charges by him about his suit in this behalf expended, to six cents; and for those costs and charges to six cents. Therefore, etc., (judgment). Burr. App. 572, §1117.

B. Verdict for the Defendant.

(As in ordinary forms, to and including the words, "say upon their oath," and then as follows): that the said C. D. is not guilty of the matters above laid to his charge, in manner and form as the said A. B. hath above complained against him. Burr. App. 570, §1122.

X. Special Verdict as Prepared for Settlement.

Afterwards, that is to say, on the ——— Monday of May, in the year one thousand eight hundred and ———, at the ——— in the city of ——— before ———, esquire, one of the circuit judges of the state of New York, according to the form of the statute in such case made and provided, came as well the within named plaintiff as the within named defendant, by their respective attorneys within mentioned, and the jurors of the jury sum-

moned to try the said issue, being called also come; who, to speak the truth of the matters within contained being chosen, tried and sworn, say upon their oath, that, etc., (here state the facts found by the jury, and not the evidence of those facts, thus):

That on the _____ day of _____ in the year _____ one X. Y., duly made and published his last will and testament, in the manner and form required by law for passing real estate, and which was duly attested according to law, whereby among other things he devised to (stating the particulars).

And the jurors aforesaid, upon their oaths aforesaid, do further say, that the said X. Y., afterwards, on, etc., died without altering or revoking his said will.

And the jurors aforesaid upon their oaths aforesaid, do further say, that, etc. (stating all the facts consecutively; and then conclude as follows):

But whether or not, upon the whole matter aforesaid, by the jurors aforesaid, in form aforesaid found, the said defendant is guilty of the matters within laid to his charge (or did promise and undertake, or did seal and deliver the bond or obligation within mentioned (or whatever else may be in issue, pursuing the words of the issue), the jurors aforesaid are altogether ignorant, and thereupon pray the advice of the said supreme court of judicature, before the aforesaid justices thereof; and if, upon the whole matters aforesaid, it shall seem to the said court, that the said defendant is guilty of unlawfully withholding the within described premises from the said plaintiff (or whatever the affirmative of the issue may be), then the jurors aforesaid, upon their oath aforesaid say, that the said defendant is guilty thereof, in manner and form as the said plaintiff hath within thereof complained against him (again stating the affirmative of the issue), and in that case, they assess the damages of the said plaintiff, by reason of the matters aforesaid, besides his costs and charges by him about his suit in that behalf expended, to _____ dollars, and for those costs and charges to six cents. But if, upon the whole matter aforesaid, it shall seem to the said court that the said defendant is not guilty of the matters aforesaid (stating the negative of the issue), then the

jurors aforesaid, upon their oath aforesaid say, that the said defendant is not guilty thereof, in manner and form as he hath within in pleading alleged (repeating the negative of the issue). Burr. App. 486, §991; Till. Forms 606; Yates' Forms, 95.

XI. Special Answers, With General Verdict.

"That the said Amadeus T. Moran, by reason of his infancy, did not undertake and promise in manner and form as the said plaintiff hath in his declaration in this cause complained against him; and the jurors aforesaid, on their said oaths aforesaid, further say that the said defendant Louis N. Moran did undertake and promise in manner and form as the said plaintiff hath in this cause complained against him; and they assess the damages of the said plaintiff, by reason of the non-performing of the promises and undertakings mentioned, over and above his costs and charges, at the sum of \$9,273.86.

"The attorney for the said plaintiff, having submitted in writing two special questions to be answered by the jury, the jury return answers to such questions, which questions and answers are as follows:

"'Q. Do you find defendants were partners as Moran Brothers?' To which question the jury answer, 'Yes.'

"'Q. Was A. T. Moran an infant at the time of the undertakings and promises set forth in plaintiff's declaration?' To which question the jury answer, 'Yes.'"

Bethel v. Linn, 63 Mich. 464, 30 N. W. 84.

XII. Under Code.

A. Entry of Verdict Upon a Single Issue in an Action for the Recovery of Money Only.

This action being brought to trial before a jury, they find a verdict for the plaintiff, and assess the amount of his recovery at _____ dollars (or, find a verdict for the defendant). 2 Abb. Forms 462.

B. Verdict in Favor of Defendant on Counterclaim.

This action being brought to trial before a jury, they find a verdict for the plaintiff upon the first issue, and for the defendant upon the second issue, and assess the amount of the defendant's counterclaim, beyond the

plaintiff's claim, at ——— dollars. 2 Abb. Forms 462.

C. Verdict in an Action for Land (Ejectment).

This action being brought to trial before a jury, they find a verdict upon all the issues of fact in favor of the plaintiff, for the premises claimed in the complaint (or, if for a part only, describe the land; or, for one equal undivided half of the premises, etc.), to hold in fee (or otherwise, specifying the nature of the tenure); and they assess the plaintiff's damages, by reason of the withholding of the same, at ——— dollars. 2 Abb. Forms 463.

D. Verdict Subject to the Opinion of the Court.

This action having been brought to trial before a jury, they find a verdict upon all the issues of fact in favor of the plaintiff, and assess the amount of his recovery at ——— dollars (or otherwise state the finding, as the case may be) subject to the opinion of the court, at a general term, upon the questions of law. 2 Abb. Forms 463.

VERIFICATION.

I. Verifications, 1255

- A. *Common Form*, 1255
- B. *By Officer of Corporation*, 1255
- C. *By One of Several Persons*, 1255
- D. *By Two Parties Not United in Interest*, 1256
- E. *By Attorney, Party Not in County*, 1256
- F. *By Attorney, Absent Corporation*, 1256
- G. *By Agent or Attorney, Facts Within Personal Knowledge*, 1256
- H. *By Agent or Attorney, Action or Defense on Written Instrument*, 1256.
- I. *Jurat to Bill, Answer or Affidavit*, 1257

CROSS-REFERENCES:

ADMIRALTY:

- Jurat, Libel Signed by Libellant's Proctor;
- Jurat, Libel Signed by Attorney in Fact.

AGREED CASE:

Verification.

BILLS OF PARTICULARS:

Verification.

GUARDIAN AD LITEM:

Petition for Guardian Ad Litem of Infant Plaintiff Over Fourteen.

PETITIONS:

Verification of Petition.

REFERENCES:

Verification of Plaintiff's Schedule of Account.

REVISOR:

Verification of Petition by Receiver or Assignee To Revive Action.

I. Verifications.

A. *Verification, Common Form.*

A. B., the plaintiff (or, defendant) above named, being duly sworn, says that the foregoing complaint (or, answer) is true, to his own knowledge (except as to those matters therein stated on information and belief, and as to those matters he believes it to be true).

(Jurat.)

(Signature.)

1 Abb. Forms 121.

B. *Verification by Officer of Corporation.*

(Venue.)

A. B., being duly sworn, says, that he is president of the ——— company, plaintiffs (or defendants) above named, and that the foregoing complaint is true to his own knowledge (except as to those matters therein stated on information and belief, and as to those matters he believes it to be true). Deponent further says, that the reason why the verification is not made by the plaintiffs is that they are a corporation; that this deponent is an officer of the same, to-wit, president, and that his knowledge is derived from having witnessed the transactions mentioned in the complaint (or, from the admissions of the defendant, or, other sources of personal knowledge, and where a portion or all of the material allegations are on information and belief, may add, or substitute, the following clause: that the grounds of his belief are information communicated to him by the agents of said corporation, or, other sources of information).

(Jurat.)

(Signature.)

1 Abb. Forms 122.

C. *Verification by One of Several Persons United in Interest, and Pleading Together.*

(Venue.)

A. B., one of the plaintiff (or defendants) above named, being duly sworn, says that he is acquainted with the facts stated in the foregoing complaint (or answer); that the same is

true to his own knowledge (except as to those matters therein stated on information and belief, and as to those matters he believes it to be true).

(Jurat.) (Signature.)

1 Abb. Forms 123.

D. *Verification by Two Parties Not United in Interest, But Pleading Together.*

(Venue.)

A. B. and C. D., the plaintiffs (or the defendants) above named, being severally duly sworn, say each for himself that the foregoing complaint (or answer) is true to his own knowledge (except as to those matters therein stated on information and belief, and as to those matters he believes it to be true).

(Jurat.) (Signature.)

1 Abb. Forms 123.

E. *Verification by Attorney, When the Party Is Not Within the County.*

(Venue.)

A. B., being duly sworn, says that he is the attorney (or one of the attorneys) of the plaintiff in this action; that the foregoing complaint is true to his own knowledge (except as to those matters therein stated on information and belief, and as to those matters he believes it to be true). Deponent further says, that the reason the verification is not made by said plaintiff is that he is not within the county of _____, which is the county where deponent resides;* and that this deponent's knowledge is derived from the possession of the notes in suit, and from the admissions of the defendant to this deponent (or other sources of personal knowledge, if any. Where a portion or all the material allegations are on information and belief, add or substitute the following clauses: That the grounds of his belief are information received from the letters of the plaintiff, or, from M. N. of _____, the agent of the plaintiff, or, other sources of information).

(Jurat.) (Signature.)

1 Abb. Forms 124.

F. *Verification by Attorney, Where Absent Defendant Is Corporation.*

(Venue and commencement.)

That he is the attorney of the _____ bank, plaintiffs in the above action; that the foregoing complaint is

true to his own knowledge (except as to those matters therein stated on information and belief, and as to those matters he believes it to be true). And he further says, that the said plaintiffs are a corporation, incorporated and transacting their business at _____, in the state of _____, and not established or transacting their business in the county in which deponent resides, neither do any of their officers reside in said county, but reside in said state of _____, which is the reason why this affidavit was not made by the plaintiffs. (Continue as above, from the *.) 1 Abb. Forms 125.

G. *Verification by Agent or Attorney, Where Material Allegations Are Within His Personal Knowledge.*

(Venue.)

A. B., being duly sworn, says, that he is the agent (or, attorney, or, one of, etc.) for the plaintiff (or defendant) in this action, that the foregoing complaint (or answer) is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true. Deponent further says, that the reason why the verification is not made by the plaintiff (or defendant), is that all the material allegations of said complaint (or answer) are within the personal knowledge of this deponent; and that his knowledge is derived from the admissions of the defendant to this deponent (or, other sources of personal knowledge).

(Jurat.) (Signature.)

1 Abb. Forms 126.

H. *Verification by Agent or Attorney, When Action or Defense Is Founded on Written Instrument for Payment of Money Only, Which Is in His Possession.*

(Venue.)

A. B., being duly sworn, says that he is the agent of the plaintiff in this action, for the purpose of collecting the demand sued in the complaint (or, the general agent of the plaintiff in this city, or, the attorney, or, one of the attorneys for the plaintiff in this action); that the foregoing complaint (or, answer) is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he be-

believes it to be true. Deponent further says, that the reason why the verification is not made by the plaintiff (or, defendant) is that the action (or, defense) is founded upon a written instrument for the payment of money only, and such instrument is in the possession of deponent, and that his knowledge is derived from said instrument, and also from the admissions of the plaintiff to this deponent (or, also from having witnessed the execution and delivery of the same, or, other sources of personal knowledge, if any. Where a portion or all of the material allegations are on information and belief, add or substitute the following clause: that the grounds of his belief are the statements of the plaintiff to this deponent, or, other sources of information).

(Jurat.) (Signature.)

1 Abb. Forms 125.

I. *Jurats to Bill, Answer or Affidavit.*

(Common form.) Commonwealth of Massachusetts, Essex county, ss.

On this _____ day of _____, before me personally appeared A. B., and made oath that he has read the above bill (or answer or affidavit), subscribed by him (or has heard it read), and knows the contents thereof, and that the same is true, of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

J. C. P., master in chancery
(or justice of the peace).

3 Dan. Ch. Pl. & Pr. (Perkins' ed.)
2187.

VIEW BY JURY.

Order Directing View by Jury.

"Whereas it appears to the court that it is proper and necessary that the jury should view certain places represented on the diagram used in this case, marked 'Map of Road from Julian to house of J. J. Bush, San Diego county, by C. J. Fox, 1881,' hereinafter specified: It is ordered, that the jury be conducted in a body, in custody of the sheriff, to such places, and that the witness Valentine show to said jury the following places, viz.: 1. The hotel in Julian; 2. The blacksmith's shop; 3. The stable near said black-

smith shop; 4. The road traveled by the witness and John Ivey the day of the killing of John Ivey, when they left Julian; 5. The place where he (Valentine) was when he first saw the defendant, J. J. Bush, after leaving Julian on the day of the killing; 6. The place where he (Valentine) saw him at the two times before mentioned; 8. The place where the killing of John Ivey took place; 9. The rock near by marked on said map; 10. The trail going to the house of J. J. Bush from the Julian road; and that said sheriff return said jury into court without unnecessary delay.

"It is ordered that the interpreter, William Lyons, heretofore sworn as such in this case, accompany the witness Valentine, and that a copy of this order be furnished said sheriff, and be interpreted to said witness Valentine, so that he may be enabled to point out the said places." *People v. Bush*, 68 Cal. 623, 10 Pac. 169.

Note.—Reversed because the prisoner was not present at the view. It was also suggested that the judge and counsel for prisoner should be present.

WAIVER.

CROSS-REFERENCES:

BILLS AND NOTES:

Complaint on Bill, Demand and Notice Excused by Waiver.

INSURANCE:

Replication, Waiver by Defendant of Conditions.

WAREHOUSEMEN.

I. Declaration by Warehousemen for Storing Goods, 1257

II. Complaints, 1258

- A. *Against Warehouseman, Injury to Goods by Neglect*, 1258
- B. *Against Warehouseman for Loss*, 1258
- C. *For Not Taking Care of and Restoring*, 1258
- D. *For Refusal To Deliver*, 1258
- E. *For Not Forwarding Goods*, 1259

I. Declaration by Warehouseman for Storing Goods

For that whereas the said defendant heretofore, to wit, on the _____ day of _____, in the year of our Lord of _____, at _____ in the county of _____, was indebted to the said

plaintiff in the sum of _____ lawful money for warehouse room by the said plaintiff before that time made and provided for, in and about the stowing and keeping of certain goods and chattels, before then stowed and kept in certain warehouses and other erections and buildings and premises of the said plaintiff, for the said defendant at his special instance and request, and being so indebted he, the said defendant, in consideration thereof, afterwards, to-wit, on the day and year last aforesaid, at _____ (the venue), aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said last mentioned sum of money, when he, the said defendant, should be thereunto afterwards requested, yet he hath disregarded his promise and hath not paid the said sum of money, or any part thereof, to the plaintiff's damage of _____ pounds; and thereupon he brings suit, etc. 2 Chit. Pl. 48.

II. Complaints.

A. *Complaint Against Warehouseman for Injury to Goods, by Neglect To Obey Instructions.*

I. That on the _____ day of _____, 18____, at _____, the defendants, in consideration of the sum of _____ dollars, then and there paid (or agreed to be paid; or of a reasonable compensation agreed to be paid) to them by the plaintiff, agreed to store and safely keep in their warehouse at _____, certain merchandise, the property of the plaintiff, of the value of _____ dollars, consisting of (here briefly describe goods), until the same should be called for by the plaintiff (or, for the term of two months from said date, or otherwise), and then safely to deliver said goods to the plaintiff (or his order) at his request, and then and there received the same for that purpose.

II. That at the time of the delivery of said goods to the defendant the plaintiff caused the defendant to be informed that it was necessary to the preservation of said goods that they should be kept in a dry condition (or, be handled with care).

III. That the defendant negligently allowed the same to become wet (or, to be handled without care, and roughly moved and broken), so that the same, through the negligence of the defend-

ant and his servants, became greatly injured (or entirely ruined), to the damage of the plaintiff _____ dollars. 1 Abb. Forms 419.

B. *Complaint Against Warehousemen for Loss of Goods.*

I. That on the _____ day of _____, 18____, at _____, the defendants, in consideration of the sum of _____ dollars, then and there paid (or, agreed to be paid; or, of a reasonable compensation agreed to be paid) to them by the plaintiff, agreed to store and safely keep in their warehouse at _____, certain merchandise, the property of the plaintiff, of the value of _____ dollars, consisting of (here briefly describe goods), until the same should be called for by the plaintiff (or, for the term of two months from said date, or otherwise), and then safely to deliver said goods to the plaintiff (or his order) at his request, and then and there received the same for that purpose.

II. That the defendants neglected to take proper care of said merchandise; and through the negligence of themselves and their servants, the same became wholly lost to the plaintiff, to his damage _____ dollars. 1 Abb. Forms 418.

C. *Complaints Against Bailees for Not Taking Care of and Returning Goods.*

I. That on the _____ day of _____, at _____, the plaintiff delivered to the defendant a quantity of merchandise (or very briefly designate the articles), of the value of _____ dollars, to be by the defendant safely and securely kept for the plaintiff (for a compensation), and to be returned and redelivered to the plaintiff on request.

II. That the plaintiff duly performed all the conditions thereof on his part; and on or about the _____ day of _____, requested the defendant to redeliver the same.

III. That the defendant, not regarding his promise and undertaking, did not take due care of and safely keep the said goods for the plaintiff, nor did he, when so requested, or at any time afterwards, redeliver the same to the plaintiff; but on the contrary, the defendant so negligently and carelessly conducted himself with respect to the said goods, and took so little care

thereof, that by and through the mere carelessness, negligence, and improper conduct of the defendant and his servants, the goods were wholly lost to the plaintiff, to his damage _____ dollars. 1 Abb. Forms 402.

D. Complaint Against Warehouseman for Refusal To Deliver.

I. That on the _____ day of _____, 18____, at _____, the defendants, in consideration of the sum of _____ dollars, then and there paid (or, agreed to be paid; or, of a reasonable compensation agreed to be paid) to them by the plaintiff, agreed to store and safely keep in their warehouse at _____ certain merchandise, the property of the plaintiff, of the value of _____ dollars, consisting of (here briefly describe goods), until the same should be called for by the plaintiff (or, for the term of two months from said date, or otherwise), and then safely to deliver said goods to the plaintiff (or his order) at his request, and then and there received the same for that purpose.

II. That on the _____ day of _____, 18____, at _____, the plaintiff requested the defendant to deliver the said goods, and tendered him _____ dollars (or, the amount due thereon for storage), but the defendant refused to deliver the same; to the damage of the plaintiff _____ dollars. 1 Abb. Forms 419.

E. Complaint Against Warehouseman for Not Forwarding Goods According to Agreement.

I. That at the time hereinafter mentioned the defendant was a forwarding agent and keeper of a warehouse at _____, for the reception of goods intended to be forwarded by him for hire, from _____ to _____.

II. That on the _____ day of _____, the defendant received from the plaintiff certain merchandise, to wit (briefly describing it), the property of the plaintiff, of the value of _____ dollars, which he undertook for hire to forward in a reasonable time from _____ to _____, by (a vessel), and meanwhile to store and safely keep the same.

III. That after the defendant received said goods, such a vessel did, within a reasonable time then following, proceed from said _____ to _____, and the defendant might and

ought to have delivered the said goods to the (master of such vessel) for the purpose aforesaid.

IV. That the defendant did not do so, or otherwise forward said goods within a reasonable time, but kept and detained the same in his said warehouse, for a long and unreasonable time, to-wit, two months, whereby the said goods perished; to the damage of the plaintiff _____ dollars. 1 Abb. Forms 420.

WARRANTS. — See PROCESS.

WARRANTY.

I. Declarations, 1260

- A. *For Breach of Covenant of Title*, 1260
- B. *On Warranty of House*, 1261
- C. *For False Warranty of Horse*, 1262

II. Complaints, 1262

- A. *On Covenant Against Incumbrances*, 1262
- B. *On Covenant, Conveyance Subject to Specified Incumbrances*, 1263
- C. *On Covenant for Quiet Enjoyment*, 1263
- D. *On Covenant of Seisin or Power To Convey*, 1264
- E. *On Covenant of Warranty of Title*, 1264
- F. *On Covenant of Warranty for Deficiency in Quantity*, 1264
- G. *On Soundness of Horse*, 1264
- H. *Of Genuine-ness of Note*, 1265
- I. *On Amount Due on Judgment*, 1265
- J. *On Warranty of Title of Chattels*, 1265

III. Answers, 1266

- A. *Breach of Warranty in Sale*, 1266
- B. *Denial of Warranty*, 1266
- C. *Denial of Breach*, 1266
- D. *Denial of Representations*, 1266

CROSS REFERENCES:

DEEDS AND NOTES.

Answer, Note Was for Goods Sold With False Warranty.

FRAUD AND DECEIT.

Declaration for False Warranty of Horse.

Declaration for False Warranty of Cable.

SET OFF AND COUNTERCLAIM.

Answer, Recoupment for Breach of Warranty (a. b.).

I. Declarations.

A. *Declaration for Breach of Covenant of Good Title.*

For that whereas, in the lifetime of the said E. F., to-wit, on, etc., at, etc. (venue) by a certain indenture made between one G. H. and I. K. his wife, the said defendant, and D. R. of the first part, one I. L. of the second part, and the said E. F. of the third part, one part of which said indenture, sealed, etc. (profert), the said G. H. and I. K. his wife, defendant, and D. R. for the consideration therein mentioned, did grant and release to the said E. F. (in his actual possession then being, by virtue of a certain bargain and sale to him thereof made by the said G. H. and I. K. his wife, defendant, and D. R. in consideration of 5s. apiece, by indenture bearing date the day next before the date of the said indenture brought into court for one whole year, and by virtue of the statute made for transferring uses into possession), and to his heirs and assigns, certain messuages, tenements, and lands, with the appurtenances, commonly called or known, etc., situate, etc., and all other the messuages, tenements, lands, hereditaments, and premises whatsoever, of them the said G. H. and I. K. his wife, defendant, and D. R. or any or either of them situate and being, etc., together with all and singular the houses, outhouses, etc., hereditaments, and premises whatsoever, to the said messuages, lands, tenements, and hereditaments, and premises thereby granted or released, or thereby meant, mentioned, or intended so to be, belonging or in anywise appertaining to the same, then, or at any time or times theretofore usually held, used, occupied, enjoyed or accepted, reputed or known, or taken for part, parcel, or member thereof, or as belonging thereto, to have and to hold the said premises, with their and every of their appurtenances, unto and to the use of the said E. F., his heirs and assigns forever; and the said defendant did, by the said indenture now brought into court here, for himself, his heirs, executors, and administrators, covenant, promise and agree, to and with the said E. F., his heirs and assigns, amongst other things, in manner following, that is to say; that the said E. F., his heirs and assigns, should and might, from time to time,

and at all times forever thereafter, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy all and singular the said purchased hereditaments and premises, therein before mentioned to be thereby granted and released as aforesaid, or meant or intended so to be, and every part and parcel thereof, with the appurtenances, and the rents, issues, and profits thereof, and of every part thereof, should and might, from time to time, and at all times thereafter, have, receive, and take, to and for his and their use and benefit, without the lawful let, suit, trouble, claim or demand, entry, eviction, ejection, molestation, hindrance, interruption, or disturbance, whatsoever, of or by the said G. H. and I. K. his wife, defendant, and D. R. or any or either of their heirs or assigns, or for or by any other person or persons whatsoever; and that free and clear, and freely and clearly, and absolutely acquitted, exonerated, released and discharged, or otherwise by the said C. H. and I. K. his wife, defendant, and D. R. and each of them, and their and each of their heirs, executors, and administrators, well and sufficiently saved, defended, and kept harmless and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, settlements, jointures, dowers, right and title of dower, thirds at common law, entries, uses, tenements, wills, legacies, statutes merchant, and of the staple, recognizances, judgments, executions, elegits, extents, rents, arrears of rent, annuities, sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts upon bonds, and of record, debts due to the king's majesty, and of, from and against all other estates, titles, troubles, charges, and incumbrances whatsoever, save and except the chief rent issuing out of or payable for the said premises to the lord or lords, fee or fees of the same, if any such should be; as by the said indenture, relation being thereunto had, may more fully appear. And the said plaintiff further says, that the said E. F. in his lifetime, and the said plaintiff from the time of the death of the said E. F. (Plaintiff's general performance. Averment of defendant's general non-performance.) The said plaintiff in fact saith, that he the said plaintiff, so be-

ing the heir of the said E. F. as aforesaid, hath not been permitted, neither hath he been able, from time to time, and at all times, from the death of the said E. F. peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said hereditaments and premises in the said indenture mentioned, and thereby intended to be granted and released, or any part thereof, nor hath he been permitted or been able from time to time, and at all times since the death of the said E. F. to have, receive, and take the rents, issues and profits of the said premises, to and for his own proper use and benefit, without lawful let, suit, trouble, entry, eviction, and ejection of any person, but on the contrary thereof, after the death of the said E. F. one M. H., his widow, who, at the time of making the said indenture thereinbefore set forth, and continually from thence until and at the time of the eviction, ejection, and expulsion hereinafter mentioned, had, and who still hath, lawful right and title to the said premises, with the appurtenances, did enter into the same, in and upon the possession of the said tenements, and ejected, expelled and removed the said plaintiff, against the will of the said plaintiff, by due process of law, from the possession and occupation of all and every the premises, with the appurtenances, and every part thereof, and kept and held out, and still keeps and holds out to him the said plaintiff, so thereof expelled from his possession and occupation thereof, to-wit, at, etc., contrary to the form and effect of the said indenture, and of the said covenant of the said defendant, so by him made in that behalf as aforesaid; by reason of all which said premises the said plaintiff hath not only entirely lost and been deprived of the said messuage, tenement, and land, with the appurtenances, in the said indenture particularly mentioned, and of divers large sums of money, amounting in the whole to a large sum of money, to-wit, etc., by him the said plaintiff, laid out and expended in and upon the said premises, in repairing, amending, and improving the same, but hath also been obliged to pay the costs and charges sustained by the said M. H., widow, in prosecuting a certain action of ejectment for the recovery thereof, which amounted to a large sum of

money, to-wit, etc., and hath been further compelled and obliged to sustain and undergo, and hath actually sustained and undergone the payment of divers large sums of money, amounting in the whole to £——— in and about the endeavoring to defend such action of ejectment, to-wit, at, etc. (venue) aforesaid. And so, etc.

And so, the plaintiff in fact saith, that the said defendant (although often requested so to do) hath not kept the said covenant so by him made as aforesaid, but hath broken the same, and to keep the same with the said plaintiff hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said plaintiff of £———, and therefore he brings his suit, etc. 2 Chit. Pl. 546.

B. *Declaration on Warranty of Horse.* (Title and commencement.) For that whereas heretofore, to-wit, on, etc., at, etc., in consideration that the said plaintiff, at the special instance and request of the said defendant, would buy of him, the said defendant, a certain horse, at and for a certain price or sum of money, to-wit, the sum of ——— dollars, to be therefore paid by him, the said plaintiff, he, the said defendant, undertook, and then and there faithfully promised the said plaintiff, that the said horse then was sound. And the said plaintiff avers, that he, confiding in the said promise and undertaking of the said defendant, did afterwards, to-wit, on, etc., aforesaid, at, etc., aforesaid, buy the said horse of the said defendant, and then and there paid him for the same, the said sum of ——— dollars; nevertheless the said defendant did not perform or regard his said promise and undertaking, as by him made as aforesaid, but received and defrauded the said plaintiff in this, to-wit, that the said horse, at the time of the making of the said promise and undertaking of the said defendant, was not sound, but on the contrary thereof, was at that time unsound, whereby the said horse became and was of no use or value to the said plaintiff, and he, the said plaintiff, hath been put to great charges and expenses of his moneys, in and about the feeding, keeping, and taking care of the said horse, in the whole amounting to a large sum of money, to-wit, the sum of ——— dollars, to-wit, at, etc., aforesaid.

(Second count.) And whereas also, afterwards, to-wit, on, etc., aforesaid, at, etc., aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had then and there bought of him, the said defendant, a certain other horse, at and for a certain other price, or sum of money then and there agreed upon between him, the said plaintiff, and the said defendant, he, the said defendant, undertook, and then and there faithfully promised the said plaintiff that the said last mentioned horse, at the time of the said sale thereof was sound; nevertheless, the said defendant (as in the first count), in this, to-wit, that the said last mentioned horse, at the time of the said sale thereof was not sound, whereby the same horse then and there became, etc. (As in the first count, and add counts for horse-keep, if there were any contract to that effect, and the money counts.) Burr. App. 264, §527; 2 Chit. Pl. 279.

C. Declaration for False Warranty of Horse.

For that whereas the said plaintiff, heretofore, to-wit, on, etc., at, etc., at the special instance and request of the said defendant, bargained with the said defendant, a certain horse, at and for a certain price or sum of money, to-wit, the sum of two hundred dollars, and the said defendant by then and there falsely and fraudulently warranting the said horse to be sound and quiet in harness, then and there sold the said horse to the said plaintiff, for the said sum of two hundred dollars, then and there paid by the said plaintiff, to the said defendant for the same; whereas in truth, and in fact, the said horse was, at the time of the said warranty and sale thereof, unsteady, restive and ungovernable in harness, and hath, from thence hitherto, so remained and continued; and the said plaintiff in fact saith, that the said defendant by means of the premises on the day and year aforesaid, at, etc., falsely and fraudulently deceived him, the said plaintiff, on the sale of the said horse as aforesaid, and thereby the said horse, afterwards, to-wit, on, etc., not only became of no use or value to the said plaintiff, but also then and there greatly kicked, hurt, injured and spoiled a certain horse of him the said plaintiff

of great value, to-wit, of the value of one hundred dollars, and thereby also the said plaintiff was then and there put to great expense of his moneys, in the whole amounting to a large sum of money, to-wit, the sum of one hundred dollars, in and about the feeding, and taking care of and selling and disposing of the said horse, to-wit, at, etc., aforesaid.

And whereas also, the said plaintiff heretofore, to-wit, on the day and year aforesaid, at, etc., aforesaid, bargained with the said defendant to buy of him the said defendant a certain other horse, and the said defendant by then and there falsely warranting the said last mentioned horse to be sound, falsely and fraudulently induced the said plaintiff then and there to buy, and the said plaintiff did then and there buy of him, the said defendant, the said last mentioned horse for a certain other large sum of money, to-wit, the sum of two hundred dollars, whereas in truth and fact, the said last mentioned horse at the time of the said last mentioned warranty and sale was not sound, but then was, and thence hitherto hath been, and still is, unsound, and of no use or value to the said plaintiff, to-wit, at, etc., aforesaid. And so the said plaintiff saith, that the said defendant falsely and fraudulently deceived him, the said plaintiff on the sale of the said last mentioned horse as aforesaid, to-wit, at, etc., aforesaid. (Conclusion in usual form.) Burr. App. 312, §581; 2 Chit. Pl. 680.

II. Complaints.

A. Complaint on Covenant Against Incumbrances on Real Property.

I. That on the _____ day of _____, 18____, the defendant (and M., his wife), for a valuable consideration, by deed, conveyed to the plaintiff in fee simple, a farm in the town of _____, county of _____ (or otherwise briefly designate the property, and the estate therein conveyed).

II. That said deed contained a covenant on the part of the defendant, of which the following is a copy: (copy of covenant, or, whereby he covenanted, etc., stating its substance, as in II, B, to the †).

III. That at the time of the making and delivery of said deed the premises were not free from all incumbrance, but * on the contrary were subject to

the (inchoate) right of dower of one M. N., wife (or widow) of one O. N., the former owner of the premises.

IV. And for a further breach the plaintiff alleges, that on the _____ day of _____, 18____, one O. P. recovered a judgment in the _____ court, at _____, against the defendant, for the sum of _____ dollars, which judgment was, on the _____ day of _____, 18____, docketed in said county of (the place where the premises are situated), and which judgment, at the time of the execution and delivery of the deed, remained unpaid and unsatisfied of record.

V. And for a further breach, the plaintiff alleges, that at the time of the execution and delivery of said deed the premises were subject to a tax theretofore duly assessed, charged, and levied upon the said premises by the said city of _____, and the officers thereof, of the sum of _____ dollars, and which tax was then remaining due and unpaid, and was at the time of the delivery of said deed a lien and incumbrance by law upon the said premises.

VI. That by reason thereof this plaintiff was obliged to pay, and did, on the _____ day of _____, 18____, pay the sum of _____ dollars in extinguishing the right of dower (or, the lien of the judgment, or, the tax, or all of them) aforesaid. 1 Abb. Forms 340.

B. Complaint on Covenant, Conveyance To Be Subject to Specified Incumbrance.

I. (As in preceding form.)

II. That by said deed the premises conveyed were described as being subject, nevertheless, to the payment of a certain mortgage (or other incumbrance, describing it by date, name of parties, amount, and the place of record, as in the deed), and no other grants, titles, charges, estates, judgments, taxes, assessments, or incumbrances were mentioned or specified in said deed, as existing upon, or affecting, or incumbering said premises or the title thereto.

III. That said deed contained a covenant on the part of the defendant, by which he, for himself, his heirs, executors, and administrators, covenanted and agreed to and with the plaintiff, his heirs and assigns, that the said premises then were free, clear, dis-

charged, and unincumbered of and from all other and former grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature or kind soever, [†] except as above; meaning, except the mortgage aforementioned (or set forth a copy of the covenant, as in preceding form).

IV. That at the time of the making and delivery of the said deed, the premises were not free from all incumbrances other than the mortgage therein excepted, but (continue as in preceding form, from the *). 1 Abb. Forms 342.

C. Complaint on a Covenant for Quiet Enjoyment.

I. That on the _____ day of _____, 18____, the defendant (and M., his wife), for a valuable consideration, by deed, conveyed to the plaintiff in fee simple, a farm in the town of _____, county of _____, or otherwise briefly designate the property and the estate therein conveyed).

II. That said deed contained a covenant on the part of the defendant, of which the following is a copy: (copy of covenant, or, whereby he covenanted, etc., stating its substance as in the preceding form, to the t).

III. That the plaintiff has not been permitted peaceably to occupy and enjoy said premises, or to receive the rents and profits thereof; but on the contrary, on the _____ day of _____, 18____, one M. N., who at the time of making said deed, and continually from thence, until the time of the eviction hereinafter mentioned, was the lawful owner (or, lawfully entitled to possession) of said premises, entered into the same, and ejected and removed the plaintiff by due process of law, from the possession and occupation of the same (or if only a part, designate what part), with the appurtenances, and has ever since kept him out of the same.

IV. That by reason thereof the plaintiff has not only lost said (part of the) premises, but also the sum of _____ dollars, by him laid out and expended in and upon the said premises in repairing and improving the same, and has also been obliged to pay the sum of _____ dollars costs and charges sustained by the said M. N. in prosecuting his action for the recovery thereof, and the cost of _____

dollars, for his own costs, charges, and counsel-fees in defending said action. 1 Abb. Forms 342.

D. Complaint on Covenant of Seizin or of Power To Convey.

I. That on the _____ day of _____, 18____, the defendant (and M., his wife), for a valuable consideration, by deed, conveyed to the plaintiff in fee simple, a farm in the town of _____, county of _____ (or otherwise briefly designate the property and the estate therein, conveyed).

II. That said deed contained a covenant on the part of the defendant, of which the following is a copy: (copy of covenant, or, whereby he covenanted, etc., stating its substance. See II, B).

III. That at the time of the execution and delivery of said deed, the defendant was not the true, lawful, and rightful owner, etc. (negating the words of the covenant).

IV. And for a further breach of the said covenant, the plaintiff alleges that at said time the defendant had not in himself good right, full power, etc., negating the words of the covenant), whereby plaintiff has sustained damage _____ dollars. 1 Abb. Forms 343.

E. Complaint on Covenant of Warranty of Title.

I. That on the _____ day of _____, 18____, the defendant (and M., his wife), for a valuable consideration, by deed, conveyed to the plaintiff in fee simple, a farm in the town of _____, county of _____ (or otherwise briefly designate the property and the estate therein, conveyed).

II. That said deed contained a covenant on the part of the defendant, of which the following is a copy: (copy of covenant of warranty, or allege its substance. See II, B).

III. That the plaintiff afterwards lawfully entered upon the premises, and became seized thereof accordingly.

IV. That the defendant has not warranted and defended the premises to the plaintiff; but, on the contrary, on the _____ day of _____, 18____, one M. N., who at the time of making said deed had, and ever since until the last-mentioned day, continued to have lawful right to the premises by an elder and better title, lawfully entered the premises, and ousted the plaintiff thereof, and still lawfully holds him

out of the same, to his damage _____ dollars.

(Or, where the eviction was by recovery at law.) IV. That the defendant has not warranted and defended the premises to the plaintiff; but, on the contrary, one M. N., lawfully claiming the same premises by an elder and better title, afterwards, in an action brought by him in the _____ court, held at _____, in which said M. N. was plaintiff, and this plaintiff was defendant (and of which action due notice was given to the said defendant in this action), did, on the _____ day of _____, 18____, recover judgment, which was duly given by said court against this plaintiff for his seizin and possession of the premises, and afterwards and on the _____ day of _____, 18____ (by virtue of a writ of execution duly issued thereon), lawfully entered the premises and ousted the plaintiff thereof, and still lawfully holds out of the same, to his damage _____ dollars. 1 Abb. Forms 344.

F. Complaint on Covenant of Warranty for Deficiency in Quantity.

I. That on the _____ day of _____, 18____, the defendant (and M., his wife), for a valuable consideration, by deed conveyed to the plaintiff (in fee simple), a farm in the town of _____, county of _____, in said deed bounded and described as follows: (copy description).

II. That said deed contained a covenant on the part of the defendant, of which the following is a copy: (copy of covenant, or, whereby he covenanted, etc., stating its substance. See II, B).

III. That the said farm contained only sixty acres of land, instead of ninety acres, as described and warranted in said deed, to the plaintiff's damage _____ dollars. 1 Abb. Forms 345.

G. Complaint on Warranty of Soundness of Horse.

I. That on the _____ day of _____, 18____, at _____, the defendant, offering to sell to the plaintiff a certain horse, warranted (and fraudulently represented) said horse to be sound, kind, and true, and gentle and quiet in harness.

II. That the plaintiff, relying upon said warranty and representations, then and there purchased said horse, and

paid to the defendant therefor the sum of _____ dollars.

III. That at the time of said warranty and sale the said horse was unsound, unkind, and untrue, and restive and ungovernable in harness, and had an infectious disease, and was utterly worthless (or, and was worth _____ dollars less than the defendant represented and warranted), and was known by the defendant so to be; and that said horse still so remains.

(Allege special damage, if any, *e. g.*, as follows):

IV. That thereafter said horse infected with said disease three other horses of the plaintiff, of the value of _____ dollars, by reason whereof one of said horses died, and the others were rendered worthless; and the plaintiff was put to great expense in the care of said horses and in attempting their cure.

Or, thus, IV. That the plaintiff relying upon the said warranty of the said defendant, afterwards attempted to use the said horse in harness, and the said horse being unsteady, restive and ungovernable in harness, without the fault of the plaintiff, ran away, greatly injuring and breaking the plaintiff's wagon, and greatly injuring and bruising the plaintiff, whereby the plaintiff became sick, sore, and lame, and was hindered from attending to his work, as a mason, and was put to great expense in repairing his wagon and harness, and in recovering from his hurts.

V. That by reason of the premises this plaintiff was injured and misled, to his damage _____ dollars. 1 Abb. Forms 384.

II. Complaint on Warranty of General Soundness of Note Sold.

I. That on the _____ day of _____, 18____, at _____, the defendant offering to pass to the plaintiff, for a valuable consideration, a promissory note (describing it, *e. g.*, thus), for the sum of _____ dollars, made by one M. N., payable to his own order, and indorsed by him, which note bore date the _____ day of _____, 18____, and was payable _____ days from date (or, a promissory note, of which the following is a copy: copy of the note), then and there warranted (and fraudulently represented), the said note to have been in truth made by the said M. N.

II. That the plaintiff, relying upon

said warranty, purchased said note of the defendant, and paid him therefor the sum of _____ dollars.

III. That in truth said note was not made by said M. N., but his name was forged thereto.

IV. That by reason of the premises the plaintiff was injured and misled, to his damage _____ dollars. 1 Abb. Forms 386.

I. Complaint on Warranty of Amount Due on Judgment Assigned.

1. That on the _____ day of _____, 18____, the defendant, for a valuable consideration, duly assigned by writing, under his hand (and seal) to this plaintiff a judgment which he had, on the _____ day of _____, 18____, recovered in the supreme court, county of _____ (or, in the _____ court), for the sum of _____ dollars, in a certain action wherein A. B., defendant above-named, was the plaintiff, and one M. N. was defendant.

II. That said assignment contained a covenant on the part of the defendant, of which the following is a copy: (copy of the covenant), (or, that the defendant did therein and thereby warrant that there was due upon said judgment, from said M. N., the said sum of _____ dollars, with interest thereon from the _____ day of _____, 18____).

III. That in truth, at the time of said assignment, said judgment had been paid in full (or, in part) to the defendant, and no part thereof (or, only the sum of _____ dollars) was or now is due thereon.

IV. That by means of the premises this plaintiff was injured and misled, to his damage _____ dollars. 1 Abb. Forms 393.

J. Complaint for Breach of Contract on Warranty of Title of Chattels Sold.

1. That on the _____ day of _____, 18____, at _____, the defendant offering to sell to the plaintiff for _____ dollars, to be paid to him by this plaintiff, a certain piece of _____, warranted (and fraudulently represented) said piece of _____ to be the property of the defendant.

II. That the plaintiff, relying on said warranty (and representation), purchased the same from defendant, and paid him therefor _____ dollars.

III. That in truth said piece of _____ was then not the property of defendant.

ant, but belonged to one M. N., all which defendant then knew.

IV. That thereafter the said M. N. sued the plaintiff to recover possession of the same; and that the plaintiff gave the defendant due and timely notice of the commencement of said action, and required him to defend the same, or judgment would be suffered by failure to answer; but the defendant neglected to defend said action, and such proceedings were afterwards had therein as that the said M. N. recovered, by legal process, possession of said pianoforte from the plaintiff, with _____ dollars costs.

V. That by reason of the premises this plaintiff was misled to his damage _____ dollars. 1 Abb. Forms 394.

III. Answers.

A. Answer Breach of Warranty in Sale.

I. That the goods therein mentioned were warranted by the plaintiff to be (genuine chinaware).

II. That they were not (genuine chinaware).

III. That, therefore, the defendant, on the _____ day of _____, 18____, and as soon as he discovered the defect, returned the same to the plaintiff (or, duly tendered the same back to the plaintiff, and has ever since been, and still is, willing to return them). 2 Abb. Forms 106.

B. Answer, Denial of Warranty.

That he did not promise or represent to the plaintiff that any sum whatever was due upon said note (or, that said horse was sound, or kind, or true, or gentle, or quiet in harness), as alleged (but that the plaintiff purchased said _____, with notice (here state defect, if any), and not relying on any representations of the defendant). 2 Abb. Forms 107.

C. Answer, Denial of Breach.

That at the time of the sale mentioned in the complaint, said horse was sound, etc. (pursuing terms of warranty). 2 Abb. Forms 108.

D. Denial of Representations.

That he did not make any of the representations alleged. 2 Abb. Forms 115.

WASTE.

I. Proceedings at Law, 1266

A. Declarations, 1266

1. Voluntary, 1266

2. Permissive, 1267

B. Writ of Inquiry, 1268

C. Judgment Record, 1268

D. Execution, 1268

II. Proceedings in Equity, 1268

A. Bill To Restrain, 1268

B. Decree Awarding Injunction, 1270

C. Decree Staying Waste by Tenants in Common, 1270

III. Code Proceedings, 1270

A. Complaints, 1270

1. By Heirs Against Doweress, 1270

2. By Lessor for Damage, 1270

3. By Devisee for Damage, 1271

4. For Forfeiture and Eviction, 1271

B. Denial of Waste, 1271

CROSS-REFERENCES:

EJECTMENT:

Petition for Order To Stay Waste.

INJUNCTIONS:

Injunction Against Waste or Alienation;

Injunction Against Waste by Ploughing or by Cutting Timber;

Injunction Against Waste in Respect of House or Ornamental Trees;

Injunction Against Removing Fixtures.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Complaint by Purchaser at Sheriff's Sale for Waste Committed Before Conveyance.

LANDLORD AND TENANT:

Complaint by Lessor Against Lessee for Injunction and Damages.

I. Proceedings at Law.

A. Declarations.

1. Declaration in Waste, Voluntary.

Supreme court. _____ of _____ term, in the year, etc. (City and county (of _____), ss.:

A. B. was summoned to answer C. D. of a plea wherefore he has committed waste (here pursue the description in the writ), and hereupon the said C. D., by E. F., his attorney, complains for that whereas the said A. B. before and at the time of the committing the grievances next hereinafter mentioned, held and enjoyed the said above mentioned dwelling house, farm and garden, with the appurtenances, as tenant thereof to him the said C. D., under

and by virtue of a certain demise (or other instrument) to him the said A. B., thereof made by the said C. D. (he the said C. D. being then and yet seised in fee thereof), and which said estate of the said A. B., by virtue of the said demise, was for the term of (state the time). Yet the said A. B., contriving and wrongfully and unjustly intending to injure, prejudice and aggrrieve him the said C. D., in his reversionary interest and estate in and to the said dwelling house, farm and garden, with the appurtenances, while the same were in the possession of the said A. B. as tenant thereof to the said C. D., under and by virtue of the said demise to the said A. B., as hereinbefore mentioned, to-wit, on, etc., and on divers other days and times between that day and the commencement of this suit, at, etc., felled, etc., divers trees, to-wit, one hundred beech trees, one hundred maple trees, etc., of great value, to-wit, of the value of one thousand dollars, standing, growing and being upon the said farm, and took and carried away the same and converted and disposed thereof to his own use. (Other acts of waste may be averred, such as removing manure, or over-cropping, etc.) By means of which said several grievances, the said C. D. was and is greatly injured in his said reversionary estate and interest in the said described premises, with the appurtenances, and hath sustained damage to the amount of two thousand dollars, and therefore he brings suit, etc.

E. F., atty. for plff.

Burr. App. 568, §1106.

2. Declaration in Waste, Permissive.

For that whereas heretofore, to-wit, on, etc. (day of letting, or about it), at, etc. (venue), in consideration that the said plaintiff, at the special instance and request of the said defendant, would demise and let to the said defendant a certain messuage, garden and premises, with the appurtenances, situate in the county of _____, to hold the same to the said defendant, as tenant thereof to the said plaintiff, to-wit, from the _____ day of _____ then next, for one whole year, and so from year to year, so long as the said plaintiff and defendant should respectively please, he the said defendant undertook, and then and there faithfully promised the said plaintiff that he the

said defendant would, during the continuance of the said tenancy, keep the said messuage, garden and premises, with the appurtenances, in good and tenantable repair, order and condition. And the said plaintiff avers that he, confiding in the said promise and undertaking of the said defendant, afterwards, to-wit, on the day and year first aforesaid, at, etc. (venue), aforesaid, did demise and let the said messuage, garden and premises, with the appurtenances, to the said defendant, for the time and upon the terms aforesaid, and that the said defendant was, and continued tenant to the said plaintiff of the said messuage, garden and premises with the appurtenances, under and by virtue of the said tenancy, for a long space of time, to-wit, from the time of making his promise and undertaking aforesaid, until and upon the _____ day of, etc. Nevertheless the said defendant, not regarding his said promise and undertaking, but contriving and intending to deceive and defraud the said plaintiff in this behalf, did not nor would, after the making of his promise and undertaking, and during the continuance of the said tenancy, keep the said messuage, garden and premises, with the appurtenances, in good and tenantable repair, order and condition, according to his said promise and undertaking; but on the contrary thereof, he the said defendant, after the making of his said promise and undertaking, and during the continuance of his said tenancy, to-wit, on the day and year first above mentioned, and from thence until and upon the said, etc., wrongfully and unjustly suffered and permitted the said messuage, garden and premises, with the appurtenances, to be and continue, and the same were, for and during all that time, ruinous, prostrate, foul and in bad and untenable repair, order and condition, for want of good and careful and necessary repairing, cleaning and amending thereof. And afterwards, to-wit, on the day and year first aforesaid, he the said defendant wrongfully and unjustly yielded and delivered up to the said plaintiff the said premises so ruinous, prostrate, broken down, foul and in bad and untenable repair, order and condition as aforesaid, contrary to his said promise and undertaking, to-wit, at, etc. (venue) aforesaid. 2 Carr Pl 311.

B. Writ of Inquiry in Waste.

The people of the state of New York, to the sheriff of the (city and) county of ———, greeting:

Whereas A. B., lately in our supreme court of judicature, before our justices thereof, impleaded (C. D. of a plea wherefore, etc. (here insert the declaration), to his damage ——— dollars, as he said: And such proceedings were thereupon had in our said supreme court, before our said justices, that the said plaintiff ought to recover his damages by occasion of the premises. But because it is unknown to our said supreme court, before our said justices, what damages the said plaintiff hath sustained by reason of the premises: Therefore we command you that you go to the place wasted as aforesaid, in the said declaration described, and there, by the oath of twelve good and lawful men of your county, you diligently inquire of the waste done as aforesaid, and of the damages occasioned thereby; and that the inquisition which you shall thereupon take you send to our said court, before our justices thereof, at, etc., on, etc. (the return day), under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness, etc. (teste and signature in the usual form). Burr. App. 590, §1162.

C. Judgment Record in Waste.

(The record is made up in the same manner as in ordinary actions, with placita, pleadings and the usual entries to judgment, which, if rendered for the plaintiff, is entered as follows):

Therefore it is considered that the said plaintiff do recover against the said defendant treble the amount of the damages aforesaid, by the jurors aforesaid in form aforesaid found, such treble amount being ——— dollars; and also ——— dollars, for his costs and charges by him about his suit in this behalf expended, by the court now here adjudged, of increase to the said plaintiff, and with his assent; which said damages, costs and charges, in the whole amount to ——— dollars. And it is further considered that the said plaintiff do recover against the said defendant the premises aforesaid in the declaration aforesaid mentioned, with the appurtenances, and that the said

plaintiff have execution thereof, etc. Burr. App. 532, §1056.

D. Execution in Waste.

The people, etc., to the sheriff, etc., greeting:

Whereas, by the judgment and consideration of our supreme court of judicature, before our justices thereof, at, etc., it was adjudged that A. B. recover, etc. (here state the judgment as in preceding form). Whereof the said C. D. is convicted, as appears to us of record: and although judgment be thereof given, yet execution thereof remaineth to be done. Now, therefore, we command you that of the goods and chattels of the said C. D. in your county, you cause to be made the damages aforesaid in form aforesaid adjudged. And if sufficient goods, etc. (as in an ordinary fi. fa.; or let the writ be framed like an ordinary ca. sa. if necessary; and if possession of the place wasted is to be given, add as follows): And we further command you that, without delay, you deliver to the said A. B. possession of the said premises so recovered as aforesaid, with the appurtenances; and in what manner you shall have executed this our writ, make appear to our justices of our supreme court of judicature, at, etc., on, etc. (the return). And have you then there this writ.

Witness, etc. (teste in the usual form).

————, ———, clerks.

E. F., attorney.

Burr. App. 520, §1041.

II. Proceedings in Equity.*A. Bill To Restrain Waste.*

Your orator A. B., of, etc. That your orator before and at the time of making the indenture hereinafter mentioned was seized in his demesne as of fee, of and in certain tenements, with the appurtenances, situate at L., in the county of N., hereinafter particularly described; and being so seized, by a certain indenture bearing date the ——— day of ———, in the year ———, and made between your orator of the one part, and C. D., of, etc. (the defendant hereinafter named) of the other part, your orator did demise, lease, set, and to farm let, unto the said C. D., his executors, administrators and assigns, all, etc.

To hold the same, with the appurtenances, unto the said C. D., his execu-

tors, administrators and assigns, from the _____ day of _____, then last past, for the term of _____ years thence next ensuing, at the yearly rent of \$_____; and the said C. D. did thereby for himself, his executors, administrators and assigns, covenant, promise and agree with your orator, his heirs and assigns, that he the said C. D., his executors, administrators or assigns, would during the said term keep the said premises in good repair, and manage and cultivate said farm and lands in a proper husbandlike manner, according to the custom of the country as by the said indenture of lease, reference being thereunto had, will more fully appear. And your orator further sheweth unto your honors that the said C. D., under and by virtue of the said indenture, entered upon the said demised premises, with the appurtenances, and became, and was, possessed thereof for the said term, so to him granted thereof by your orator as aforesaid. And your orator further sheweth unto your honors that at the time the said C. D. entered upon the said premises, the same were in good repair and condition, and your orator hoped the said C. D. would so have kept the same, and have cultivated the said lands in a proper and husbandlike manner, according to the custom of the country, and that such part of the said premises as consisted of ancient meadow or pasture ground would have remained so, and not have been ploughed up, and converted into tillage; and that no waste would have been committed on the said premises. But now so it is, may it please your honors, the said C. D., combining, etc., pretends that the said premises now are in as good repair as when he entered in or to the same, and that he has cultivated the said farm and lands in a proper and husbandlike manner, and that no waste has been committed by him thereon.

Whereas your orator charges that the said premises and the buildings, out-houses, gates, stiles, rails and fences were in a good and perfect state and condition when the said C. D. entered upon the said premises, but now are very ruinous and bad, and the land very much deteriorated, from the wilful mismanagement and improper cultivation thereof by the said C. D., who has ploughed up certain fields called

_____, containing respectively _____ acres, and has otherwise committed great spoil, waste and destruction in, upon and about the said premises; and your orator further charges that the said C. D. ought to put the said premises into the same condition they were in when he entered thereon, and to make your orator a reasonable compensation for the waste and damage done or occurred thereto; and that the said C. D. ought to be restrained, by the order and injunction of this honorable court, from ploughing up the remaining pasture fields, part of the said demised premises, and particularly the fields called _____ and _____, and containing respectively _____ acres, which he threatens to do, and also restrained from committing any further or other waste, spoil or destruction in and about or to the said estate and premises, or any part thereof. All which actings, etc.

And that the said C. D. may be compelled by the decree of this honorable court to put the said premises into such repair and condition, in every respect, as far as circumstances will permit, as the same were in when he entered upon the same, under and by virtue of such demise as aforesaid; and may also be decreed to make a reasonable compensation to your orator for all waste done, committed or suffered by him on the said premises, and all damage occasioned thereby by his mismanagement or neglect (your orator hereby waiving all pains and penalties incurred by the said C. D. on account of committing waste on the said premises), and that he may be decreed to keep the said premises in good and sufficient repair and condition during the remainder of his interest therein, and to manage and cultivate the said farm and lands in a proper and husbandlike manner, according to the custom of the country, and that he may be likewise restrained, by the order and injunction of this honorable court, from ploughing up the said remaining pasture fields, forming part of the said demised premises, and particularly the said fields called _____ and _____, and from committing or permitting any further waste or spoil in, on, or to the said demised premises, or any part thereof. (And for general relief.) May it please, etc. (And by praying an injunction in the terms of the

prayer, and by praying process of a subpoena.) 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2068.

B. Decree Awarding Injunction To Stay Felling Ornamental Timber and Other Waste.

This court doth order that an injunction be awarded to restrain the defendant D., her agents, servants and workmen, from cutting down any timber or other trees growing on the estate in the plaintiff's bill mentioned, which are planted or growing thereon for the protection or shelter of the several mansion houses belonging to the said estate, or for the ornament of the said houses, or which grow in lines, walks, vistas or otherwise, for the ornament of the said houses, or of the gardens or parks or pleasure grounds thereunto belonging. And it is further ordered that the injunction do also extend to restrain the defendant D., her servants, workmen and agents, from cutting down any timber or other trees, except at seasonable times, and in a husbandlike manner; and likewise from cutting down saplings and young trees, not fit to be cut as and for the purposes of timber; until, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2307; *Chamberlayne v. Dummer*, 1 B. C. C. 166; 2 Seton Dec. (Eng. ed., 1862) 891.

Decree Awarding Injunction, Trees To Intercept View.

Or which were planted for the purpose of intercepting the view of objects intended to be kept out of sight. And also from committing any other spoil or destruction on the said estate. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2308.

Decree Awarding Injunction, Trees To Shade or Shelter.

Standing or growing for ornament, shade or shelter of the mansion and buildings at, etc., or any other houses or buildings on the settled estates. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2308.

C. Decree Staying Waste by Tenants in Common.

This court doth order that an injunction be awarded against the defendant A., to restrain him, his servants, workmen and agents, from cutting down any timber, or other trees, or underwood, from off the estates in the bill mentioned at unseasonable times; until, etc. 3 Dan. Ch. Pl. & Pr. (Perkins'

ed.) 2309; 2 Seton Dec. (Eng. ed., 1862) 894.

III. Code Proceedings.

A. Complaints.

1. Complaint by Heirs Against Dowress and Her Husband.

I. That one M. N. was in his life-time seized in fee simple of lands in _____ county, of which the following described premises are a part.

II. "That on the _____ day of _____, 18—, being so seized, he died intestate, leaving the defendant W. his widow.

III. That the defendant W. thereafter entered on and was possessed as her dower during her life of one-third part of said lands, to-wit, the following described premises (description of premises).

IV. That the defendant W. afterwards intermarried with the defendant Y. Z., who entered and was possessed thereof in her right.

V. That the plaintiffs were left by the said M. N. his only children and heirs; and as such were, at the time of the committing of the grievances hereinafter mentioned (and still are), entitled to the reversion in the above described premises.

VI. Allege waste as in preceding forms. 1 Abb. Forms 478.

2. Complaint by Lessor for Damages for Waste.

I. That the plaintiff, before and at the time of the committing of the grievances hereinafter mentioned, was (and still is) the owner in fee simple of the following described lands (description of premises).

II. That at the time of the committing of said grievances the defendant held and enjoyed the said premises as tenant thereof to the plaintiff, under and by virtue of a demise to the defendant, made by the plaintiff.

III. That the defendant, with intent to injure the plaintiff in his reversionary interest therein, on the _____ day of _____, and on other days thereafter, and before this action, without authority, cut down and carried away therefrom one thousand beech trees, one thousand chestnut trees (etc.), of the value of _____ dollars.

IV. That during the same time he likewise dug up and carried away one thousand cubic yards of soil and herbage, of the value of _____ dollars,

and converted all the same to his own use.

V. That during the same time he likewise wrongfully (or negligently) set fire to and destroyed (the said building) upon the premises, and constituting a part of the realty, and wholly destroyed the same.

VI. That the plaintiff was thereby injured in his reversionary estate in the premises to the amount of _____ dollars. 1 Abb. Forms 477.

3. Complaint by Devisee for Damages for Waste.

I. That at the time of his death, one M. N. was seized in fee simple of (describe the premises).

II. That in his lifetime the said M. N. made and published his last will and testament, whereby he devised the said land to the defendant, for the term of _____, and afterwards to the plaintiff.

III. That on the _____ day of _____, 18—, at _____, the said M. N. died.

IV. That the defendant entered into possession of the same, under the said will.

V. Continue as in preceding form, III to VI. 1 Abb. Forms 478.

4. Complaint for Forfeiture and Eviction on Ground of Waste.

I-IV. As in III, A, 3; or, where the defendant is lessee, as I and II, in III, A, 2.

V. That on the _____ day of _____, 18—, the defendant committed great waste on the said land (cutting down _____ apple trees, or otherwise specify the acts of waste. See III, A, 2).

VI. That the injury thereby done to the said property is (more than) equal to the value of the defendant's unexpired term.

VII. That said waste was committed in malice.

Wherefore the plaintiff demands judgment:

1. That the estate of the defendant in the said property be forfeited;

2. That he be evicted therefrom;

3. For (_____ dollars damages, and for) the costs of this action. 1 Abb. Forms 480.

B. Answer, Denial of Waste.

That he did keep said premises in repair, and he did not use them in an

untenant-like or improper manner, and he cultivated and managed the same according to good husbandry and the custom of the country (or otherwise, agreeing in substance with the averments of breach in the complaint). 2 Abb. Forms 128.

WATERS AND WATERCOURSES.

I. Declaration for Damage by Continuing a Dam, Flowing Meadow, 1271

II. Complaint, Allegation of Special Damage From Overflow, 1272

III. Complaint, Allegation Against Continuer of Dam Which Is Nuisance, 1272

IV. Complaint Against Erector of Dam Which Is Nuisance, Seeking Abatement and Damages, 1272

V. Complaint for Erecting Dam Causing Backwater, 1272

VI. Declaration for Damages for Diverting Stream, 1273

VII. Complaint for Diverting Water From Plaintiff's Mill, 1273

VIII. Complaint, Destroying Water for Irrigation by Mining Operation, 1273

IX. Complaint, Interfering With Floating Logs, 1274

CROSS REFERENCES:

LOUIS AND LOUISIANA:

Declaration for Injury to Mill Dam by Logs.

MALICIOUS MISCHIEF:

Indictment for Malicious Mischief, Cutting Down River or Sea Dam, Indictment, Injury to Dam.

I. Declaration for Damage Caused by Continuing Dam, Flowing Meadow.

"The plaintiff declared, 'In a year of the case for that the plaintiff at Woodstock, on the first day of May, A. D. 1840, was and ever since has been and still is possessed of a certain place, being twenty-five acres of meadow land, in said Woodstock (the sitting is), through which meadow there has during all that time run, and still runs, a brook called Mill

Brook, which runs northwardly by the jail, in said Woodstock; yet the said Granger, well knowing the premises, but contriving and maliciously intending wrongfully and unjustly to hurt, injure, and prejudice the plaintiff, and cause the water of said brook to set back and flow out of its channel upon the said meadow of the plaintiff, and cause the said meadow to become wet and cold, and less fertile than it would otherwise be, and to destroy the grass of the plaintiff, growing and that would grow, upon said meadow, and to deprive the plaintiff of the profits of his said meadow, at said Woodstock, on the said 1st day of May, 1830, and from thence until the present time, hath wrongfully and unjustly kept and continued, and caused to be kept and continued, a dam, which had before been wrongfully erected, set up, put down and placed in, over, and across the said brook, northwardly, by and down the said brook from the said meadow of the plaintiff; and, during all that time, kept and caused to be kept the sluices and gates in said dam so shut and closed, that the waters of said brook were prevented from flowing through the said meadow of the plaintiff in the natural channel of said brook, and were caused to set back upon the said meadow of the plaintiff, during all the time aforesaid; by reason of all which doings of said defendant, and of said waters of said brook being obstructed in the manner aforesaid, the said meadow became, and, during all the time aforesaid, has been, and yet is, less fertile than it used to be, and less fertile than it would otherwise have been, and has become cold and wet, and the good grass, well growing and rooted on the said first day of May, has died and ceased to grow, and coarse wild grass has grown up in its stead; and that he has, all that time, sustained great injury both in the quality and quantity of the grass, growing from year to year upon said meadow, all which is to the damage of the plaintiff, as he says, the sum of five hundred dollars.' " *Hutchinson v. Granger*, 13 Vt. 386.

II. Complaint, Allegation of Special Damage to Plaintiff's Land From Overflow.

Whereby the plaintiff's grass, of the value of _____ dollars, then growing on said meadow, was spoiled, and his

meadow made spongy, rotten, and good for nothing; and forty lengths of plaintiff's fence, of the value of _____ dollars, have been taken up and carried away. 1 Abb. Forms 475.

III. Complaint, Allegation Against Continuer of Dam Which Is Nuisance.

That on or about the _____ day of _____, 18____, the defendant (erector) conveyed said freehold to the defendant (continuer), who, from that time ever since, has been in possession of said freehold and dam, and wrongfully maintains said nuisance; although, on the _____ day of _____, 18____, and before this action, he was by the plaintiff requested to remove and abate the same. 1 Abb. Forms 475.

IV. Complaint Against Erector of Dam Which Is a Nuisance, Seeking Abatement and Damages.

I. That the plaintiff is, and at the times hereinafter mentioned was, the owner of the freehold of certain lands in _____, with dwelling house thereon, known as (designating the premises).

II. That in the month of _____, 18____, the defendant wrongfully raised a dam (or, a pool of water) upon his freehold, in the vicinity of the plaintiff's land, whereby the water was flowed thereon (or, on plaintiff's freehold), to the nuisance of plaintiff's said freehold, and to his damage _____ dollars.

Wherefore the plaintiff demands judgment:

1. That the said nuisance be removed.

2. That the plaintiff recover of the defendant _____ dollars, damages caused thereby, and costs of this action. 1 Abb. Forms 474.

V. Complaint for Erecting Dam Below Causing Backwater.

I. That at the times hereinafter mentioned, the plaintiff was lawfully possessed (or, if not in possession, the owner in fee), of a water-mill, called a grist-mill (or saw-mill, or otherwise), situated upon _____ Brook (naming the stream), at _____ stating location definitely, or stating name of mill).

II. That the plaintiff then had a right to use and employ the water of said brook, and to have the same flow

to and through his mill in a convenient and customary manner, according to the natural and usual flow of said brook, and without the hindrance of the defendant or any other person.

III. That on the _____ day of _____, 18____, and on various days between that time and the _____ day of _____, 18____, the defendant (knowing the premises, and intending to injure the plaintiff) wrongfully erected a dam and mill upon the same stream, a little below the plaintiff's said mill, and have continued the same ever since, whereby the defendants cause a backwater, that hinders a free course of said stream from the plaintiff's mill, to the nuisance of his mill, and to the hindrance of his business, to his damage _____ dollars (or conclude with paragraph IV). 1 Abb. Forms 473.

VI. Declaration for Damages for Diverting Stream.

The declaration alleged that the plaintiff, on the 17th day of October, 1851, was, and ever since had been, lawfully seized and possessed of a certain saw-mill, situated in the town of Glastenbury, near to a certain stream or water course there, and which said stream or water course, before and at the time of committing the grievances mentioned, had been accustomed to run and flow, and of right had run and flowed, and still of right ought to run and flow, in great abundance and plenty unto the said saw-mill of the plaintiff, for the supplying of the same with necessary water for the working thereof; yet that the defendant, well knowing the premises, on the 18th day of October, 1851, and on divers other days and times between that day and the commencement of the suit, wrongfully and unjustly diverted and turned large quantities of the water of said stream out of the same, and away from said mill, and hindered and prevented the water of the said stream from flowing along its usual course to said mill of the plaintiff, and from supplying the same with water for the necessary working thereof, as the same ought to have done and otherwise would have done; and that by reason thereof, the water of said stream, sufficient for the supplying of the said mill during that time, could not and did not flow to the same as the same ought to have done and otherwise would have done; and

that the plaintiff, for want of such sufficient water, could not during that time use his said mill in so large, extensive and beneficial a manner as he ought to have done, and otherwise would have done, but was thereby, during all that time, deprived of the use and enjoyment of said mill, and of all profit which he otherwise might and would have made by the use of the same; to the damage of the plaintiff, etc. Wier & Covell, 29 Conn. 198.

VII. Complaint for Diverting Water From Plaintiff's Mill.

I. That at the times hereinafter mentioned, the plaintiff was lawfully possessed (or, if not in possession, the owner in fee) of a water-mill, called a grist-mill (or, saw-mill, or otherwise), situated upon _____ brook (naming the stream), at _____ (stating location definitely, or stating name of mill).

II. That the plaintiff then had a right to use and employ the water of said brook, and to have the same flow to and through his mill in a convenient and customary manner, according to the natural and usual flow of said brook, and without the hindrance of the defendant or any other person.

III. That on the _____ day of _____, 18____, and on various days between that time and the _____ day of _____, 18____, the defendant (knowing the premises, and intending to injure the plaintiff) wrongfully dug up and removed the banks of said brook above said mill, and for _____ days diverted the water (or, a part of the water) thereof from running to and through said mill (or, built a dam across said brook above said mill, and for _____ days stopped the water thereof from running to and through said mill).

IV. That, by reason of such acts of the defendant, the plaintiff's mill, which was able, and before was used to grind _____ bushels of wheat, &c., thereafter and during the time aforesaid could only grind _____ bushels, to the damage of the plaintiff _____ dollars. 1 Abb. Forms 472.

VIII. Complaint, Action To Restrain Destroying Water Supply for Irrigation by Mining Operations.

"Plaintiff avers, that he is a ranchman and cultivator of the soil; that on and on his said ranch a valuable garden

and orchard; that there is a dwelling house and stable thereon, and was, a short time since, a good soring thereon, the water of which was used for drinking and culinary purposes; that he has also in said ranch a dam, used for the purpose of collecting water; that there is also upon said ranch a ditch connected with said dam, and which is supplied with water from said dam; that said dam and ditch are used by plaintiff to collect and supply water for irrigating the trees and vegetables on said ranch; that said garden and vegetables and trees growing thereon, would be entirely useless and worthless without said water, and that said water could not be obtained or supplied without said dam and ditch.

"Plaintiff avers that he now has, and has had for some time past, a great many vegetables and trees growing in said garden.

"Plaintiff further avers, that a short time since, and while plaintiff was the owner of said land as aforesaid, the defendants commenced mining operations upon the ravine and hillside above the land aforesaid, south of and about one hundred yards from said garden; that said mining is carried on by the process known as sluicing, and by means of using large quantities of water that said defendants by mining and using large quantities of water as aforesaid, have flooded plaintiff's premises aforesaid, injuring and filling up the dam aforesaid, so that it is worthless, cutting and injuring the ditch aforesaid, cutting and injuring the garden aforesaid, so as to destroy the vegetables and injure and damage the trees thereon.

"And plaintiff further avers, that said defendants, by their acts aforesaid, have injured and destroyed said spring, and have rendered the same entirely worthless and useless to plaintiff.

"Plaintiff charges that the acts of defendants are unlawful, and if they are permitted to continue their acts aforesaid, great and irreparable injury will be done him. That they have already by their acts aforesaid, done him injury and damage in the sum of one hundred and fifty dollars.

"Plaintiff further charges, according to his information and belief, that said defendants have no property or visible means from which an execution could be satisfied in case of the rendition of

a judgment against them in favor of plaintiff for the injuries done and threatened aforesaid.

"Wherefore, plaintiff sues and prays judgment for said sum of one hundred and fifty dollars damages, and costs of suit. And he further prays that a temporary injunction be issued against the defendants, enjoining them from in any manner flowing water upon said land and premises, or any part thereof, and that upon final hearing said injunction be made perpetual." *Levaroni v. Miller*, 34 Cal. 231.

IX. Complaint, Action for Damages for Interfering With Floating Logs.

"For that the plaintiffs, on the first day of May, A. D. 1861, and on each and every day between said first day of May and the day of the date of this writ (October 22, 1861), owned and possessed a large quantity, to-wit: five million feet, board measure, of pine, spruce and hemlock board-logs and timber, which said logs and timber they had, on and between said days, deposited in and upon the Androscoggin River, at Milan, in the county of Coos, and State of New Hampshire, for the purpose of being floated and driven in and upon and down said river to the steam sawmills of the plaintiffs, situated on the banks of said river, in said Bethel; and the plaintiffs aver that the said Androscoggin River, from its rise to its mouth, to-wit, from the place where said logs and timber were deposited, in said Milan, to the said mills in said Bethel, on said first day of May was, ever since has been, and now is, a public highway for all persons to go upon and navigate with their boats and rafts of timber, and over and upon and down which to drive and float their logs, timber and lumber, at their free will and pleasure, and without any let or hindrance whatsoever. Yet the defendants, well knowing the premises, while the plaintiffs so owned and possessed said logs and timber, to-wit, on said first day of May, and on divers other days and times, between said first day of May and the day of the date of this writ, and while said logs and timber were so landed and deposited in said river for the purpose aforesaid, did, by themselves, their agents and servants, unlawfully, unjustly and wrongfully

keep and detain said logs and timber, at said Milan, by means of a certain boom then and there constructed and built in the said river, by the said defendants, whereby the free navigation of said river was obstructed. And the plaintiffs aver, that the defendants thereby, by means of said boom, then and there so obstructed the said river, at said Milan, as to render said river impassable and unnavigable, and unfit for the public to pass over and upon said river, with their boats and rafts of timber, and unfit and inconvenient to float logs and timber upon and down the same. And the plaintiffs further aver that, by reason of the aforementioned obstruction, their logs and timber were detained and kept back until after the rise of water in the said river had become unfit and unsuitable to float their said logs and timber, to such an extent, that they, the plaintiffs, were compelled to abandon a great portion of their said logs and timber, to-wit, one million feet board measure, between said place of deposit, in said Milan, and their said mills, in said Bethel. And the plaintiffs further declare and allege, that they were put to a great expense, to-wit, an expense of one dollar for each and every thousand feet board measure, by reason of their detention at said Milan, caused by said boom, built by the defendants as aforesaid, in driving their said logs from said place of deposit thereof, in Milan, to their said mills, in said Bethel, over and above what they would have been to and at had not said boom been built. Whereby, and by force of the statute in such case made and provided, an action hath accrued to the plaintiffs to have and recover the damage by them sustained in this behalf, and for which this action is brought." *Davis v. Winslow*, 51 Me. 264.

WEAPONS.

I. Indictment for Carrying Concealed Weapon, 1275

II. Indictment for Carry Concealed Weapon Into Public Assembly, 1275

III. Indictment for Carry Weapon Contrary to Law, 1276

CROSS REFERENCE:

DISORDERLY CONDUCT:

Complaint for Discharging Firearms in Corporate Limits.

I. Indictment for Carrying Concealed Weapon (a).

"State of Indiana, Warren county, ss. Warren circuit court, October term, 1877. The State of Indiana v. Isaac Judy. Indictment for carrying concealed weapon.

"The grand jurors of Warren county, in the State of Indiana, good and lawful men, duly and legally empanelled, sworn and charged in the Warren Circuit Court of said State, at the October term for the year 1877, to enquire into felonies and certain misdemeanors in and for the body of said county of Warren, in the name and by the authority of the State of Indiana, on their oaths do present, that one Isaac Judy, late of said county, on or about the 14th day of June, A. D. 1877, at and in said county and State aforesaid, did then and there unlawfully carry, conceal in his pocket, a certain dangerous and deadly weapon, to-wit, 'a pistol, he, the said Isaac Judy, not being then and there a traveler, contrary,' etc. *State v. Judy*, 60 Ind. 138.

Information for Carrying Concealed Weapons (b).

"One William Swope, he not then and there being a traveler, did then and there wear and carry concealed about his person, a dangerous and deadly weapon, to-wit: a fire arm called a revolver." *State v. Swope*, 20 Ind. 106.

Indictment for Carrying Concealed Weapon (c).

"On the _____ day of July, 1888, and on divers other days before and since, in the county aforesaid, did carry concealed a deadly weapon, to-wit: a certain deadly weapon commonly called a 'stung gun,' together with other deadly weapons to the great unknown, and other peace and order, pocket-knife, against the peace and dignity of the Commonwealth," etc. *Com. v. McCluskey*, 7 Met. (Ky.) 8.

Indictment for Carrying Concealed Weapon (d).

"Unlawfully did wear a pistol, concealed as a weapon, when not upon a journey." *Carry v. State*, 24 Ark. 338.

II. Indictment for Carrying Concealed Weapon Into Public Assembly (a).

"Unlawfully did go into a certain religious assembly, with the following

mitage school house, in said county, where was then assembled divers persons for the purpose of religious worship, and did then and there have on his person a certain pistol, and he, the said Newton Porter, not being then and there a peace officer," etc. *Porter v. State*, 1 Tex. App. 477.

Note.—Under statute forbidding carrying weapons to public assemblies.

Indictment for Carrying Concealed Weapon Into Public Assembly (b).

"Unlawfully and wilfully go into a ball room with a pistol on his person, the said Rainey not then and there being an officer of the peace." *Rainey v. State*, 8 Tex. App. 62.

III. Indictment for Carrying Weapon Contrary to Law.

"That, on the 16th day of January, one thousand eight hundred and seventy-six, in the county of Lamar, in said state of Texas, with force and arms, one Frank Lewis did unlawfully carry about his person a certain pistol; the said Frank Lewis, at the time and place aforesaid, had no reasonable grounds for fearing an unlawful attack on his person, and that said attack was immediate and pressing; and, at the time and place aforesaid, the said Frank Lewis was not carrying said pistol about his person for the lawful defense of the state, as a militiaman in actual service, nor was he a peace officer, or a policeman engaged in the lawful discharge of his official duties; and that the said Frank Lewis, at the time and place aforesaid, was not a sheriff engaged in the lawful discharge of his official duties, nor was he a civil officer of any kind whatsoever; and the said Frank Lewis, at the time and place aforesaid, was not on his own premises nor at his place of business, and at the time and place aforesaid the said Frank Lewis was not a traveler in this state." *Lewis v. State*, 2 Tex. App. 26.

Note.—Under statute forbidding carrying pistol except in cases enumerated.

WILLS.

- I. Bill by Husband of Legatee Against Executor, 1277
- II. Complaint by Creditor of Deceased Against Legatee, 1277

III. Complaint Against Devisee by Creditor of Deceased Person, 1278

IV. Plea by Devisee, Rien Per Devise, 1279

V. Decrees and Decretal Orders, 1278

- A. Order for Inquiry if Executors Have Recovered Money, 1278
- B. Decree Establishing Will, Where Proved, 1278
- C. Decree Establishing Will Where Admitted, 1278
- D. Decree Declaring Construction of Will, 1278
- E. Decree, Will Established Except as to Legacies Partly Failing, 1279
- F. Decree, Devise Declared Good, 1279
- G. Decree, Declaration That Real Estate Is Charged With Debts, 1279
- H. Decree, Directions for Inquiries as to Charities and Their Treasurers, 1279
- I. Decree, Gifts by Deed and Will in Charity Declared Void, 1279
- J. Decree Declaring Void Testamentary Papers, Not Being Executed According to Law of Testator's Domicil, 1279
- K. Decree, Directions for Inquiry as to Exercise of Power To Appoint, 1280
- L. Decree, Defect of Execution of Appointment by Will Supplied, 1280
- M. Decree, Forfeiture Declared Under Terms of Will, 1280
- N. Decree That Devise on Double Contingency Failed, 1280
- O. Decree, Inquiry as to Employment of Balances, 1280
- P. Decree, Directions to Executor To Pay Mortgage Out of General Assets, Costs, 1280

CROSS-REFERENCES:

ANNUITIES:

Bill for Dower and Annuity Against Executors, Devisees in Trust.

COMPROMISE AND SETTLEMENT:

Complaint Upon Compromise of Suit for Withdrawing Opposition to Probate of Will.

EJECTMENT:

Complaint in Ejectment Setting Forth Title by Devise.

INHERITANCE:

Declaration Against Heir or Devisee of Obligor;

Complaint Against Heir or Devisee
Where He Has Conveyed Land;
Answer by Heir or Devisee, Nothing
by Descent or Devise.

ISSUES IN PLEADING AND PRACTICE:

Order for an Issue as to Clause in
Will;
Order After Issue as to Clause in
Will.

LANDLORD AND TENANT:

Complaint, Assignee of Devisee of
Reversion and Rent Against As-
signee of Part of Premises.

PLEA IN EQUITY:

Plea of Will.

PRAYER FOR RELIEF:

Prayer of Bill To Carry Trusts Into
Execution and To Ascertain Rights
of Parties.

PROBATE OF WILLS:

Petition To Revoke Probate;
Objection to Probate, Nuncupative
Will;
Certificate of Probate of Foreign
Will.

WASTE:

Complaint by Devisee for Damages
for Waste.

I. Bill by Husband of Legatee Against Executor.

To, etc.

Humbly complaining sheweth unto
your honors your orator A. B. of, etc.
That W. S., late of, etc., duly made
and published his last will and testa-
ment in writing, bearing date on or
about ———, and thereby amongst
other bequests gave to his nephews
and nieces, the children of his late sis-
ter M. A. the sum of \$——— each
to be paid to them as they should re-
spectively attain the age of twenty-
one years, and appointed E. T. F. of,
etc., the defendant hereinafter named,
the sole executor of his said will, as
in and by the said will or the probate
thereof when produced will appear.
And your orator further sheweth unto
your honors that the said E. T. F. soon
after the death of the said testator
duly proved the said will in the proper
court, and hath since possessed himself
of the personal estate and effects of
the said testator to an amount much
more than sufficient for the payment
of his just debts, funeral and testa-
mentary expenses and legacies. And
your orator further sheweth that after
the death of the said testator your
orator intermarried with A. A. who was
the niece of the said testator, and

one of the children of the said M. A.
in the said will named, and by virtue
of such intermarriage your orator in
right of his said wife became entitled
to demand and receive the aforesaid
bequest of \$———. And your orator
further sheweth that your orator's said
wife lived to attain her age of twenty-
one years, and that she hath lately de-
parted this life, and that neither your
orator nor his said wife received any
part of the said legacy. And your
orator further sheweth that having ob-
tained letters of administration to his
said wife, he hath repeatedly applied
to the said E. T. F. for payment of
the said legacy and interest thereon
from the time of his said late wife
attaining her age of twenty-one years,
and your orator hoped that such his
reasonable requests would have been
complied with, as in justice and equity
they ought to have been. But now so
it is, may it please your honors, that
the said E. T. F. combining, etc.
(Bills and Answers, I, D.) To the end,
therefore, that, etc. (Bills and An-
swers, I, G.)

And that an account may be taken
of what is due and owing to your
orator for the principal and interest of
the said legacy, and that the said de-
fendant may be decreed to pay the
same to your orator. And if the said
defendant shall not admit assets of the
said testator sufficient to answer the
same, then that an account may be
taken of the estate and effects of the
said testator which have been pos-
sessed or received by the said defend-
ant, or by any other person by his or-
der or to his use, and that the same
may be applied in a due course of ad-
ministration. (And for further relief,
see Bills and Answers, I, H. I.) May
it please your honors, etc. (Bills and
Answers, I, G.)

II. Complaint by Creditor of De- ceased Against Legatee.

I. State facts showing a debt of
the decedent, due and still unpaid.

II. That on the ——— day of
———, 18——, at ———, and
(decedent) died, leaving a last will and
testament duly made, by which one
M. N. was appointed sole executor
thereof; and that on the ——— day
of ———, 18——, said will was duly
proved and admitted to probate in the
office of the surrogate of the county
of ———, and letters testamentary

thereupon were thereafter duly issued and granted to said M. N. by said surrogate.

III. That said will contained the following legacy to the defendant (copy of the clause of the will, or: That by said will the said (decedent) bequeathed a legacy of _____ dollars to the defendant).

IV. That before the commencement of this action said executor paid over to the defendant, as such legatee, the amount of said legacy (or, _____ dollars, being part of the amount of said legacy) out of the assets of said estate.

V. That no assets have been delivered by the executor to any of the next of kin of the deceased (except assets to the value of _____ dollars; and the value of said assets so delivered has been recovered from the next of kin by one M. N., a creditor of the decedent; or say, and the value of said assets so delivered is not sufficient to satisfy the plaintiff's demand). 1 Abb. Forms 533.

III. Complaint Against Devisees by Creditor of Deceased.

I. and II. As in Form II.

III. That said will contained the following devise to the defendants (copy of the clause of the will), and that said devise property is bounded and described as follows (description of premises).

Or, III. That by said will the testator devised to the defendants the following described premises (description).

Continue as in preceding form. 1 Abb. Forms 536.

IV. Plea by Devisee, Rien Per Devise.

Because he says, that he the said defendant hath not, nor at the time of the exhibiting of the bill of the said plaintiff, in this behalf (or, if in C. P. or by original, at the time of the commencement of this suit), nor at any time before or since, had any lands, tenements, or hereditaments, by devise from the said E. F. deceased. And this, etc. 3 Chit. Pl. 974.

V. Decrees and Decretal Orders.

A. Order for Inquiry if Executors Have Recovered Moneys.

It is ordered that it be referred to, etc., to make an inquiry, what part of the personal estate comprised in and

assigned by the indenture of settlement, dated, etc., in, etc., came to the hands of S. and R., the trustees of the said settlement; and what funds were in the hands of the said trustees at the death of E., the testatrix in, etc., and what has become of all such funds as came to the hands of the said trustees, and whether the same or any, and which of them, might have been recovered from the said trustee by M. and T., the executors of the said E., after the decease of the said E. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2300; 2 Seton Dec. (Eng. ed. 1862) 752.

B. Decree Establishing Will, Where Proved.

This court doth declare, that the will of _____, the testator in the bill (or pleadings) named, dated, etc., is (or and the codicil thereto, dated, etc., are) well proved, and that the same ought to be established, and the trusts thereof performed and carried into execution; and order and decree the same accordingly. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2209.

C. Decree Establishing Will, Where Admitted.

The defendant H., the heir-at-law of _____ the testator in the bill (or pleadings) named, by his answer (or counsel) admitting the due execution of the testator's will (dated, etc., and of the said codicil, dated, etc.), this court doth declare, that the same ought to be established, and the trusts thereof performed and carried into execution, and doth order and decree the same accordingly. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2209.

D. Decree Declaring Construction of Will.

This case came on to be heard, and was argued by counsel, and the court having considered the same do find and declare that the said E. J. is entitled to the household furniture and wearing apparel of the testator, and all his other chattels of personal use as her own absolute property; that she is entitled to the income, during her widowhood, of all the rest of the personal estate, and that the executor is a trustee by implication to hold the principal, so long as the income is payable to her.

That she is also entitled to the possession and use of the real estate during her widowhood. That the principal of the personal estate, of which

the widow is entitled to the income, is intestate estate, the right to which at the death of the testator, vested in the persons entitled under the statute of distributions; that of this, if there were no children, one-half vested in the widow and her interest in the income of her share merged in her vested remainder, and it may be paid to her by the executor when his account is settled, and an order of distribution obtained in the probate court.

G. C. W., clerk.

Feb. 12, 1862.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2212.

E. Decree, Will Established, Except as to Legacies Partly Failing.

The court doth declare that the will ought to be established, etc., except as to so much of the charity legacies thereby bequeathed as are directed to be paid out of the money to arise by sale of the testator's real and leasehold estates, or to come out of any mortgages or chattels real belonging to the testator, and decree the same accordingly; and as to so much of the said charity legacies as is directed to be paid out of the money to arise by sale of the said freehold and leasehold estates, the court doth declare that the same is void, as being contrary to the statute passed in the ninth year of the reign of his late Majesty King George II, entitled, "An Act to restrain the disposition of lands, whereby the same became unalienable." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2218; 1 Seton Dec. (Eng. ed. 1862) 329.

F. Decree, Devise Declared Good.

Establish will. "And declare, that the devises and limitations of the estates contained in the said will are good and valid in law." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2209; Thelluson v. Woodford, 13 Ves. 297; 1 Seton Dec. (Eng. ed. 1862) 257.

G. Decree, Declaration That Real Estate Is Charged With Debts.

And the testator having by his will charged his real estate with the payment of his debts, this court doth declare that such debts ought to be made good out of such estate, as equitable assets. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2210.

H. Decree, Directions for Inquiries as to Charities and Their Treasurers.

And it is ordered (or further ordered) that the said master do inquire what are the several charitable institutions intended in the residuary bequests contained in the will of the testatrix; and who are the present treasurers of such charitable institutions respectively; and in case there shall be no such treasurer, then who are the trustees or managers thereof respectively. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2219.

I. Decree, Gifts by Deed and Will in Charity Declared Void.

The court doth declare, that the charitable gifts contained in the indenture of, etc., and the will of the same date of C., the testator in, etc., so far as such gifts are payable out of his real estate or personal estate savoring of realty (which has arisen from or is connected with land) are null and void by the statute, etc. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2219; 1 Seton Dec. (Eng. ed. 1862) 330.

J. Decree Declaring Void Testamentary Papers, Not Being Executed According to Law of Testator's Domicil.

"That the said Sir J. C. in the bill mentioned, at the time of the writing, and executing the letters mentioned in the said bill, and also at the time of his death, was domiciled in the Province of New Brunswick, and that the letters aforesaid purport to be, and are, testamentary papers; and that the legal validity and interpretation thereof are to be governed and adjudged by the laws of said province; and that the same not being executed so as to be binding as a will and testament by the laws of the said province, they are to be deemed to all intents and purposes as testamentary papers, a mere nullity, and of no effect; and that the said Sir J. C. is therefore, to be deemed to have died intestate; and that the said T. C. G., having been duly appointed administrator of the goods and effects of the said Sir J. C., is entitled to have and hold as such, the assets of the said Sir J. C., now in the hands of the said W. A. and his executors is stated and admitted. And it is thereupon ordered and decreed by the court, that the said W. A. do forthwith pay

over the same to the said T. C. G., as administrator, deducting therefrom the amount which shall be awarded to him as costs in this cause by the court, as hereinafter stated." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2217.

K. Decree, Direction for Inquiry as to Exercise of Power To Appoint.

And it is ordered (or further ordered), that the said master do inquire, whether the testatrix executed any deed or deeds other than those mentioned in the pleadings, which operates or operate as an appointment of her real estate, or of any kind, and what part thereof, pursuant to the power contained in the indenture dated, etc., and if so, what is the nature and effect thereof. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2218; 1 Seton Dec. (Eng. ed. 1862) 287.

L. Decree, Defect of Execution of Appointment by Will Supplied.

The court doth declare, that the will of M. L., widow, deceased, in the pleadings, etc., is, notwithstanding the defect in the execution thereof, a valid execution of the power of appointment given her by the will of J. L., the testator in the pleadings, etc., and that under such will of the said M. L., her daughters, the defendants, M. B., etc., are entitled absolutely to the, etc., and cash carried over in trust in and to the credit of the cause L. v. L., to "The disputed appointment accounts of the said defendants respectively," as in the pleadings mentioned, subject to the payment thereof of the costs of all parties of this suit pro rata. Tax all parties' costs of this suit, as between solicitor and client. Liberty to apply. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2217; *Lucena v. Barnewall*, 5 Beav. 249; 1 Seton Dec. (Eng. ed. 1862) 287.

M. Decree, Forfeiture Declared Under Terms of Will.

And the defendant A., by her counsel, admitting that she never has resided, and does not intend to reside, in the mansion house situate, etc., the court doth declare, that according to the true construction of the will of G., the testator in, etc., the said defendant has forfeited the estate for life given to her by the said testator's will; and (by consent of the plaintiff by his counsel) doth declare that

such forfeiture takes place from this day. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2210, 2211; *Dunne v. Dunne*, 3 S. & G. 22; 1 Seton Dec. (Eng. ed. 1862) 262.

N. Decree That Devise on Double Contingency Failed.

This court doth declare, that the testator's daughter S., having died in his lifetime, under twenty-one years of age, but married, the devise over of the two messuages, etc., to the defendant E., her heirs and assigns, in the event of the death of the said S. under twenty-one and unmarried, did not take effect, and the said two messuages descended to the defendant L., the testator's heir at law, and that the same are by the said will charged with the testator's debts and funeral expenses. 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2210; 1 Seton Dec. (Eng. ed. 1862) 257, 258.

O. Decree, Inquiry as to Employment of Balances.

It is ordered that it be referred to, etc., to inquire and report "how and in what manner the personal estate of the testator possessed by (come to the hands of) the defendant C., has been employed by him, and what balances in respect thereof have remained in his hands, and during what time respectively." 3 Dan. Ch. Pl. & Pr. (Perkins' ed.) 2301.

P. Decree, Directions to Executor To Pay Mortgage Out of General Assets Costs.

Suffolk, ss. Supreme judicial court, in equity. W. T. A., executor v. S. B. and others. Decree.

And now after a full hearing and consideration it is ordered, adjudged, and decreed that the said W. T. A., executor of the will of T. W., take out of the general assets of the estate of said T. W. in his hands as such executor, a sum sufficient to pay the debtor with interest thereon, which is secured by mortgage on the estate in D. street named in the will and therein specifically devised in trust; and a further sum sufficient to pay the costs of this suit taxed as between solicitor and client, to-wit, the sum of two hundred and twenty dollars for the costs of the said executor, the sum of three hundred and eight dollars and seventy-five cents for the costs of the several respondents, S. B. and J. G. B., and

the sum of three hundred and ten dollars for the costs of the residuary legatees; and that no part of the said mortgage debt, interest, or costs be paid out of the real or personal estate specifically devised by said will to the said W. T. A. in trust for the benefit of the said S. B. and J. G. B.

By the court.
G. C. W., clerk.

December 27, 1862.

3 Dan. Ch. Pl. & Pr. (Perkins' ed.)
2211; Andrews v. Bishop, 5 Allen
(Mass.) 490.

WINDING UP CORPORATIONS.

Complaint, Action by Stockholder To Wind Up Corporation.

(Allegations of corporate existence and ownership of stock by plaintiffs, of indebtedness of corporation and insufficiency of earnings to conduct business, and danger of loss of entire assets if business is continued.)

"Wherefore plaintiffs ask that a receiver for the said defendant corporation may be appointed to take charge of its real and personal property of all kinds and descriptions, and wheresoever situated, including choses in action, with authority to continue the business of said corporation for the time being, under the direction and subject to the orders of this court, pending the final winding up and settlement of the affairs of said corporation; that he may be authorized by order of this court from time to time to borrow such sums of money for the purpose aforesaid, as to this court may seem necessary and proper, and issue his obligations therefor, that he may ascertain the indebtedness of said corporation and report the same to this court, that the said defendant corporation may be ordered to convey or transfer all its property, both real and personal, including choses in action and letters patent, wheresoever the same may be situated, whether within this state or any other state or country, to the said receiver to be appointed in this action, that the business and affairs of said defendant corporation may be ultimately wound up, all its property of all kinds and descriptions sold, and the proceeds thereof equitably distributed under and in accordance with the orders of this court, and plaintiffs pray for all such other and further re-

lief as they may be entitled to, whether at law or in equity." Peter v. Farrell & M. Co., 53 Ohio St. 534, 42 N. E. 690.

WITHDRAWAL OF JUROR.

Entry of Withdrawal of Juror.

(Enter the postea in the usual form, to the words, "also come," and then proceed as follows): who, to speak the truth of the matters within contained, are chosen, tried, and sworn; whereupon for certain causes, moving as well the said (circuit judge) as the said plaintiff and defendant, John Doe, one of the jurors of the jury aforesaid is withdrawn from the panel thereof, and the rest of the jurors of the jury aforesaid are altogether discharged from giving any verdict of and upon the premises within mentioned, etc. Burr. App. 96, §184; 2 P. & D. Pl. 725.

WITHDRAWAL OF PLEADINGS.

CROSS REFERENCE:

EQUITY JURISDICTION AND PROCEDURE:

Petition for Leave To Withdraw
Replication and Amend Bill;
Order for Leave To Withdraw and
Amend Bill.

WITNESSES.

- I. Affidavit To Procure a Habeas Corpus Ad Testificandum, 1281
- II. Habeas Corpus Ad Testificandum, 1282
- III. Warrant Against Witness, 1282
- IV. Interrogatories on Attachment of Witness, 1282

CROSS REFERENCES

CHANGE OF VENUE:

Affidavit for Change of Venue in Accordance of Convenience of Witnesses.

CROSS:

Affidavit To Payment of Witness Fees.

DEPOSITIONS:

Commission To Examine Witness (in Ill.)

Commission To Examine Witness for Purpose of Motion.

CONCERNING JUSTICE:

Judgment, Interfering With Witness Advising Non-attendance.

Judgment, Interfering With Witness Administration of Interrogatories.

PENALTIES, FORFEITURES AND FINES:

Complaint Against Witness for Disobeying Subpoena.

PRELIMINARY EXAMINATION:

Deposition of Witnesses Taken at Preliminary Examination;

Oath to Complaining Witness on Preliminary Examination.

SUBPOENA:

Subpoena for Circuit;
 Subpoena Duces Tecum;
 Subpoena Ticket for the Circuit;
 Subpoena Ticket Duces Tecum;
 Subpoena on Writ of Inquiry Before the Sheriff;
 Subpoena Ticket on Writ of Inquiry;
 Subpoena on References;
 Subpoena Ticket for Appearance Before Referee.

I. Affidavit To Procure Habeas Corpus Ad Testificandum.

(Erie) county, ss.: A. B. of _____, the above named plaintiff (or, C. D. of _____, the above named defendant) being duly sworn, deposes and says, that this action is brought to recover, etc. (state the nature of the action), that the defense to the same is (state what). And deponent further says, that he has fully and fairly stated the case in this cause to E. F. his counsel therein, who resides at _____ and has fully and fairly disclosed to his said counsel what he expects to prove by X. Y. who is now a prisoner (for debt) in the custody of the sheriff of the county (or city and county) of _____, and that the testimony of the said X. Y. is material and necessary to this deponent on the trial of this cause, as he is advised by his said counsel, and verily believes; and that without the benefit of the testimony of the said X. Y. this deponent cannot safely proceed to the trial of this cause, as he is also advised by his said counsel and verily believes. And deponent further says, that this cause is noticed for trial, at, etc. (state the time and court), and that this application to procure the attendance of the said X. Y. as a witness for this deponent, is without any fraud or connivance between this deponent, and the said X. Y. Sworn, etc. A. B. (or C. D.). Burr. App. 18, §39; Till. Forms 249; Yates' Forms 84.

II. Habeas Corpus Ad Testificandum.

The people of the state of New York,

to the sheriff of the (city and) county of (New York), greeting:

We command you, that you have the body of X. Y., detained in our prison in your custody, as it is said, under safe and secure conduct, before our justices of our supreme court, circuit judges, or some or one of them, at a circuit court to be held in and for the (city and) county of (New York), at the (city hall in the said city), on the first Monday of May next, to testify and give evidence in a certain cause now pending in the said supreme court, and then and there to be tried between A. B. plaintiff, and C. D. defendant, of a plea of trespass on the case (or as the action is), on the part of the plaintiff (or defendant). And immediately after the said X. Y. shall then and there have given his testimony in the said cause, that you return him to our said prison, under safe and secure conduct. And have you then there this writ. Witness, Greene C. Bronson, Esquire, our chief justice, at the (capitol in the city of Albany), the (seventeenth day of January), in the year of our Lord one thousand eight hundred and (forty-six).

_____, _____, clerks.

E. F., attorney.

(Endorsed in addition to the title.)

Allowed (20th March, 1846. John W. Edmonds), Circuit Judge.

Burr. App. 127, §251; Till. Forms 29; 5 Cow. 176.

III. Warrant To Apprehend Witnesses.

By (the judge or officer issuing the warrant) to the sheriff of the county of _____:

You are hereby commanded, in the name of the people of the state of New York, to apprehend and bring before me, at, etc., I. J., a witness duly summoned to attend before me, and who has neglected to do so (and a copy of which summons so disobeyed by him is hereto annexed), and hereof fail not at your peril. Witness my hand and seal, at, etc., the _____ day of _____, in the year, etc.

(Judge's signature and seal.)

Burr. App. 488, §994; Yates' Forms 652.

IV. Interrogatories on Attachment of Witness for Disobeying Subpoena.

Supreme court. Interrogatories to be administered to X. Y., who is in the

custody of W. J., sheriff of the (city and) county of (New York), on an attachment issued against him for disobeying a certain writ of subpoena directed to the said X. Y., commanding him to appear at a circuit court, held in and for the (said city and) county of (New York), at, etc., on, etc. (the day and place named in the subpoena), to testify as a witness in an action of (trespass on the case), pending in the supreme court between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff (or defendant).

First interrogatory. Were you or not, subpoenaed to appear and testify at the time, in the manner, and between the parties in the caption of these interrogatories mentioned? If yea, state when, where, how and by whom you were so subpoenaed, and whether any, and what money was paid you for your fees as such witness? Declare fully.

Second interrogatory. Look at the annexed writ of subpoena now exhibited to you at this, the time of your examination. Is that the writ by which you were so subpoenaed, and was a subpoena ticket at the same time left with you, agreeing in substance with such subpoena? Declare, to your best knowledge and belief.

Third interrogatory. Did you, or not, obey such subpoena by attending as a witness at the time and place therein mentioned, and from day to day during the circuit court in the said writ specified, or until the court or the party subpoenaing you duly discharged you. If nay, why did you not so attend? Answer fully.

E. F., attorney, and of
counsel for (plff.)

Burr. App. 130. §257; Yates' Forms
92.

WORK AND LABOR.

I. Declarations, 1284

- A. *Common Counts for Work and Labor*, 1284
- B. *For Wages as Hired Servant*, 1285
- C. *For Work With Horse and Carriages*, 1286
- D. *For Work, Journey and Attendance*, 1286
- E. *For Board and Wages as Hired Servant*, 1286
- F. *For Not Receiving Servant Into Service*, 1286

- G. *By Nurse for Services*, 1287
- H. *For Carriage of Goods by Land*, 1287
- I. *By Undertaker*, 1287

II. Complaints, 1288

- A. *For Work and Labor, General Form*, 1288
- B. *On Special Contract Completely Fulfilled*, 1288
- C. *For Work and Materials Furnished*, 1288
- D. *For Work and Materials Furnished on Account*, 1288
- E. *For Repayment of Advances on Services Unfulfilled*, 1288
- F. *By Employee Discharged or Prevented From Fulfilling Contract*, 1289
- G. *For Employee's Refusal To Serve*, 1289
- H. *For Work and Labor on Account*, 1289
- I. *For Tuition*, 1289
- J. *For Stabling Horse*, 1289
- K. *Against Common or Private Carrier, Loss of Goods*, 1290
- L. *Against Common or Private Carrier for Failure To Deliver in Time*, 1290
- M. *Against Watchmaker for Not Using Due Care*, 1290
- N. *Breach of Contract To Manufacture Goods*, 1291
- O. *For Goods Made and Not Accepted*, 1291
- P. *On Promise To Manufacture Wool*, 1291
- Q. *For Section in Editing or Compiling Book*, 1291
- R. *For Services in Editing Newspaper*, 1291
- S. *By Newspaper for Advertising*, 1291
- T. *On Agreement To Rent, and for Injury to Plates*, 1292
- U. *By Advertising Agent for Services and Disbursements*, 1292

CROSS REFERENCES.

ARCHITECTS AND BUILDERS.

- Complaint by Architect for Ill Services.
Complaint by Builder on Special Contract, Modified by Partial Work Claim for Extra Work.
Complaint Against Builder for Not Well Finishing Building.
Complaint Against Builder for Not Completing His Work, With Special Damage by Loss of Rent.

Answer, Plaintiff's Work Not Finished and Architect's Certificate Not Obtained.

ASSIGNMENTS:

Complaint on Special Contract, Where Fulfilled by Assignee.

ASSUMPSIT:

Declaration, Common Counts for Goods Sold, Work, Labor and Materials, With Money Counts.

ATTORNEYS:

Complaint by an Attorney for Services and Disbursements.

GUARANTY:

Complaint Against Principal and Guarantors in Contract for Work and Labor.

HUSBAND AND WIFE:

Declaration by Husband and Wife for Work and Labor by Wife Before Marriage;

Declaration Against Husband and Wife for Work Done for Wife Before Marriage.

INJUNCTIONS:

Injunction Against Contractor Interfering After Forfeiting Contract.

PARENT AND CHILD:

Complaint by Parent for Services of Minor Son.

PHYSICIANS AND SURGEONS:

Declaration as Surgeon, and for Medicines.

PRINCIPAL AND AGENT:

Declaration by Agent Against Principal for Commission According to Agreement.

SCHOOLS AND SCHOOL DISTRICTS:

Complaint by Teacher To Recover for Services.

USE AND OCCUPATION:

Declaration, Common Counts for Board and Lodging;

Declaration, Common Counts for Necessities Provided for Defendant;

Complaint for Board and Lodging.

I. Declarations.

A. *Declaration, Common Counts for Work, Labor and Materials, With Money Counts.*

For that whereas the said defendant heretofore, to-wit, on the _____ day of _____, in the year of our Lord one thousand eight hundred and _____, at _____, to-wit, at the (city, and in the) county of _____, aforesaid, was indebted to the said plaintiff, in the sum of _____ dollars, lawful money of the United States

of America, for the work and labor, care and diligence of the said plaintiff, by the said plaintiff, before that time done, performed, and bestowed in and about the business of the said defendant, and for the said defendant, and at his special instance and request. (Same count for materials.) And also for divers materials, and other necessary things, by the said plaintiff, before that time, found and provided, and used and applied in and about that work and labor, for the said defendant, and at his like special instance and request. And being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last aforesaid), and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff, the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. (Quantum meruit for the same.) And whereas also, afterwards, to-wit, on the same day and year (last aforesaid), and at the place aforesaid, in consideration that the said plaintiff had, before that time, at the like special instance and request of the said defendant, done, performed and bestowed divers other work and labor, care and diligence, in and about the business of the said defendant, and for the said defendant, and had, before that time, found, provided, used and applied divers other materials, and other necessary things, in and about that business, the said defendant undertook, and then and there faithfully promised the said plaintiff, that he, the said defendant, would well and truly pay to the said plaintiff so much money as the said plaintiff reasonably deserved to have of the said defendant, for the same, when he, the said defendant, should be thereunto afterwards requested. And the said plaintiff avers, that he reasonably deserved to have of the said defendant for the same, the further sum of _____ dollars, of like lawful money as aforesaid, to-wit, at the place aforesaid: Whereof the said defendant afterwards, to-wit, on the same day and year (last aforesaid), and at the place aforesaid, had notice.

And whereas also, the said defendant afterwards, to-wit, on the same day

and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiff in the sum of _____ dollars, like lawful money, as aforesaid, for so much money, before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant. And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also, the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiff, in the further sum of _____ dollars, of like lawful money as aforesaid, for so much money before that time, paid, laid out, and expended by the said plaintiff, to and for the use of the said defendant and at the like special instance and request of the said defendant. And being so indebted the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff, the said sum of money last above mentioned when the said defendant should be thereunto afterwards requested.

And whereas also, the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, was indebted to the said plaintiff in the further sum of (one thousand) dollars, of like lawful money as aforesaid, for so much money, before that time, had and received by the said defendant, to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff, the said sum of money last above men-

tioned, when the said defendant should be thereunto afterwards requested.

And whereas also, the said defendant afterwards, to-wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting, the said defendant then and there was found to be in arrear, and indebted to the said plaintiff in the further sum of _____ dollars, of like lawful money, as aforesaid. And being so found in arrear, and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to-wit, on the same day and year (last) aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff, the said sum of money last above mentioned when he, the said defendant, should be there unto afterwards requested.

Nevertheless the said defendant (although often afterwards requested so to do), hath not as yet paid the said several sums of money above mentioned, or any, or either of them, or any part thereof to the said plaintiff; but to pay the same, or any part thereof to the said plaintiff, the said defendant hath hitherto altogether refused, and still doth refuse. To the damage of the said plaintiff of _____ dollars, and therefore the said plaintiff brings suit, etc.

E. F., attorney for plaintiff.

Burr. App. 243, \$704.

B. Declaration for Wages as Hired Servant.

The indebitatus count is as in I. A. inserting these words, "for the wages or salary of the said plaintiff, before that time and then due and payable from the said defendant to the said plaintiff for the service of the said plaintiff, by him before then done and performed as the hired servant of and for the said defendant and on his retainer, and being so indebted," etc. (conclude as in I. A.). If the service has been performed on board a ship add these words, "in and on board a certain ship or vessel." 1 Chit. Pl. 65.

C. Declaration for Work With Horses and Carriages.

The indebitatus count is as in I, A, inserting these words, "for the work and labor, care, and diligence of the said plaintiff, before that time, done, performed, and bestowed by the said plaintiff and his servants, and with his horses, carts, and carriages [or, 'with his lighters and other vessels'] goods and chattels, in and about the business of the said defendant, and for the said defendant, and at his special instance and request, and being so indebted," etc. (conclude as in I, A). If it be for the carriage of goods, instead of the words between the brackets, say (in and about the carrying and conveying of divers goods, chattels, and merchandise, and delivering the same for the said defendant, and at his special instance and request," etc., or the count may be as in the next indebitatus count). The quantum meruit thereon is as in I, A, inserting as follows, "had before that time done, performed and bestowed other his work and labor, care, and diligence, by himself and his servants, and with his horses, carts, and carriages (or, 'with his lighters and other vessels') goods, and chattels in and about the business of the said defendant, and for the said defendant, he the said defendant undertook," etc. (conclude as in I, A). (Add one indebitatus assumpsit count for work and labor generally, the account stated, and breach.) 2 Chit. Pl. 76.

D. Declaration for Work, Journeys, and Attendance.

The indebitatus count is as in I, A, inserting these words, "for the work and labor, care, and diligence of the said plaintiff by him the said plaintiff, before that time done, performed and bestowed, in and about the business of the said defendant, and at his special instance and request, and for divers journeys and attendances by the said plaintiff before that time made, performed, and given, in and about the said work and labor for the said defendant and at his like special instance and request, and being so indebted," etc. (conclude as in I, A). The quantum meruit thereon is as in I, A, inserting as follows, "had before that time done, performed, and bestowed other his work and labor, care, diligence, in and about other the busi-

ness of the said defendant, and for the said defendant, and had also at his like special instance and request, before that time made, performed, and given, divers other journeys and attendances in and about the said last mentioned work and labor for the said defendant, he the said defendant undertook," etc. (conclude as in I, A). (Add one count for money paid, account stated, and breach.) 2 Chit. Pl. 77.

E. Declaration for Board and Wages as Hired Servant.

For that whereas heretofore, to-wit, on, etc. (day of retainer or about it) at, etc., in consideration that the said plaintiff, at the special instance and request of the said defendant, would enter into the service of the said defendant, as a hired servant, and serve the said defendant in that capacity, he the said defendant undertook, and then and there faithfully promised the said plaintiff, during the continuance of such service and employment, to pay him the said plaintiff for such service certain wages, after the rate of ————*l.* per annum, and certain board wages for his support and maintenance during such service, after the rate of ———— shillings per week; and the said plaintiff avers, that he, confiding in the said promise, and undertaking of the said defendant, did afterwards, to-wit, on, etc., aforesaid, enter into the service of the said defendant, and served the said defendant in the capacity aforesaid for a long space of time, to-wit, for the space of ———— weeks then next following, and that the board wages of the said plaintiff, during the time aforesaid, and after the rate aforesaid, amounted to a large sum of money, to-wit, the sum of ————*l.*, whereof the said defendant afterwards, to-wit, on, etc. (any day before title of declaration), at, etc., aforesaid, had notice. (Add the common count for wages, as in I, A, and counts for work and labor, money paid, account stated, and breach.) 2 Chit. Pl. 256.

F. Declaration for Not Receiving Hired Servant Into Service.

For that whereas heretofore, to-wit, on, etc. (day of promise, or about it) at, etc. (venue) in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there agreed

with the said defendant to enter into the service of the said defendant as a (lady's maid), and to serve the said defendant in that capacity, at certain wages, after the rate of ————l, a year, to be therefore paid by the said defendant to the said plaintiff, during her continuance in such service, she the said defendant undertook, and then and there faithfully promised the said plaintiff to receive her into the service of the said defendant in the capacity aforesaid, and to retain and employ her in such service at the wages aforesaid. And the said plaintiff avers, that she, confiding in the said promise and undertaking of the said defendant, hath always been ready and willing to enter into the service of the said defendant, in the capacity aforesaid, and to serve her the said defendant in that capacity for the wages aforesaid. And although the said plaintiff, afterwards, to-wit, on the day and year aforesaid, at, etc. (venue) aforesaid, requested the said defendant to receive the said plaintiff into the service of the said defendant, in the capacity aforesaid, and to retain and employ her in such service at the wages aforesaid; yet the said defendant, not regarding her said promise and undertaking, but contriving, and fraudulently intending, craftily and subtly to deceive and defraud the said plaintiff in this behalf, did not nor would, at the said time when she was so requested as aforesaid, or at any time afterwards, receive the said plaintiff into the service of the said defendant, or retain or employ her in such service, at the wages aforesaid, or otherwise howsoever, but wholly neglected and refused so to do; whereby the said plaintiff not only lost and was deprived of all the profits and emoluments which might and would otherwise have arisen and accrued to her from entering into the service of the said defendant, but also lost and was deprived of the means and opportunity of being retained and employed by and in the service of divers other persons, and remained and continued wholly out of service and unemployed for a long space of time, to-wit, for the space of three months then next following, and was and is otherwise greatly injured and damaged, to-wit, at, etc. (venue) aforesaid, etc. (Add counts for work

and labor, account stated, and breach.) 2 Chit. Pl. 324.

G. Declaration by Nurse for Services.

The indebitatus count is as in I, A, inserting these words, "for the work and labor, care, and diligence of the said plaintiff, by the said plaintiff before that time done, performed, and bestowed as a nurse for the said defendant, and at his special instance and request, in and about the nursing, attending, and taking care of the said defendant and of divers persons, whilst he and they were sick and laboring under divers diseases, disorders and maladies, and being so indebted," etc. (conclude as in I, A). The quantum meruit thereon is as in I, A, inserting as follows, "had before that time done, performed, and bestowed other her work and labor, care, and diligence as a nurse, in and about the nursing, attending, and taking care of the said defendant and divers other persons, whilst they were sick and laboring under divers other diseases, disorders, and maladies, he the said defendant undertook," etc. (conclude as in I, A). 2 Chit. Pl. 85.

H. Declaration for Carriage of Goods by Land.

The indebitatus count is as in I, A, inserting these words, "for the carriage and conveyance of divers goods, merchandise, and chattels, by the said plaintiff before that time carried and conveyed in certain carts and other carriages for the said defendant, and at his special instance and request, and being so indebted," etc. (conclude as in I, A). The quantum meruit thereon is as in I, A, inserting as follows, "had before that time carried and conveyed divers other goods, merchandise, and chattels, in certain other carts and carriages, for the said defendant, he the said defendant undertook," etc. (conclude as in I, A). (Add one count for work and labor generally money paid, account stated, and breach.) 2 Chit. Pl. 77.

I. Declaration by Undertaker.

The indebitatus count is as in I, A, inserting these words, "for the work and labor, care, diligence and attendance of the said plaintiff as an undertaker of funerals, before that time done, performed, and bestowed by the said plaintiff and his servants in and about the funeral of one F. P. (or a

certain person deceased) on the retain-er, and at the special instance and re-quest of the said defendant, and for divers hearses, coaches, horses, mate-rials, chattels, and other necessary things used and applied in and about the furnishing and conducting of the said funeral by the said plaintiff be-fore that time found and provided for the said defendant, and at his like special instance and request; and be-ing so indebted," etc. (conclude as in I, A). The quantum meruit thereon is as in I, A, inserting as follows, "had before that time done, performed, and bestowed, other his work and labor, care, diligence, and attendance, as an undertaker of funerals, by himself and his servants, in and about the funeral of the said E. F. (or of a certain other person deceased) and had also at the like special instance and request of the said defendant, before that time found and provided divers other hearses, coaches, horses, materials, chat-tels, and necessary things for the said defendant, and used and applied the same in and about the furnishing and conducting of the said last-mentioned funeral, he the said defendant, under-took, etc. (conclude as in I, A). (Add one indebitatus count for work and labor generally, one for goods sold, one for the use and hire of hearses, coaches, and horses, goods, etc., money paid, account stated, and breach.) 2 Chit. Pl. 85.

II. Complaints.

A. Complaint for Work and Labor, General Form.

I. That from the _____ day of _____, 18____, to the _____ day of _____, 18____, at _____, the plaintiff rendered services to the de-fendant, at his request * as his house-hold servant (or otherwise. See the following forms).

II. That for said services the de-fendant promised to pay him _____ dollars per month.

(Or, II. That the same were reason-ably worth _____ dollars, which sum became due therefor on the _____ day of _____, 18____.)

III. That no part of the same has been paid.

IV. (Demand, if necessary, as fol-lows: That on the _____ day of _____, the plaintiff demanded of the defendant of said sum.) 1 Abb. Forms 200.

B. Complaint on Special Contract Completely Fulfilled.

I. That on the _____ day of _____, 18____, the defendants (in consideration of _____), executed in writing under their hands and seals (and delivered to the plaintiff) a con-tract with the plaintiff, of which the following is a copy: (copy contract).

II. That thereafter and before the _____ day of _____, 18____, the plaintiff duly performed all the condi-tions thereof on his part.

III. That on the _____ day of _____, 18____, at _____, the plain-tiff duly demanded of the defendants payment of the sum of _____ dol-lars (being the last instalment) in said contract mentioned.

IV. That no part of the same has been paid (except, etc.) 1 Abb. Forms 206.

C. Complaint for Work and Mate-rials Furnished.

As in II, A, substituting at the * in (here indicate briefly the nature of the services, *e. g.*, printing 1000 copies of a book called "The _____"), and that the plaintiff then and there fur-nished the paper and other materials necessary in the said work upon the like request, and that he delivered the same to the defendant. 1 Abb. Forms 203.

D. Complaint for Work and Mate-rials Furnished on an Account.

As in II, H, inserting at the *, in (here indicate briefly the nature of the services, *e. g.*, in painting the house of the defendant in said town, or, in making a carriage for the defend-ant, or, in repairing the machinery in the mill of the defendant in said town), and for materials and other necessary things furnished by this plaintiff in and about said work, on the like re-quest. 1 Abb. Forms 204.

E. Complaint for Repayment of Ad-vances on Contract for Services Unfulfilled.

I. That on the _____ day of _____, 18____, at _____, the plain-tiff entered into an agreement with the defendant, whereby the defendant under-took to render his services to the plaintiff as _____, for the term of _____, in consideration of the sum of _____ dollars, to be paid therefor by the plaintiff.

II. That on the _____ day of _____,

_____, 18____, at _____, the plaintiff paid to the defendant, on account of his services to be rendered thereafter in pursuance of said agreement, the sum of _____ dollars.

III. That the defendant wholly neglected and refused to render said services, although this plaintiff has been ready to receive and to pay for the same, and that no part of said sum has been repaid to the plaintiff. 1 Abb. Forms 176.

F. Complaint by Employee, Discharged or Prevented From Fulfilling Contract.

I. That on the _____ day of _____, 18____, at _____, the plaintiff and the defendants made an agreement in writing, of which a copy is annexed, as a part of this complaint (or, made an agreement whereby the plaintiff undertook to render his services to the defendant as bookkeeper, or, as salesman, or, as teacher, or, etc., as the case may be, from said date to the _____ day of _____, 18____; in consideration whereof the defendants agreed so to employ the plaintiff during said period, and to pay him for services at the rate of _____ dollars each month).

II. That the plaintiff (entered upon his employment under said agreement, and duly discharged all the duties thereof until the _____ day of _____, 18____, and he) has ever since been and still is ready and willing (and on the _____ day of _____, 18____, duly offered) to perform all the conditions of said agreement upon his part.

III. That the defendant then refused, and still refuses to allow him so to do, or to pay him therefor, to his damage _____ dollars. 1 Abb. Forms 352.

G. Complaint for Employee's Refusal To Serve.

I. That on the _____ day of _____, 18____, at _____, the plaintiff and the defendant made an agreement in writing, of which a copy is annexed as a part of this complaint (or, made an agreement whereby the defendant agreed to render his services to the plaintiff as bookkeeper, or, as salesman, or, as a teacher, or, etc., as the case may be, from said date to the _____ day of _____, 18____; in consideration whereof the plaintiff agreed so to employ the defendant dur-

ing said period, and to pay him for his services at the rate of _____ dollars each month).

II. That the plaintiff (has ever been ready and willing to employ the defendant, and on the _____ day of _____, 18____, offered to do so; and has otherwise) duly performed all the conditions thereof on his part.

III. That the defendant entered upon the service of the plaintiff on the above-mentioned day, but afterwards, on the _____ day of _____, 18____, he refused to serve the plaintiff as aforesaid; to his damage _____ dollars.

(Or where the defendant refused to commence service, III. That the defendant wholly refused to perform said agreement; to the plaintiff's damage _____ dollars.) 1 Abb. Forms 373.

H. Complaint for Work and Labor Upon an Account.

I. That the defendant is indebted to the plaintiff on an account for the work, labor, and services of the plaintiff (and his servants), * in (here state briefly the nature of the services, see other forms), performed at the request of the defendant, between the _____ day of _____, 18____, and the _____ day of _____, 18____, in the sum of _____, and interest thereon from the _____ day of _____, 18____.

II. That no part thereof has been paid (except the sum of, etc.) 1 Abb. Forms 201.

I. Complaint for Tuition Bills.

As in II, H, substituting at the *, in instructing the defendant's children in various useful branches of learning, and for books, papers, and other necessary things furnished by this plaintiff in and about said work, at the like request (and for the board, lodging, and other necessities for said children, provided by the plaintiff during said time, at the like request). 1 Abb. Forms 265.

J. Complaint for Stabling of Horses.

I. That from the _____ day of _____, 18____, until the _____ day of _____, 18____, the plaintiff, at the request of the defendant, provided for, kept, and fed the two horses of the defendant.

II. That in consideration thereof the defendant promised to pay _____ dollars (or, the same were reasonably worth the sum of _____ dollars).

III. That the defendant has not paid the same. 1 Abb. Forms 205.

K. Complaint Against Common or Private Carrier on Special Contract for Negligent Loss of Goods.

I. (That the defendants are a corporation created by and under the laws of the state of _____, organized pursuant to an act of the legislature of said state, entitled "An Act to Authorize the Formation of Railroad Corporations, and to Regulate the same," passed _____, 18— [or other act], and the acts amending the same.)

II. That on the _____ day of _____, 18—, at _____, the plaintiff delivered to the defendant (or, if a corporation, to the defendants, being such corporation), certain goods, the property of the plaintiff, to-wit (describe the goods) of the value of _____ dollars, and in consideration of the sum of _____ dollars (or, of a reasonable compensation) paid (or, agreed to be paid) to him (them) by the plaintiff, the defendant then and there entered into an agreement with the plaintiff in writing, subscribed by the defendant (by his agent duly authorized thereto), of which agreement the following is a copy: (copy of the agreement).

III. That the defendant did not safely carry and deliver said goods pursuant to his agreement; but he so negligently and carelessly conducted in regard to the same, that they were wholly lost to the plaintiff (or, but that he failed to deliver them to _____, although on the _____ day of _____, 18—, at _____, he was requested so to do), to the damage of the plaintiff _____ dollars. 1 Abb. Forms 407.

L. Complaint Against Common or Private Carrier on Special Contract for Failure To Deliver in Time Agreed, With Special Damage.

I. That at the times hereinafter mentioned, the defendant was a common carrier (or, the defendants were common carriers, doing business as such as partners, under the firm of Y. Z. & Co., or, were common carriers, jointly interested as such), of goods, for hire, between the places hereinafter mentioned.

II. That on the _____ day of _____, 18—, at _____, the plain-

tiff delivered to the defendants (one hundred fat sheep), of the value of _____ dollars, the property of the plaintiff, which the defendants, in consideration of _____ dollars (or, of a reasonable compensation to be) paid them by the plaintiff, agreed safely to carry to the city of _____, and there deliver to the plaintiff, on or before the _____ day of, etc.

III. That the defendants did not fulfill their agreement safely to carry the same, and to deliver them in _____ on said day; but, on the contrary, although the period between the said day (day of delivery to defendants) and said (day on which they should have been delivered to plaintiff) was a reasonable time for carrying the same from _____ to the city of _____, yet the defendants so negligently and carelessly conducted (and so misbehaved in regard to the same, in their calling as carriers), that they failed to deliver the same in _____ until the _____ day of _____, 18—.

IV. That the market value of said (sheep) in the city of _____ on the (day agreed) was _____ dollars, but on the (day of actual delivery) was only _____ dollars; and that by reason of the premises the plaintiff was injured, to his damage _____ dollars. 1 Abb. Forms 408.

M. Complaint Against Watchmaker for Not Using Due Care and Skill in Repairing.

I. That the defendant, being a watchmaker at _____, the plaintiff, on the _____ day of _____, 18—, delivered to him a watch of the plaintiff, of the value of _____ dollars, to be repaired by the defendant, for reward.

II. That in consideration of the premises, the defendant then undertook said employment, and to use due care and skill in repairing said watch, and to take due care thereof while in his possession, and to redeliver the same to the plaintiff on request.

III. That the defendant did not take due and proper care of the said watch whilst in his possession, whereby the said watch was broken and injured; and he did not use due care or skill in repairing the said watch, but did his work in so careless and unworkmanlike manner that no benefit was derived therefrom, and the watch

was not improved, to the plaintiff's damage ——— dollars. 1 Abb. Forms 402.

N. Complaint for Breach of Contract To Manufacture Goods.

I. That on the ——— day of ———, 18—, at ———, the defendant promised and agreed with the plaintiff to manufacture and deliver to the plaintiff (50,000 slats and 4,500 frames for elliptic spring beds), at the price of ———, for which the plaintiff agreed to pay the defendant ——— dollars.

II. That the plaintiff duly performed all the conditions of said agreement on his part.

III. That defendant did manufacture, under said agreement (——— frames and ——— slats), but manufactured them in an unskilful and unworkmanlike manner, to the damage of the plaintiff ——— dollars. 1 Abb. Forms 355.

O. Complaint for Goods Made at Defendant's Request, and Not Accepted.

I. That on the ——— day of ———, 18—, at ———, the defendant employed the plaintiff to make for him (designate articles), and agreed to pay for the same, upon delivery thereof, ——— dollars (of which contract a copy is annexed as a part of this complaint).

II. That the plaintiff made the said (articles), and on the ——— day of ———, 18—, tendered the same to the defendant and has ever since been ready and willing to deliver them, and has otherwise duly performed all the conditions on his part.

III. That the defendant has not accepted or paid for the same. 1 Abb. Forms 356.

P. Complaint on Promise To Manufacture Wool.

I. That on, etc., at, etc., the defendant, in consideration that the plaintiff had delivered to him (fifteen bags of wool), of the value of ——— dollars, to be manufactured into (satinets) for a reasonable compensation, to be paid him by the said plaintiff, the defendant undertook to cause the said wool to be manufactured into satinets, and deliver the same to the said plaintiff early in the next spring there after, or as soon afterwards as the same

could be done by the defendant and his servants.

II. That the said wool was so manufactured by the said defendant, before the ——— day of ———, 18—, on which day the plaintiff, at ———, demanded said satinets of the defendant, and then and there offered to pay him a reasonable compensation for such, his services in the said manufacturing.

III. That the defendant then, and ever since, refused and neglected to deliver the same, and has converted them to his own use, to the damage of the plaintiff ——— dollars.

(Or II. That the defendant did not manufacture said wool into satinets, although a reasonable time therefor elapsed before this action, to the damage of the plaintiff ——— dollars.)

(Or III. That the defendant so negligently and unskilfully manufactured said wool that the satinets were of no value, to the damage of the plaintiff ——— dollars.) 1 Abb. Forms 356.

Q. Complaint for Services in Editing or Compiling Books.

As in II. H. inserting at the *, in compiling and editing a certain book entitled "The ———," and in preparing the same for the press and revising and correcting the proofs of the same. 1 Abb. Forms 202.

R. Complaint for Writer's Services in Editing Newspapers.

As in II. H. substituting at the *, as an editor, in conducting the newspaper of the defendants, known as "The ———," and in writing and preparing articles and paragraphs for the same. 1 Abb. Forms 202.

S. Complaint by Proprietors of Newspapers for Advertisements.

I. That these plaintiffs, as the issues hereinafter mentioned, were the proprietors and publishers of the daily newspaper known as "The ———," published in ———.

II. That on the ——— day of ———, 18— (or, if there were several insertions, between the ——— day of ———, 18—, and the ——— day of ———, 18—), these plaintiffs rendered services to the defendant, at his request, in publishing in their said newspaper the advertisements of the

defendant (or of the ———, in which the defendant was interested).

(Continue as in II. II, paragraphs 1 and II.) 1 Abb. Forms 203.

T. Complaint Against Printer on Agreement To Print, and for Injury To Stereotype Plates.

First. For a first cause of action:

I. That on or about the ——— day of ———, 18—, the plaintiff made a contract with the defendant, whereby the defendant agreed to furnish paper for, and to print and bind for the plaintiff, within thirty days, two thousand copies of a book of memoirs, for the price, and at the rate of \$271 for each thousand copies, payable at three months from the completion of the work.

II. That in accordance with, and for the purpose of fulfilling the contract, the defendant received into his possession, from the plaintiff, the stereotype plates of the book, of the value of \$500.

III. That after so receiving them he neglected to fulfil the contract, and afterwards refused to fulfil it, unless the plaintiff would advance thereon about \$250.

IV. That accordingly the plaintiff did, about the ——— day of ———, 18—, advance thereon to the defendant \$188, but after receiving the money defendant refused to fulfil, or to return the plates or the moneys thus advanced, to the plaintiff's damage ——— dollars.

Second. For a second cause of action the plaintiff alleges:

V. That, by the gross carelessness and negligence of the defendant and his servants, the stereotype plates delivered to defendant, as hereinbefore alleged, were destroyed, so that they were entirely lost to the plaintiff, and by reason of which she was put to a great additional expense in printing the two thousand copies agreed on, viz., \$298, and was also subjected to other expense and damage by reason of the delay in the publication, in consequence of which the sale of the book was greatly injured, to her damage ——— dollars. 1 Abb. Forms 357.

U. Complaint by Advertising Agent for Services and Disbursements.

I. That between the ——— day of ———, 18—, and the ——— day of ———, 18—, at ———, this plaintiff rendered services to the de-

fendants, at their request, in causing the defendants' advertisements of their business to be inserted in the following named newspapers and periodicals (names of papers, or annex and refer to a list).

II. That this plaintiff, for such insertions, for the use of the defendants, and at their request, paid out (and incurred liability to pay) the sum of ——— dollars, the amount of which payments, together with a reasonable sum for said services, the defendants promised to pay this plaintiff.

III. That such services were reasonably worth the sum of ——— dollars, which sum, with the amount of said disbursements, became due on the ——— day of ———, 18—, but no part thereof has been paid (except the sum of ———). 1 Abb. Forms 206.

WRIT OF ASSISTANCE.—See ASSISTANCE, WRITS OF.

WRIT OF ENTRY.

I. Writ of Entry in the Post, 1292

II. Declaration on Writ of Entry, 1292

I. Writ of Entry in the Post.

William the fourth, etc., to the sheriff of Northumberland, greeting:

Command R. C. that justly and without delay he render to M. B. widow (two messuages, etc.) in the parish of, etc., which she claims to be her right and inheritance, and into which the said R. C. hath not entry but after the disseizin, which he unjustly, and without judgment, made thereof to J. F., the brother of her the said M., and whose heir she is, within fifty years now last past as she saith; and unless he shall do so, and if the said M. shall give you security to prosecute her suit, then summon by good summoners the said R. C. that he appear before our justices at Westminster, on ——— to show why he will not do it, and have you there the summoners and this writ. Witness, etc. 3 Chit. Pl. 1339.

II. Declaration on Writ of Entry.

Northumberland (to-wit). M. B., widow, by ———, her attorney, demands against R. C. (two messuages, etc.) with the appurtenances, in, etc., as her right and inheritance, and into which the said R. C. hath not entry but by the disseizin, which he unjust-

ly and without judgment, made thereof to J. F., the brother of the said M. B., and whose heir she is, within fifty years now last past; and thereupon the said M. B., by ———, her attorney aforesaid, saith, that the said J. F. was seized of the tenements aforesaid, saith, that the appurtenances, in the demesne as of fee and right, within fifty years before the issuing of the original writ in this cause, by taking the esplees thereof to the value of, etc., and from the said J. F., who died without heirs of his body, the right descended to the said M. B., as sister and heir of the said J. F., and into which the said R. C. had not entry but by the disseisin, which he unjustly, and without judgment made thereof to J. F., the brother of her the said M. B., and whose heir she is, within fifty years now last past. 3 Chit. Pl. 1339.

WRIT OF ERROR.

I. Writs, 1293

- A. *To Trial Court From Supreme Court*, 1293
- B. *On Error in Fact in Trial Court*, 1294

II. Notice of Issuing Writ, 1294

III. Bond in Error, 1294

IV. Notice of Bail in Error, 1295

V. Notice of Exception to Bail in Error, 1295

VI. Record, 1295

VII. Return in Supreme Court, 1296

VIII. Allegation of Diminution, 1296

IX. Orders for Judgment, 1296

- A. *Of Affirmance*, 1296
- B. *Of Affirmance in Default*, 1296
- C. *Of Reversal*, 1296

X. Writ of Restitution After Judgment Reversed, 1296

CROSS REFERENCES:

CASE AND QUESTION CERTIFIED, REVERSED OR REPORTED:

Question of Jurisdiction Certified

CERTIORARI:

Petition for Certiorari in Aid of Writ of Error, Alleging Diminution of Record;

Certiorari on Allegation of Diminution.

ERRORS, ASSIGNMENT OF:

Assignment of Error in Supreme Court;

Notice To Join in Error;

Joinder in Error in Supreme Court;

Special Plea to Assignment of Error, Release;

Replication to Plea of Release to Assignment of Error;

Assignment of Error, Death of Plaintiff Before Trial as an Error of Fact;

Assignment of Error, Death of Defendant Before Trial as an Error of Fact;

Assignment of Error, Coverture as an Error of Fact;

Plea to Assignment of Error, Death as an Error of Fact;

Plea to Assignment of Error, Coverture as an Error of Fact;

Judgment Record, Circuit Roll on Error in Fact.

INFANTS:

Assignment of Error, Infancy as an Error of Fact;

Plea to Assignment of Error of Infancy as an Error of Fact.

JUDGMENTS AND DECREES, ENFORCEMENT OF:

Fieri Facias After Non Pros. or Affirmation in Supreme Court;

Fieri Facias on Remittal for Costs.

MANDATE:

Mandate, United States Supreme Court to State Court;

Mandate, Appellate Court to Common Pleas;

Mandate From United States Supreme Court to District Court;

Mandate of State Supreme Court.

REMITTIVE:

Remittitur From Appellate Court;

Remittitur From Appellate Court With Costs;

Remittitur From Appellate Court With Costs and Damages.

SUBRE FACIAS:

Plea to Subre Facias, Writ of Error Pending.

SUPPLICATION:

Supplication Dissolving Writ of Error.

I. Writs.

A. *Writ of Error To Trial Court From Supreme Court.*

The people of the state of New York, to the judges of our court of common pleas, in and for the county of ———, greeting.

Because in the record said, unrecorded

ings, and also in the giving of judgment, in a plaint which was in our said court of (common pleas), before you, between A. B., plaintiff, and C. D., defendant, of a plea of (trespass on the case), manifest error hath intervened, to the great damage of the said C. D., as by his complaint we are informed: We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you send to our justices of our supreme court (of judicature), distinctly and openly, under your seal, the record and proceedings of the plaint aforesaid, with all things concerning the same, and this writ, so that they may have them at the _____ in the city of _____, on the _____ Monday of _____ next, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and according to the law and custom of the state of _____, ought to be done. Witness, _____, esquire, our chief justice, at the (capitol) in the city of _____, the _____ day of _____, in the year of our Lord one thousand eight hundred _____, _____, clerks.

G. H., attorney.

Burr. App. 498, §1010.

B. Writ of Error on Error in Fact in Trial Court (Coram Nobis).

The people of the state of New York, to our judges of our _____ court of _____, greeting:

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our court, before you, between A. B., plaintiff, and C. D., defendant, of a plea of trespass on the case (or as the action is), as it is said, which said record and proceedings now remain before you, as it is said, manifest error hath intervened, to the great damage of the said C. D., as by his complaint we are informed: We being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then the record and proceedings aforesaid being inspected, you cause

to be further done thereupon, for correcting that error, what of right, and according to the law and custom of the state of _____, ought to be done.

Witness, etc. Burr. App. 497, §1009.

II. Notice of Issuing Writ of Error.

Sir: Take notice that a writ of error directed to the judges of the court of (common pleas) in and for the county of _____ (or otherwise, according to the court), commanding them to send to the justices of the supreme court of (judicature of the people of) the state of _____, the record and proceedings of a plaint which was had in the said (court of common pleas) with all things touching the same, between A. B. and C. D., etc., in a plea of, etc. (as in the writ of error), wherein judgment was given for the said A. B. against the said C. D., has been issued out of the said supreme court (of judicature), and returnable therein as above stated, and tested the _____ day of _____ last. (Dated, signed and directed in the usual form). Burr. App. 204, §394a; 2 Humph. Prec. 1071.

III. Bond in Error.

Know all men by these presents, that we, C. D., of _____, K. L., of _____, and M. N., of _____, are held and firmly bound unto A. B., of _____, in the sum of _____ dollars (double the sum recovered by the judgment, if the writ be intended as a stay of execution; otherwise, "in the sum of _____ hundred dollars") lawful money of the United States, to be paid to the said A. B., his executors, administrators or assigns; for which payment well and truly to be made we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the _____ day of _____, one thousand eight hundred _____.

Whereas judgment has been rendered in the (here name the court appealed from), in favor of the said A. B., against the said C. D., for _____ dollars, damages and costs (or as the judgment may be), in which judgment and proceedings the said C. D. complains that there is error in substance therein, and to be relieved therefrom hath applied for, and obtained a writ of error, to remove the same to the

supreme court (of judicature of the people) of the state of _____, to the end that the errors made therein may be corrected: Now the condition of the above obligation is such that if the said C. D. shall fail to prosecute the said writ, or if the said writ shall be quashed or discontinued, or if the judgment, for the reversal of which the said writ of error is brought, or any part of such judgment, shall be affirmed, then if the said C. D. will pay and satisfy the (debt or) damages and costs recovered by such judgment, which he shall be liable to pay, or such part of such recovery as shall be affirmed, if a part only shall be affirmed, and all costs and damages which shall be awarded by the said supreme court upon the judgment so affirmed), then this obligation to be void; otherwise to remain in full force and virtue. (If the writ be not intended to operate as a stay of execution, the condition of the bond will be as follows: Now the condition of the above obligation is such that if the above bounden C. D. shall fail to prosecute the said writ, or if the said writ be quashed or discontinued, or if the judgment on which the said writ is brought, or any part thereof, be affirmed, then if the said C. D. will pay the costs, if any, and the damages which shall be awarded by the said supreme court, then, etc.

Sealed and delivered in the presence of

C. D. (L. S.)
K. L. (L. S.)
M. N. (L. S.)

Burr. App. 45, §84a.

IV. Notice of Bail in Error.

Sir: Please to take notice that K L., of (No. _____ street, in the city of _____, merchant), and M. N., of (No. _____ street, in the said city, builder), have become bail for the plaintiff in error on the writ of error issued in this cause; and have, together with the said plaintiff in error, executed the bond required by the statute in such case made and provided (of which the within is a copy). Burr App. 203, §393.

V. Notice of Exception to Bail in Error.

Sir: Take notice that I except to the sureties in the bond filed with the writ of error brought upon the judgment rendered in the court of common

pleas in and for the (city and) county of _____ (or otherwise as the case may be), against C. D. in favor of A. B. Dated this _____ day of _____, 18—. Burr. App. 203, §394; 2 Humph. Prec. 1072.

VI. Record (Error Book).

Pleas before the justices of the supreme court (of judicature of the people) of the state of _____, at the capitol in the city of _____, of _____ term, in the year one thousand eight hundred and _____.

Witness, _____, esquire, chief justice.

_____, clerks.

State of _____, ss.: The (people of the) state of _____ have sent to their judges of the court of common pleas, in and for the (city and) county of _____, their writ close in these words, to-wit:

The (people of the) state of _____ to the judges, etc. (continue writ of error as in I, A).

The answer of the judges of the court of (common pleas), in and for the (city and) county of _____.

The record and proceedings whereof mention is within made, and all things touching the same, we certify under the seal of our said court, to the justices of the supreme court (of judicature) within mentioned, in a certain schedule hereto annexed, as within is commanded.

By the court.
J. H. Clark.

Pleas in the court of (common pleas), held at the _____ of the city of _____, in and for the said (city and) county of _____, before the judges of the said court, on the _____ Monday of _____, in the year of our Lord one thousand eight hundred and _____.

(City and) county of _____, ss.: A. B. plaintiff in this suit, by B. F., an attorney, complains of C. D., defendant in this suit, being in custody, etc., at a plea of _____ on the _____ For that whereof, etc. (copy the whole judgment record to the end).

Afterwards, to-wit, on the _____ Monday of _____, in the term of _____, in the year of our Lord one thousand eight hundred _____, before the justices of the supreme court (of judicature of the people) of the state of _____, at the capitol in

the city of ———. comes the said C. D., by G. H., his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to-wit, that, etc. (copy the assignment of errors to the end).

And hereupon the said A. B., by E. F., his attorney, freely comes before the justices of the supreme court (or judicature of the people) of the state of ———, at the capitol in the city of ———, and says that there is not any error in the record and proceedings aforesaid; and he prays, etc. (copy the joinder in error). Burr. App. 98, §190. See 21 Wend. (N. Y.) 67.

VII. Return in Supreme court.

To the justices of the supreme court (of judicature of the people) of the state of ———:

The return to this writ appears by the schedule thereto annexed. The answer of the judges of the (style of the court below).

(Seal of the court below.)

J. C., clerk of the (court below).

Burr. App. 443, §857.

VIII. Allegation of Diminution.

Supreme court. (In error.) Of the term of (July), in the year of our Lord one thousand eight hundred ———. C. D. v. A. B.

Afterwards, to-wit, on the ——— Monday of ———, in this same term, before the said justices of the supreme court aforesaid, at the ——— in the city of ———, comes the said C. D., by G. H., his attorney, and suggests and alleges to the said court that there is remaining before the judges of the, etc. (the court below), a record of judgment in favor of the defendant in the above cause who was plaintiff in the said (the court below), against the said plaintiff in this court; and also a capias, return and filing, rules to plead, for default, for interlocutory judgment, for reference to clerk to assess damages, clerk's report thereon, etc. (specifying the different proceedings), the transcript whereof is not certified and returned with the writ of error depending in this court; and thereupon the said C. D. prays a writ of certiorari to be issued to the said judges of, etc. (the court below), commanding them to certify the transcript

of the said record and proceedings so remaining before them.

G. H., attorney for plaintiff in error.

Burr. App. 413, §771.

IX. Order for Judgment.

A. Order for Judgment of Affirmance in Error.

After hearing counsel for the respective parties in this cause, ordered that the judgment of the (court of common pleas for the ——— county of ———), be, and the same is hereby affirmed, with costs. Burr. App. 466, §946.

B. Order for Judgment of Affirmance in Default.

On reading and filing an affidavit of due service of notice of motion in this cause, and on motion of Mr. J., of counsel for the defendant (no one appearing to oppose), ordered, etc. Burr. App. 466, §946a.

C. Order for Judgment of Reversal.

After hearing counsel, etc., ordered that the judgment of the (court below) be, and the same hereby is reversed; costs to abide the event, venire de novo to the court below. Burr. App. 467, §947.

X. Writ of Restitution After Judgment Reversed, With a Fieri Facias Clause.

The people of the state of New York, to the sheriff of the county of ———, greeting:

Whereas A. B., lately, that is to say, in ——— term, in the year of our Lord one thousand eight hundred ———, in our court of (common pleas) in and for the county of ———, before the judges of the said court, at the courthouse in and for the said county of ———, by the judgment of the same court, recovered against C. D. \$———, for his damages, which he had sustained, as well, etc. (as in a common writ of fieri facias, in assumpsit, covenant, case, trover, trespass or replevin; and then as follows): whereof the said C. D. was convicted, as appeared to us of record; and afterwards, to-wit, on the ——— day of ——— in the year of our Lord one thousand eight hundred and ———, the record and proceedings aforesaid, with all things concerning the same, by virtue of our certain writ for correcting errors, prosecuted by the said C. D. in the premises, were, by our said court of common pleas, in and for the county

of ———, before the judges thereof, sent before our said justices of our supreme court (of judicature) aforesaid, according to the form of the statute in such case made and provided: And afterwards, to-wit, on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, by our said supreme court (of judicature), before our aforesaid justices thereof, it was considered that the judgment aforesaid, for divers errors in the record and proceedings aforesaid, should be reversed, annulled and altogether held for nought, and that the said C. D. should be restored to all things which he had lost by occasion of the judgment aforesaid: And it was also further considered that the said C. D. should recover against the said A. B. ——— dollars, which were by our said supreme court (of judicature), before our aforesaid justices thereof, then there adjudged to the said C. D., and with his assent, according to the form of the statute in such case made and provided, for his costs and charges by him expended, about the prosecution of the said writ of error: And now, on the behalf of the said C. D., in our said supreme court (of judicature), before our aforesaid justices thereof, we have been informed that the said A. B., on pretense of the said former judgment, hath had his execution of the damages aforesaid, and is yet possessed thereof: Therefore we command you, that if it

can be made appear to you, that the said A. B. hath had his execution of the damages aforesaid, by virtue of the judgment aforesaid, then without delay you cause the said C. D. to have full restitution of the said ——— dollars: And if you cannot cause him to have restitution thereof, then that you cause to be levied of the goods and chattels of the said A. B. in your county, the said sum of ——— dollars, and also the amount of the said costs and charges: And if sufficient goods and chattels of the said A. B. cannot be found in your county, that then you cause the said ——— dollars to be made of the lands, tenements, real estate and chattels real, in your county, whereof the said A. B. was seized on the ——— day of ———, in the year of our Lord one thousand eight hundred and ——— (the day the judgment of reversal was rendered in the supreme court), in whose hands soever the same may be; and cause that money to be delivered without delay to the said C. D.: And in what manner you shall execute this our writ make appear to our said justices of our supreme court (of judicature) aforesaid, on the ——— Monday of ——— next, at the ———, in the ——— of ———, and save you then there this writ. *Witness*, etc. (teste in usual form). *Barr. App.* 498, §1011; 2 *Hampd. Proc.* 1135.
WRITS. — See *Process*.

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